

# Rasslin' In Court

By Reg P. Wydeven  
March 13, 2010

Growing up in the 1980s, I was a huge fan of professional wrestling. One of my favorites was Bret the “Hit Man” Hart. Hart was trained by his famous father, Stu Hart, who trained dozens of professional wrestling champions in the basement of his mansion in Calgary, Alberta, Canada. Dubbed “The Dungeon,” the walls and ceilings of the basement were riddled with holes from body slams.

One of Stu’s best pupils, Chris Benoit, went on to become a two-time WWE World Heavyweight Champion. Known as the Canadian Crippler, Benoit was also an extremely skilled wrestler who would cause his opponents to submit by using his signature move, the crippler cross-face.

But during one tragic weekend in the summer of 2007, events played out that were way more outrageous than any wrestling script. Police discovered in Benoit’s Atlanta-area home that he had bound his 43-year-old wife, Nancy, and then strangled her. He then drugged and strangled his 7-year-old son, Daniel, before committing suicide by hanging himself with a weight machine.

The police were unable to ever establish a formal motive, however, an autopsy revealed that Benoit’s body contained testosterone, painkillers and anti-anxiety drugs. Additionally, performance-enhancing anabolic steroids were later found in the home. Doctors also discovered Benoit suffered from brain damage from “prior repetitive injury” presumably caused by a series of concussions from his high-flying moves in the ring.

After the crime, photographer Mark Samansky sold nude pictures of Nancy to ‘Hustler,’ the racy men’s magazine founded by Larry Flynt, and they appeared in the March 2008 issue. The pictures of Nancy, who was formerly a wrestler and later a manager known as “Woman,” were taken by Samansky over 20 years earlier. Immediately after the shoot, Nancy asked that Samansky destroy the videos and photos and believed he did so.

Nancy’s mother, Maureen Toffoloni, brought a lawsuit against Hustler and is seeking monetary damages on behalf of her daughter’s estate. The lawsuit pits the constitutional right of privacy alluded to in the 14<sup>th</sup> Amendment against the 1<sup>st</sup> Amendment protections of the media and publishers. Like most states, Georgia has a law recognizing the right to privacy against “the appropriation of another’s name and likeness ... without consent and for the financial gain of the appropriator.” The law applies to “a private citizen, entertainer, or a public figure who is not a public official” such as a politician. Hustler claimed the photos of Nancy were “newsworthy” because of her murder.

The court ruled against Hustler, finding that the “brief biography” of Nancy Benoit and her murder accompanying the nude photos did not represent a “newsworthy article.” The court elaborated that “the photographs published by [Flynt] neither relate to the incident of public concern conceptually [the murders] nor correspond with the time period during which Benoit was rendered, against her will, the subject of public scrutiny. Were we to hold otherwise, [Flynt] would be free to publish any nude photograph of almost anyone without their permission, simply because the fact they were caught nude on camera strikes someone as ‘newsworthy.’ Surely that debases the very concept of a right to privacy.”

Flynt and Samansky filed an appeal with the U.S. Supreme Court, even having the support of several media organizations including the Reporters Committee for Freedom of the Press, which claimed that if the Georgia ruling was upheld it would “affect all news-gathering.”

The Supreme Court denied the appeal, so Toffoloni can proceed with her suit, and Hustler is once again on the ropes.

*This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2010 McCarty Law LLP. All rights reserved.*