

IN THE 2510th JUDICIAL DISTRICT COURT
IN AND FOR RANDALL COUNTY, TEXAS

BEN WHITTENBURG,
Plaintiff,
v.
STANLEY MARSH 3,
Defendant.

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Cause No. 41822-C

PLAINTIFF'S ORIGINAL PETITION

Ben Whittenburg, plaintiff, asserts his claims against Stanley Marsh 3, defendant, and would show the court as follows:

1. Plaintiff, who goes by Ben, resides with his parents George and Ann Whittenburg in Amarillo, Randall County, Texas, and did so at the time of the accrual of his causes of action against Stanley, and at least part of one or more of his causes of action accrued in Randall County.

2. Mr. Marsh may be served with process at his offices in Suite 1200 of Bank One Center at 600 South Tyler in Amarillo, Texas.

3. On Friday night, October 21, 1994, Ben accompanied a group of teenagers from the First Presbyterian Church of Amarillo to Boley's Park for a church-supervised, overnight camp-out as described on the church flyer attached as Exhibit A and incorporated for all purposes. Ben had just started his senior year at Amarillo High School. Boley's is on some land Ben's family has at the intersection of the Dumas Highway and Givens Avenue (F.M. 2176).

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LAURENCE
RANDALL COUNTY CLERK

4. After the sun came up Saturday morning, October 21, 1994, the adult sponsor from the church asked Ben to wait at Boley's until everyone else had left and to lock up before heading back home. Ben had been up all night with the group, and while he was waiting in his mother's van for all the kids to leave, he fell asleep.

5. Between eight and nine o'clock that Saturday morning, Mr. Marsh, accompanied by another man and two high school boys climbed over an 11-wire fence and tried to rip the license plate off the van. Ben was startled awake by Mr. Marsh, who had begun beating on the driver's side window of the van and screaming at the top of his voice, "Open the window you little s--t; you g--damn little s--t, open this window!" Ben awakened in a panic and cracked the window. He recognized Mr. Marsh and remembered him from a trip he had made to Mr. Marsh's office with a group of middle school leaders from his church. Looking like a mad man and brandishing a double-headed hammer in a menacing manner, Mr. Marsh said, "You little f---r, think you can steal my sign!"

6. Ben could not believe that Mr. Marsh was angry about one of his signs. On Saturday January 14, 1994, at Mr. Marsh's invitation, Ben had accompanied Tim Tam, the Director of Adult & Youth Ministries from his church, to Mr. Marsh's offices on the 12th floor of Bank One Center with the group of middle school leaders. The purpose of the visit was to get ideas from Mr. Marsh for games and gags to be used at church events for middle school students. Mr. Marsh was quite pleasant and, as is now clear, on his best behavior. He wrote each of the students a nice follow-up letter the following week reflecting the event. His letter to Ben, dated

February 2, 1995, is attached as Exhibit B and incorporated for all purposes.

7. That Saturday in his office, Mr. Marsh told the kids that he didn't care if people took his signs. They talked about one of his signs that read "STEAL THIS SIGN." One of the kids specifically asked if he cared when people stole his signs. As a result of Mr. Marsh's response, the kids felt invited to participate in what they perceived to be Mr. Marsh's sign games. Mr. Marsh laughed about it and said that if he doesn't get strong reactions like that he feels the signs have failed -- that he just replaces them with other signs.

8. Not long after that visit to Mr. Marsh's office, Ben and one of his friends learned that three other boys had spent three to four hours sawing three-fourths of the way through one of Mr. Marsh's signs and that the three of them planned to return the following night to finish the job. Ben and his friend decided to play a trick on the three boys by getting there first and taking the sign, which depicted a jack rabbit with the inscription "RAPID" underneath it. The sign was later used by a family employee who placed it in the ground to protect some PVC pipe from being broken by cars making too tight a turn in a water crossing by the pond at Boley's. The sign was in plain view.

