

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
MONMOUTH COUNTY  
DOCKET NO. MON-L-002736-08  
APP. DIV. NO. \_\_\_\_\_

TOO MUCH MEDIA, LLC, :  
et als., :  
 : TRANSCRIPT  
Plaintiffs, :  
 : OF  
vs. :  
 : MOTION FOR RECONSIDERATION  
SHELLEE HALE, et als., : (COURT DECISION)  
 :  
Defendants. :  
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Place: Monmouth County Courthouse  
71 Monument Park  
Freehold, N.J. 07728

Date: September 11, 2009

B E F O R E:

HONORABLE DANIEL M. WALDMAN, J.S.C.

T R A N S C R I P T O R D E R E D B Y:

JOSEPH SCHRAMM, III, ESQ, (Fox Rothschild, LLP)

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I N D E X  
9/11/09

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	<u>Page</u>
<u>COURT DECISION</u>	3

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Court Decision

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(Proceedings begin at 9:40 a.m.)

THE COURT: Okay?

THE CLERK: Yes.

THE COURT: This is the matter of Too Much Media, LLC, et al v Shellee Hale, et al., Docket Number MON-2736-08, a motion for reconsideration by defendant Shellee Hale. This is my decision.

The record should reflect that there are no counsel here. It's 9:30 a.m. on Friday, motion day, 9/11. I advised counsel that I was going to place something on the record on 9/11 and I would either be denying the motion for consideration for reasons which I would state on the record or I would carry the motion for reconsideration to another date. I have opted to deny the motion for reconsideration. I'm going to read my decision into the record.

The defendant Shellee Hale, through her attorneys, has filed a notice of motion for reconsideration of a prior order of June 30, 2009 of now retired Judge Louis Locascio, J.S.C. That order of Judge Locascio was also accompanied by his written 19-page decision of same date. Since Judge Locascio has retires, his civil docket numbers have been allocated between the civil judges in this courthouse. This matter of Too Much Media is one of the inherited docket

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1 numbers I received as a result of Judge Locascio's  
2 retirement.

3 Judge Locascio's order and decision was in  
4 response to a motion filed by defendant Shellee Hale, a  
5 resident of Washington, whom Judge Locascio had ordered  
6 to undergo a deposition via a teleconferencing link-up.  
7 Her counsel was concerned that TTM's counsel was going  
8 to inquire about defendant Hale's sources of  
9 information that formed the basis of her alleged  
10 defamatory internet blogs; hence, the motion was filed  
11 before Judge Locascio, one, for a protective order,  
12 pursuant to N.J.S.A. 2A:84A-21, codified into our Rules  
13 of Evidence as Evidence Rule 508, the newspapermen's  
14 privilege, to keep confidential the identities of  
15 defendant Hale's sources of information; and, two, for  
16 a dismissal of the complaint under Rule 4:6-2(e),  
17 failure to state a claim upon which relief can be  
18 granted on the basis that plaintiff TMM could not  
19 sustain a claim of slander per se because the postings  
20 were liable and not slander and because plaintiff TMM  
21 suffered no actual or pecuniary damages.

22 In resolving that motion filed by defendant  
23 Hale, Judge Locascio conducted a plenary hearing which  
24 he found to be mandated by N.J.S.A. 2A:84A-21.3(b) and  
25 (c) so that he could do fact-finding on whether

1 defendant Hale could make a prima facie showing that  
2 she was entitled to the protections of the  
3 newspapermen's -- newsperson's privilege, effectually  
4 known as the shield law.

5 After conducting the plenary hearing, Judge  
6 Locascio concluded that "defendant has not made a prima  
7 facie showing that she is engaged on, engaged in,  
8 connected with, or employed news media for the purpose  
9 of gathering procuring, transmitting, compiling,  
10 editing, or disseminating news for the general public."

11 He further found as to the defendant's  
12 application to dismiss plaintiff TMM's defamation  
13 complaint that actual malice did not have to be proved,  
14 that's number one. And, number two, that he -- that  
15 the defamation claim was actionable without proof of  
16 special harm; hence, the judge denied that dismissal  
17 application.

18 As indicated, defendant Hale, thereafter  
19 filed its motion for reconsideration under Rule 4:49-2.  
20 Judge Locascio retired in July 2009. He is not  
21 available to reconsider his order of June 30, 2009.

22 "Reconsideration is left to the sound  
23 discretion of the court." Casino Reinvestment  
24 Authority v Teller, 385 -- excuse me, 384 N.J.  
25 Super. 408, (App. Div. 2006).

