

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:19-cv-277-MOC-DCK**

FREDA J. DAY,)	
)	
Plaintiff,)	
)	
vs.)	
)	
OPRAH WINFREY, et al.,)	<u>ORDER</u>
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)	
Defendants.)	
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THIS MATTER is before the Court on a Motion for Summary Judgment filed by Defendants Harpo Productions, Lionsgate Entertainment Corporation, Oprah Winfrey Network, LLL, and Oprah Winfrey. (Doc. No. 44). The Court held a hearing on the motion on December 16, 2020, and then again on February 17, 2021. The parties were allowed to file supplemental briefs following the December 16 hearing. This matter is ripe for disposition.

I. BACKGROUND

A. Plaintiff’s Copyright Infringement Claim

This is a copyright infringement action in which Plaintiff alleges that Defendants have infringed the copyright of Plaintiff’s memoir, written in 1999, and hereinafter referred to as “the Book.” (Compl., Doc. No. 1, ¶ 2). Plaintiff alleges that the Book is “based on [her] life experiences” and was “granted copyright protection” in April 2003 and was published in 2005. She also alleges that her publisher created a “CD disk” related to the Book. (Id. ¶ 4). Plaintiff does not allege that the CD was ever registered with the Copyright Office. Plaintiff alleges that she sent the Book by certified mail to “Defendant Winfrey” in 2009. (Compl., Doc. No. 1, ¶ 23).

Plaintiff alleges that Defendants were all involved in some capacity with the production or broadcast of Greenleaf, a television show that aired on Oprah Winfrey’s network “OWN,” which Plaintiff alleges infringes on the Book. (Id., ¶¶ 2, 9–12).

B. Summary of the Book

The Book, titled *From the Greenleaf to Greener Pastures: A Memoir*, is a lengthy memoir of Plaintiff’s life, essentially an autobiography. Plaintiff was born around 1960. The Book was written in 1999 and describes Plaintiff’s life up until that time. Plaintiff was one of ten children. Plaintiff’s father operated a café called The Green Leaf. Plaintiff’s father died when she was around four years old.

The Book describes Plaintiff’s life as a child, living with her multiple siblings in a modest home maintained by her mother. The Book describes Plaintiff’s adolescence, her early romances, and her college experiences. The vast majority of the Book deals with Plaintiff’s relationship with a man named Ed, whom she eventually marries. Ed is an alcoholic and habitual drug user, is usually unemployed, and is physically and mentally abusive to Plaintiff. The Book describes how Plaintiff and Ed lived in poverty (often getting by on food stamps and without electricity) and how Plaintiff and Ed were evicted more than a dozen times from various apartments. Plaintiff describes a series of low paying and unfulfilling clerical jobs she had with various governmental agencies, schools, and hospitals, from which she was either fired or quit. Plaintiff describes how she and Ed had frequent run-ins with the law and how they were arrested and jailed from time to time on minor charges. Plaintiff describes raising three children she had with Ed. Throughout the Book, Plaintiff discusses her strong faith in God and was generally optimistic that her life would get better. Plaintiff states on several occasions that she rarely attended church. Her faith in God was personal, not institutional. At the end of the Book, in

1999, when she was around thirty-nine years old, Plaintiff describes how she applied for and obtained a teaching job in North Carolina. The Book ends at that point, with Plaintiff stating how she believed she would be moving on to a better life.

The Book is structured chronologically. The first chapter addresses the story of Plaintiff's mother, how she met Plaintiff's father (who was married to another woman), and the ten children they had together. The Book thereafter chronicles Plaintiff's life from childhood through adulthood sequentially as it occurred. Along the way, the Book presents hundreds of short anecdotes and stories about Plaintiff and Ed, their extended family members, and their friends.

C. Summary of the Television Series Titled "Greenleaf"

Greenleaf is a fictional television series set in the present. It is the story of a large, affluent African-American church in Memphis, Tennessee, its leader Bishop Greenleaf (a man in his 60s), and his family. Bishop Greenleaf and his wife Mae have been married for 44 years, and they have four children. At the beginning of the show, it is revealed that one of them, Faith, has committed suicide. The other three children are:

1. Grace – a woman in her 40's who left the church and her family 20 years earlier to pursue a career as a television journalist. She has a teenage daughter and is a single mother. She is the main character and protagonist of Greenleaf.

2. Jacob – a man in his mid-30s who works in the church as an assistant pastor to his father. He is married and has two children, one of whom is a teenager who becomes friends with Grace's daughter.

3. Charity – a woman in her late 20's or early 30's who is in the church choir, is married and wants to have children.

Greenleaf begins with Grace and her daughter returning to Memphis from their home in Phoenix to attend Faith's funeral. Grace agrees to stay in Memphis after the funeral, ostensibly to work in the church, but her real reason for staying is to try to prove that her uncle (Mae's brother) is molesting young girls. Indeed, Grace's uncle molested Faith as a young girl, and this ultimately led to her suicide. This is the primary storyline of the first season of Greenleaf, but there are multiple subplots as well.

In the first season the following subplots are featured:

a. Grace, who is a talented preacher in her own right, becomes more and more involved in church affairs and starts counselling parishioners and leading services on her own. (Episodes 102, 105, 106 and 113).

b. Jacob and his wife have marital difficulties because he was having an affair; eventually they go to counseling and reconcile. (Episodes 101–106).

c. Jacob is put on leave by Bishop Greenleaf, which alienates him and causes him to join a rival church. (Episodes 105 and 111–13).

d. Charity's husband, Kevin, becomes attracted to a man who helps run a homeless shelter at the church; Charity begins to suspect that her husband might be gay. (Episodes 102, 103, 105, 106 and 109–13).

e. A police officer and church member accidentally shoots an innocent teenager, becomes ostracized by the church (the Bishop ignores him fearing congregation backlash), and is eventually killed in the church parking lot. (Episodes 102, 104 and 108).

The show explores the relationships and career aspirations of all of the Greenleaf family members, as well as contemporary social issues such as the Black Lives Matter movement, sexual abuse, and the role of formal religion in the contemporary African-American community.

Significantly, and in stark contrast to the Book, the fictional Greenleaf family does not live in poverty. Rather, they live a life of luxury and privilege, residing in a mansion and working at a sleek, modern, contemporary church complex. Nor is Greenleaf a biography. It does not trace the steps of anyone's 40-year journey to adulthood. Its characters come to the first episode of the show fully formed and developed.

The following facts are undisputed on summary judgment:

1. The only submission to any of the Defendants that Plaintiff can recall is a purported submission by certified mail to Defendant Winfrey in 2009. (Shephard Decl., Ex. A, Response to Interrogatory No. 1).

2. Even though Plaintiff claims to have submitted the Book to Defendant Winfrey in 2009 by certified mail, Plaintiff has no receipt or other evidence to confirm that fact. (Shephard Decl., ¶ 7); (Shephard Decl., Ex. C, Request No. 10).

3. Plaintiff has no recollection of whether her alleged submission of the Book was accompanied by a transmittal letter. (Shephard Decl., Ex. A, Response to Interrogatory No. 4). No transmittal letter has been produced. (Shephard Decl., ¶ 7).

4. The address to which Plaintiff claims to have sent the Book to Defendant Winfrey was not used by Defendants in 2009 when the Book was allegedly sent. (Nordman Decl., ¶ 4). The address was not used by Defendants until 2015. (Id.).

5. There is no record of the Book in submission logs maintained by Ms. Winfrey's companies where submitted material, if reviewed and considered, is recorded. (Nordman Decl., ¶ 6); (Declaration of Cindy Iwaki ("Iwaki Decl."), ¶ 4).

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