9. Ben was somewhat groggy and confused from being so violently awakened that Saturday morning at Boley's. Mr. Marsh asked, "Who are you and whose land is this?" Ben responded, "I'm Ben Whittenburg, and this is my land." Mr. Marsh said, "Do you know who I am?" Ben said he did. Mr. Marsh asked Ben if he was one of the students who came to his office the day that Tim Tam was there.

Ben said he was. Mr. Marsh said, "This isn't your land you little f-----r; who are your parents." When Ben told him that George and Ann Whittenburg were his parents, Mr. Marsh went crazy. He started yelling,

"The f-----g Whittenburgs, poor white trash. No one likes the f-----g Whittenburgs. You're all just a bunch of trash. Ya'll are the scum of the earth."

10. Mr. Marsh then screamed at Ben, "Get out of the van you g--damn s--t!" Ben's immediate reaction was to do what Mr. Marsh told him to do. Ben was stunned and bewildered. He had been asleep and was wearing only his jeans and socks. He grabbed his shirt and hat. While Ben was getting out of the van, Mr. Marsh continued to scream at him saying, "Hurry up, you little s--t, hurry up." Mr. Marsh was running around the van with his small sledgehammer like an insane person, screaming,

"The g--damn Whittenburgs. Everyone hates your dad. He's just an arrogant f-----r. Your grand dad was scum. Your grand dad was a loser. Ya'll used to have money, but you don't anymore. You should have all moved out of town when you sold the newspaper."

11. Ben was angry and humiliated, but was too afraid to do anything. He feared that the four of them would beat him up and maybe kill him with that hammer. Mr. Marsh told Ben to let the air out of the tires on the van. When Ben hesitated, he started to threaten him again. Ben was moving slowly, afraid of making a wrong move. Mr. Marsh said, "Hurry up, you little s--t, hurry up f-----r, you stole my sign."

12. As Ben got down and began letting the air out of the right front tire, one of the guys with Mr. Marsh, the older one started to take pictures of Ben. The two younger guys were running around throwing chairs and other things into the pond. Mr. Marsh

came and stood behind where Ben couldn't see him. Mr. Marsh was still holding the hammer and said, "I ought to break your f-----g arms and your f-----g legs and smash your g--damn feet!" Ben was afraid Mr. Marsh was going to hit him in the head with the hammer and kill him. After the first tire was flat, Mr. Marsh said, "Okay, come on, hurry up." They walked around to the other side of the van and Mr. Marsh forced Ben to let the air out of the left front tire.

13. Ben was very angry and humiliated, but couldn't do anything. The guy taking pictures was laughing at him. Mr. Marsh said that this was going to get a lot of publicity. After the left front tire was flat, Mr. Marsh said, "Hurry up, you little s--t, hurry up," and marched Ben around to the area in front of the little rock house by the pond at Boley's. As they walked, Mr. Marsh said, "You better be glad that you were here because if you weren't I would burn down the house and bust out the windows of the car."

14. When they reached the bonfire pit in front of the little rock house, Mr. Marsh asked the older guy with him if there were any animals that he could turn loose. They heard the chickens. Mr. Marsh marched Ben to the chicken pen and said, "Get in there and chase those chickens out." The ground in the pen was covered with chicken manure and Ben had only his socks on. When Ben hesitated, Mr. Marsh held his hammer in a menacing manner and said, "Get in there you little g--damn s--t." Ben went into the chicken pen, but just stood there, refusing to chase the chickens. Mr. Marsh said, "Chase those g--damn chickens out or I'll cut them up and cover you with their blood."

15. Ben then chased the chickens out because he was scared. After all the chickens were out except for one, Mr. Marsh

said, "I'll leave you a friend." Then Mr. Marsh and one of his henchmen wired the gate shut in such a way that Ben could not unfasten it from the inside. Ben was wired inside the chicken pen with no way out. Mr. Marsh continued to berate Ben and said, "Your dad's trash, your grand dad was trash, your mom is trash, and you're trash."

