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Florida Court Says “Aloha” to Copyright Suit Against Hawaii Publisher Over Obamaland Book

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A Florida federal court has dismissed a copyright infringement lawsuit brought by a Florida woman against the Hawaiian publisher of Obamaland: Who is Barack Obama?, a book about President Barack Obama’s formative years in his native Hawaii.

Adopting the reasoning of a magistrate judge’s Report and Recommendation — but ordering outright dismissal of the case, rather than affirming the magistrate’s recommendation of a transfer — Orlando federal Judge Gregory A. Presnell held that the Florida court lacked personal jurisdiction over the defendant, Honolulu-based Trade Publishing Company. Order, *Edwards v. Trade Publishing Company*, Case No. 6:10-cv-1883-Orl-31KRS (M.D. Fla. August 18, 2011), adopting Report and Recommendation (M.D. Fla. July 20, 2011).

The case arose in late 2008 after President Obama’s election, when a freelance Hawaiian writer and radio personality, Ron Jacobs, approached Trade Publishing to publish his book about President Obama’s relationship with Hawaii. Trade Publishing agreed to print the book on an independent contract basis. In January 2009, Trade Publishing printed 8,800 copies of Obamaland, the majority of which were sold in Hawaii through a Hawaiian book distributor. Books were also available for purchase over the Internet through a distributor and through Trade Publishing’s website. Trade Publishing did not market or advertise the book in Florida, but three Florida residents bought a total of six books through the Internet.

The 150-page book consisted of a compilation of chapters published under the bylines of people who knew President Obama in his Hawaii days. A four-page chapter appeared under the byline of the plaintiff, Joella Marie Edwards, who attended the same high school as Obama. In the lawsuit, Edwards claimed that the Obamaland infringed her copyright in an essay she claimed to have written, “Black in a Buff ‘n Blue World.” Edwards had registered the essay with the Copyright Office nine months after the publication of the book.

In particular, Edwards claimed that Jacobs had promised to pay her for the use of her story, and that Trade Publishing was required to honor that alleged promise. She sought damages for statutory and common law copyright violations against both Trade Publishing and Jacobs. Jacobs never appeared in the case.

Trade Publishing moved to dismiss on grounds that a court in Florida could not exercise personal jurisdiction over a Hawaiian defendant. Although the Florida Supreme Court recently extended the reach of the state’s long-arm statute to include information made accessible, and actually accessed in Florida, *Internet Solutions Corp. v. Marshall*, 39 So.3d 1201 (Fla. 2010), the exercise of personal jurisdiction under the statute must still comport with constitutional due process. For purposes of testing the long-arm statute under due process, copyright infringement claims are treated as intentional torts, and courts apply the three prongs of the “effects test” established in *Calder v. Jones*, 465 U.S. 783 (1984). This requires a showing that the defendant (1) committed an intentional tort, (2) that was expressly aimed at the forum, (3) causing an injury within the forum that the defendant should have reasonably anticipated. See *Id.* at 785-89.

Applying the test, the magistrate judge found — and the district judge adopted over the plaintiff’s objections — that Trade Publishing did not meet any of the three elements. First, the court held that at the time Trade Publishing printed the 8,800 copies of *Obamaland*, Jacobs — who the court agreed was an independent contractor and lacked authority to bind the publisher — had assured Trade Publishing that all rights had been obtained for material in his book, including the four-page article concerning Edwards. Moreover, the court found, Jacobs had not asked Trade Publishing to approve Edwards as a sub-contractor, as Jacobs’ agreement with Trade Publishing required. In addition, Trade Publishing had limited knowledge of Edwards’ status as a Florida resident, and had no pre-publication conversations with her. Accordingly, the court held that any alleged copyright infringement by Trade Publishing “was, at best, only negligent,” and not willful or intentional, and that the first prong of the Calder test therefore had not been met. As to the second and third prongs of Calder, the court found that *Obamaland* was not “expressly aimed” at Edwards or Florida, as the majority of the book was instead about President Obama and Hawaii.

Similarly, because neither the publication nor distribution of the book was directed towards Edwards, it could not have caused her injury in Florida that Trade Publishing should have reasonably anticipated. Significantly, the court noted that Trade Publishing’s knowledge that Edwards was a Florida resident was not sufficient, standing alone, to satisfy the second or third prong of the effects test because the express aim of the book was not Edwards or Florida.

The magistrate judge, while finding that the exercise of personal jurisdiction would not comport with due process, had recommended transfer to the to the U.S. District Court for the District of Hawaii under the doctrine of forum non-conveniens. When the plaintiff filed an objection to the Report and Recommendation, Trade Publishing urged the district court to adopt the magistrate judge’s findings, but instead of a transfer, order dismissal outright.

The district judge agreed, and in his order, found that “the interests of justice” require dismissal.

Charles D. Tobin and Drew E. Shenkman, of Holland & Knight LLP in Washington, D.C., represented defendant Trade Publishing Company in this matter. Brian R. Gilchrist, Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, FL, represented plaintiff Joella Marie Edwards.

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