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IN THE CIRCUIT COURT OF THE
THE SEVENTH JUDICIAL CIRCUIT IN
AND FOR VOLUSIA COUNTY, FLORIDA

TERESA EARNHARDT and The Estate of
DALE EARNHARDT, by and through
its personal representative, TERESA
EARNHARDT, for and on Behalf
of The Estate and For The Survivors,

CASE NO. 2001-30373-CICI
Div. 32

Plaintiffs,

v.

VOLUSIA COUNTY, OFFICE OF THE
MEDICAL EXAMINER,

Defendant.

FILED
2001 FEB 22 AM 8:39
CLERK OF THE CIRCUIT
& CIVIL COURT VOLUSIA COUNTY
FLORIDA

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Teresa Earnhardt and the Estate of Dale Earnhardt, by and through its personal representative, Teresa Earnhardt, for and on behalf of the Estate and for the Survivors, hereby sues the Office of the Medical Examiner for Volusia County, Florida, and state:

1. This is an action for declaratory and temporary and permanent injunctive relief pertaining to Chapter 119, Florida Statutes, otherwise known as the Florida Public Records Act, and Section 540.08, Florida Statutes.

2. This Court has jurisdiction pursuant to Chapter 86, Florida Statutes.

3. Venue is proper in this Court pursuant to Section 47.011, Florida Statutes, because the subject matter of this action involves the release of certain photographs in the possession of and maintained by the Office of the Medical Examiner within and for Volusia County, Florida.

4. Teresa Earnhardt, the Wife of Dale Earnhardt, ("Mr. Earnhardt" or "Deceased"), and

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Personal Representative of the Estate of the Deceased, (collectively, "Plaintiffs"), is a resident of North Carolina.

GENERAL ALLEGATIONS

5. On February 18, 2001, Mr. Earnhardt, an internationally known and well respected professional race car driver, was killed in a crash during the Daytona 500 at the Daytona International Speedway in Volusia County, Florida.

6. After the accident and in accordance with Section 406.11, Florida Statutes, the Volusia County Medical Examiner took photographs of Mr. Earnhardt's automobile which was involved in the crash.

7. Due to Mr. Earnhardt's stature within the racing community, and his international and domestic fame, a media deluge has surrounded the circumstances of his death.

8. Defendant, without receiving proper requests therefor under Chapter 119, the Florida Public Records Act, has already allowed the display of the above-referenced photographs on the Volusia County website. The print and electronic media have already published some of those photographs after obtaining them, presumably, from the Volusia County website. Under cases such as Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991), the gratuitous disclosure of any photographs taken by the Defendant in connection with the death of Mr. Earnhardt is inappropriate, unacceptable and personally harmful to Plaintiffs. Plaintiffs reasonably anticipate that further publication of photographs, including publication on the Internet, will occur absent the granting of the relief sought in this Complaint.

9. Plaintiffs seek to preclude the further release and publication of any photographs, the requests for which are undoubtedly soon to follow.

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10. Defendant's gratuitous publication of the photographs on its website has caused, and will continue to cause, Plaintiffs to endure severe emotional distress.

11. If photographs are further released and disseminated on the Internet, that would have a destructive effect upon young children who might view the photographs there, and would additionally distort the public's perception and memory of Mr. Earnhardt.

12. Further, the inappropriate release and dissemination of the photographs has violated and would continue to violate Plaintiffs' intellectual property rights to the images contained in said photographs, in violation of Section 540.08, Florida Statutes.

COUNT I- DECLARATORY RELIEF

13. Plaintiffs hereby reallege and reassert each and every allegation set forth in paragraphs 1 through 12 as if fully set forth herein.

14. Pursuant to Article 1, Section 23, of the Florida Constitution (1968), and under the authority of Post-Newsweek Stations, Florida, Inc. v. Doe, 612 So. 2d 549 (Fla. 1992), State v. Rolling, 1994 WL 722891 (Fla. Cir. Ct. July 27, 1994), and New York Times Company v. National Aeronautics and Space Administration, 782 F. Supp. 628 (D.C. 1991), the Plaintiffs' privacy rights, as the immediate family of Mr. Earnhardt, will be violated if any of said photographs are permitted to be inspected or copied in any manner whatsoever.

15. Moreover, under Section 540.08, Florida Statutes, these photographs may not be printed, published, displayed, or otherwise used publicly for any commercial or advertising purpose, without the express written consent of the estate of the deceased, unless the photograph is part of a bona fide news presentation having a current and legitimate purpose.

16. Here, the Plaintiffs have not authorized the use of these photographs, nor is there any

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
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...ua hide media purpose requiring the publication of said photographs. The only media or public interest in said photographs flows from a morbid exploitation by some members of the public and the pursuit of sensationalism by some members of the media.

WHEREFORE, Plaintiffs request this Court to enter a declaratory judgment ordering that the release by the Medical Examiner of any of said photographs, for inspection or copying in any manner would violate the Plaintiff's rights under the Florida Constitution, Section 540.08, Florida Statutes, and the authority cited herein.

COUNT II - TEMPORARY AND PERMANENT INJUNCTION

17. Plaintiffs hereby reallege and reassert each and every allegation set forth in paragraphs 1 through 16 as if fully set forth herein.

18. Plaintiffs seek an Order of this Court enjoining the release of any and all of the above-referenced photographs, by the Office of the Medical Examiner.

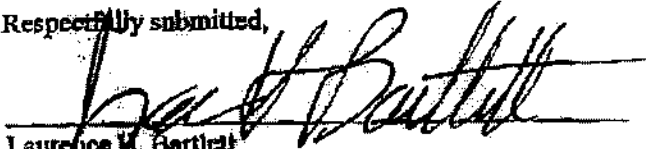
19. Plaintiffs demand, pursuant to Article 1, Section 23, of the Florida Constitution (1968), and under the authority of Post-Newsweek Stations, Florida, Inc. v. Doe, 612 So. 2d 549 (Fla. 1992), State v. Rolling, 1994 WL 722891 (Fla. Cir. Ct. July 27, 1994), and New York Times Company v. National Aeronautics and Space Administration, 782 F. Supp. 628 (D.C. 1991), that their privacy rights, as the immediate family of Mr. Earnhardt, be protected, and that said photographs not be permitted to be inspected or copied in any manner whatsoever.

20. Plaintiffs have no adequate remedy at law and would suffer irreparable harm unless the injunctive relief requested is granted. There exists a substantial likelihood that Plaintiffs will succeed on the merits of their claims and that entry of an injunction will not injure the public, but rather, would be consistent with the public interest.

WHEREFORE, Plaintiffs request this Court to enter an injunction, both temporary, and after notice and hearing, permanent, enjoining Defendant from releasing any photographs taken in connection with Defendant's performance of his duties in connection with the death of Dale Eannhardt for inspection or copying in any manner and to grant any other and further relief that this Court deems just and appropriate.

DATED THIS 21st DAY OF FEBRUARY, 2001

Respectfully submitted,



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