16. Mr. Marsh and his henchmen continued taking pictures of Ben while he was locked in the chicken pen, and they tried to make him smile. Mr. Marsh said, "Smile you little s--t, smile you little f----r." While all of this was going on, some of Mr. Marsh's other henchmen were putting out two wooden signs around the little rock house. One sign said, "IF I WERE A TROLL, I'D HAVE TO SUCK YOUR SOUL." The other, with white crosses drawn on it, said, "SACRED TROLL BURIEL GROUND KNOWN AS 'TUPULI'."

17. Mr. Marsh and his gang then departed, leaving Ben locked up in the chicken pen. Ben got out when a family employee came out to Boley's that morning to feed the animals. The incident was reported to the Potter County Sheriff's Department, but in order to avoid any further confrontations with Mr. Marsh, Ben decided not to press charges.

18. Mr. Marsh, however, has not been content to let things drop, but instead has tried to make Ben's life "a living hell," to use one of Mr. Marsh's favorite threats. During the past school year, the AHS debate club was attempting to raise money for the club. When one of the students approached Mr. Marsh for a contribution, he declined to make an outright donation, but offered to pay five dollars for every egg that the kids threw at Ben's home.

19. Moreover, Mr. Marsh has made multiple copies of the pictures he took of Ben, some of them enlarged. He keeps a large picture of Ben in the chicken pen on the wall of his office. At various times during this past school year, Mr. Marsh sent some of the students who work for him to Amarillo High School, in Randall County, Texas, with pictures of Ben for the purpose of showing them around to intimidate, embarrass, and humiliate Ben with his schoolmates.

20. Mr. Marsh has deliberately engaged in conduct to intimidate, embarrass, and humiliate Ben and has through a course of conduct that constituted assault, false imprisonment, invasion of privacy, slander, and intentional infliction of emotional distress.

21. Apart from his tortious conduct directed toward Ben, Some of Mr. Marsh's seemingly crazy behavior is apparently part of a deliberate plan. He uses his signs as an attractive nuisance to lure and then compromise and threaten teenage boys into doing his bidding. One of the most serious aspects of Mr. Marsh's conduct is the example he sets for the high school boys he takes with him when he decides to take the law into his own hands. Mr. Marsh sends the clear message to these young people that assault, false imprisonment, invasion of privacy, slander, and intentional infliction of emotional distress are an acceptable way to handle disputes in our society.

22. As a result of Mr. Marsh's example to the young men around him, and in particular to the young men with him the day he assaulted Ben and falsely imprisoned him, Ben and his family have suffered ongoing losses of property and destruction of property by theft and vandalism at Boley's. Specifically, during a period of

time after the event, a stove, a TV and a refrigerator were stolen from the little rock house. Plastic chairs were burned and the barbed wire fence was cut. Locks to both gates have been cut. Most troubling of all, the bodies of chickens were found on the ground outside the pen with their heads pulled off and missing. On one of those occasions, someone left another sign, which said "TROLLS WELCOME" and depicted a sinister face on a yellow moon.

23. As a recognized member of the Amarillo community, Mr. Marsh is doing irreparable harm to many of our young people by personally leading them in vicious, vindictive, Rambo-like tactics against other young people. He follows up his scare tactics with demands that the young men go to work for him. It is a frightening scenario as exemplified by two other similar incidents.

24. The first occurred on a Saturday morning early this year when two teenage brothers and some friends were awakened at their home in southwest Amarillo, in Randall County, Texas, by Mr. Marsh and several of his henchmen. The brothers' parents were out of town, and several of the boys' friends had spent the night with them. Mr. Marsh and his gang roused all of them out of bed and hassled them about one of his signs that was in the boys' back yard. During the confrontation, Mr. Marsh boasted about how he had abused Ben, telling them that he made Ben let the air out of his tires and locked Ben in the pen, that he had taken pictures of Ben and had them in his office to look at and remember and laugh, and that he was holding a hammer and was going to crush Ben's hands and toes and feet with his hammer and "bash his f-----g head."