1 "As stated years earlier, reconsideration  
2 should be utilized only for those cases which fall  
3 into that narrow quarter in which either, one, the  
4 court has expressed its decision based upon a  
5 palpably incorrect or irrational basis; or, two,  
6 it is obvious that the court either did not  
7 consider or failed to appreciate the significance  
8 of probative competent evidence. Said another  
9 way, a litigant must initially demonstrate that  
10 the court acted in an arbitrary, capricious, or  
11 unreasonable manner before the should engage in  
12 the actual reconsideration process. The arbitrary  
13 or capricious standard calls for a less searching  
14 inquiry than other formulas related to the scope  
15 of review. The arbitrary, capricious or  
16 unreasonable standard is the least demanding form  
17 of judicial review." D'Atria v D'Atria, 242  
18 Super. 392, 401-402, (Ch. Div. 1990).

19 If I were Judge Locascio, I would apply the  
20 aforesaid standards to the order and decision  
21 previously rendered and determine whether  
22 reconsideration should be granted. In the absence of  
23 Judge Locascio, can this Court now consider his order?  
24 This Court answers in the negative, without reaching  
25 the merits of the various legal issues that Judge

1 Locascio addressed. The reason is clear to this Court  
2 and this Court wishes to convey it to counsel.  
3 Although the departure of judges in the past  
4 has resulted in the distribution to the remaining  
5 sitting judges, the retiree's motions, including  
6 motions for reconsideration, and although we generally  
7 decide those motions, here there is a deterrent that  
8 prohibits the Court. Specifically, Judge Locascio's  
9 application of the shield law, N.J.S.A. 2A:84(A)-21, et  
10 seq. resulted in his conducting a plenary hearing in  
11 order to resolve the issue of the applicability of the  
12 newsperson's privilege to defendant Shellee Hale. That  
13 plenary hearing resulted in Judge Locascio's taking  
14 testimony from defendant Hale. In that plenary  
15 hearing, defendant Hale was subjected to direct  
16 examination and cross-examination. At the conclusion  
17 of that examination, if became incumbent upon Judge  
18 Locascio to make finding of fact and conclusions of  
19 law. The same are reflected in Judge Locascio's  
20 decision. Those findings of facts resulted in Judge  
21 Locascio's evaluating, as a fact-finder should, the  
22 credibility, that is the believability of defendant  
23 Hale's testimony. Suffice it to say here, for reasons  
24 stated in his opinion, he found her less than credible.  
25 Yet, as stated by Shakespear's Hamlet in his

1 well-traveled soliloquy, aye -- "Aye, there's the rub."

2 This trial court cannot pass upon the  
3 credibility determinations made by another trial judge  
4 in a plenary hearing. That is not the function of this  
5 court on a motion for reconsideration. While Judge  
6 Locascio would have discretion whether to grant or deny  
7 this motion for reconsideration, I have no discretion,  
8 I must deny. I cannot possibly be charged with the  
9 responsibility of determining whether he has applied  
10 his credibility determining whether he has applied his  
11 credibility determinations correctly. He has seen and  
12 heard the witness testify and he's had the unique  
13 opportunity to assess the demeanor of the witness. I  
14 have not.

15 Simply stated, I am not Judge Locascio's  
16 Appellate Division. Credibility is always for the  
17 fact-finder to determine. It is not for me to  
18 determine whether there is sufficient credible evidence  
19 present in the plenary hearing record to uphold the  
20 findings of fact of Judge Locascio. I was not the  
21 trial judge; and, hence, I am not in a good position to  
22 do that. I cannot and will not make new credibility  
23 findings. I cannot weigh the evidence from that  
24 hearing, assess the credibility of the witness from  
25 that hearing -- assess the credibility of the witness

1 from that hearing or make conclusions about that  
2 evidence from the hearing.

3 In closing, let us return to our eponymous  
4 Hamlet, "To be, or not to be: that is the question:  
5 Whether 'tis nobler in the mind to suffer the slings  
6 and arrows of outrageous fortune, or to take arms  
7 against a sea of troubles, and by opposing end them? To  
8 die: to sleep; no more; and by a sleep to say we end  
9 the heart-ache and the thousand natural shocks that  
10 flesh is heir to, 'tis a consummation devoutly to be  
11 wish'd."

12 Gentlemen, to pervert Parker Brother's  
13 legendary game of Monopoly, do not pass go, go directly  
14 to the Appellate Division.

15 That's the end of the decision.

16 (Proceedings concluded at 9:48 a.m.)  
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