25. Mr. Marsh told the boys that he made Ben chase the chickens out of the pen and that Ben "got those chickens out fast

'cause I threatened, 'cause he was scared." Mr. Marsh said he wired the cage shut and Ben couldn't get out. Mr. Marsh also said "the Whittenburgs are a bunch of scum and trash."

26. One of the boys asked Mr. Marsh "why won't you just get the cops after us?" And Mr Marsh said, "I don't f--k with the law, I take the law into my own hands." Mr. Marsh also told the boys that he puts the signs up to get rich kids to try and take them so that he can get the kids to work for him. As Mr. Marsh and his gang were leaving, they looked at each other and said "We've got five new recruits to work for us." As he left, Mr. Marsh gave one of the boys a card that instructed him to be in Mr. Marsh's office Monday morning or "be cursed."

27. The second incident occurred on a Thursday night in May of this year after two teenage boys were stopped by a sheriff's deputy at the site of a sign that was bent over. The next morning, two of the boys' friends called Mr. Marsh on their behalf. Mr. Marsh told them that he would press charges against them and "was going to prosecute them to the fullest degree and make their lives hell" if they didn't come down to his office and talk to him.

28. That afternoon, the two boys who were stopped, together with six of their friends, including the two who called for them, went to Mr. Marsh's office. Once there, they were surrounded by a large number of Mr. Marsh's henchmen, who started making fun of them. Mr. Marsh came in and required all eight of the boys to fill out employment applications. Mr. Marsh said he was going to sing them a song to relax them. One of his employees began playing a guitar and Mr. Marsh sang a racist song about how he wanted to be a white cowboy, but not a black or Mexican or a "long-nose jew."

29. Mr. Marsh then asked some of the boys where their parents worked and told them that he had enough money and power to have their parents fired. He also told the boys he could stop them from going to college, from getting any financial aid, and from receiving any loans or grants. He said he would make their brothers' and sisters' lives hell.

30. Mr. Marsh also talked about his owning Channel 7, one of the areas leading television stations. He told one of the boys, "I own a TV station, and I can generate publicity that will ruin your reputation." He said that he would use his news station to broadcast their families' names as thieves and that he would run it on the news everyday at 5:59 p.m. for half a minute until they "found out how it was." Mr. Marsh pointed to one of his employees, a guy with orange hair, and said, "This guy works for me now. When he ripped up some of my signs, I went to the zoo where his mom worked and I was going to have her fired." Then he said, "Now he's working for me, putting up signs, and we didn't have to have her fired."

31. Then Mr. Marsh brought up Ben. He said,

"The people at Amarillo High are a bunch of little s--ts that are spoiled, rotten little brats. I'm sure you know Ben Whittenburg -- well, I don't like Ben, and I don't like his f-----g family. His father, George, is the biggest white trash piece of s--t on the face of this earth. If George Whittenburg and his money can't handle me, what makes ya'll think your parents' money can handle me? I have all the power. I own a TV station and lots of land."

32. One of Mr. Marsh's employees, the one with the orange hair, said to one of the boys, "He'll probably make you swim nude in front of all of us and then work for a day and then everything will be forgotten." When the boy said he was not going to do that, the

guy with the orange hair called him a "faggot." One of this boy's friends said that Mr. Marsh made him and two other guys swim nude in front of him and all his goons in order to avoid threatened criminal charges.

33. Stanley told the boys that he had made Ben eat chicken shit. He said, "I told Ben to eat it, but he didn't eat it. He just smeared it on his lips, but I think he got a little bit of it." He said that he threatened Ben's life and that he was going to, as he said, "Smash Ben's brains in with his hammer." He looked for what he told the boys was the picture showing him holding the hammer to Ben's face, but said he could not find it. He said lots of bad things about Ben using very vulgar language; that Ben was spoiled, rotten, and lived in a little house. He told the boys that Ben's dad was a white trash son of a bitch and didn't have any money.

34. Mr. Marsh also said, "If George Whittenburg can't do anything to me then your parents shouldn't even try." He talked about how the Whittenburgs did not have enough power to take him down because he was the owner of Channel 7. Mr. Marsh told the boys that he owned all this property and all this land and that no one could do anything to him.

35. Mr. Marsh tried to coerce the boys into coming back to see him the following Tuesday. He gave each of them pictures he had taken of Ben when he locked Ben in the chicken pen at Boley's, and he told them that the pictures were their tardy passes and that they had to get them autographed by Ben and bring them back on Tuesday. He threatened to press criminal charges if they failed to do so.

36. Mr. Marsh's conduct towards Ben as described above was perpetrated maliciously and intentionally to intimidate, embarrass, and humiliate Ben for the purpose of inflicting severe emotional distress, and for those reasons, Ben asserts the following causes of action, for which he seeks recovery of his damages from Mr. Marsh:

(a) Assault by causing an imminent apprehension of harmful or offensive bodily contact;

(b) False imprisonment by causing wrongful confinement;

(c) Invasion of privacy by causing the unwarranted appropriation or exploitation of personality, the publicizing of private affairs with which the public has no legitimate concern, and the wrongful intrusion into private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities;

(d) Slander by dissemination false and disparaging statements; and

(e) Intentional infliction of emotional distress by intentionally or recklessly engaging in extreme and outrageous conduct for the purpose of causing severe emotional distress.

37. As a result of Mr. Marsh's wrongful conduct, Ben has suffered damages including severe emotional distress. Part or all of Mr. Marsh's wrongful conduct was a proximate or producing cause of those damages.

38. Mr. Marsh's wrongful conduct was specifically intended to cause substantial injury to Ben, who is therefore entitled to recover exemplary damages in an amount sufficient to

deter Mr. Marsh, in light of his great wealth, from ever again engaging in such egregious behavior.

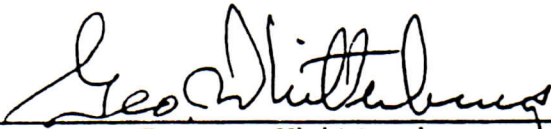
39. All conditions precedent to plaintiff's recovery have been fulfilled or have occurred.

WHEREFORE, PREMISES CONSIDERED, plaintiff requests that defendant be cited to appear and answer, and that on final trial, the court award plaintiff judgment against defendant for plaintiff's actual damages, including damages for mental suffering, shame, humiliation, and emotional distress, which are within the jurisdictional limits of the court; for prejudgment interest thereon; for exemplary damages; and for post-judgment interest on the total damages awarded; together with all other relief to which plaintiff may be justly entitled, at law or in equity, both general and special, with costs of court.

Respectfully submitted,

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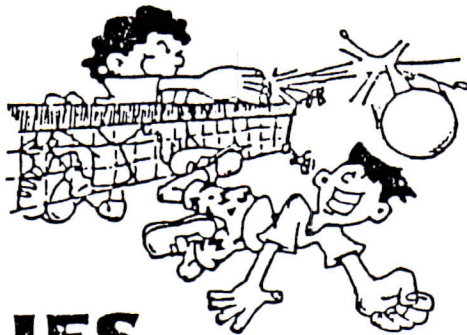
George Whittenburg

FPC SR. HIGH

**ANOTHER
FUN-PACKED
WEEKEND**

FRIDAY, OCTOBER 21

CAMP-OUT



at BOLLIES

- *After Football games
- *Will have you back at 8:00 a.m.
- Saturday at A & O House
- *Bring sleeping bag & warm grubbies
- *Campfires, ropeswings, night volleyball, smores

EXHIBIT A

THEN ON SATURDAY

IT'S.....



**FRAMING
FOOTBALL**

***At the Equestrian Euipper**

***Wear your grubbi**

***Ladies, It's time to
AVENGE your 38-35 loss
last month**

**Meet at A & O House at
7:00 p.m.**