

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JULIE AMANDA TILTON,

Plaintiff,

v.

Case No. 8:05-cv-692-T-30TGW

DESLIN HOTELS, INC., et al.,

Defendants.

AMENDED ORDER¹

THIS CAUSE comes before the Court upon Plaintiff Julie Amanda Tilton's Motion for Final Judgment Upon Default Against Paul A. Prewitt and Memorandum of Law in Support (Dkt. 182). For the reasons explained below, the Court determines that Plaintiff's motion should be **GRANTED** in part and **DENIED** in part:

PROCEDURAL BACKGROUND

On April 11, 2005, Plaintiff Julie Amanda Tilton ("**Plaintiff**") filed her original Complaint (Dkt. 1) against numerous defendants, including defendant Paul A. Prewitt ("**Prewitt**"). In the original Complaint, Plaintiff asserted various claims against Prewitt, including alleged violations of 18 U.S.C. §2251(a), 18 U.S.C. §2252(a), and 18 U.S.C. §2252A(a) (the "**Federal Child Pornography Claims**"). On July 12, 2005, a Clerk's Default

¹ This Amended Order amends the Court's August 30, 2007 Order (Dkt. 220) by directing the Clerk to enter partial final judgment rather than final judgment in favor of Plaintiff. This Amended Order is otherwise identical to the August 30, 2007 Order.

was entered against Prewitt. Plaintiff's Amended Complaint (Dkt. 41) asserts the same Federal Child Pornography Claims Against Prewitt. Plaintiff has now moved this Court to enter a Final Judgment in favor of Plaintiff and against Prewitt for \$450,000.00 in statutory minimum compensatory damages (\$150,000.00 for each of the Federal Child Pornography Claims), and \$202,500.00 in attorneys' fees. Upon consideration, this Court finds that Plaintiff's motion should be GRANTED in part and DENIED part as set forth herein.

DISCUSSION

Plaintiff asserts that, pursuant to a July 27, 2006 amendment to 18 U.S.C. §2255(a) as part of the Adam Walsh Child Protection and Public Safety Act (the "Walsh Act"), she is entitled to statutory damages of \$150,000.00 for each alleged Federal Child Pornography Claim². Plaintiff argues that, although her claims are based on conduct that occurred before the enactment of the Walsh Act, the amendment was remedial in nature and should be applied retroactively. However, Plaintiff's argument for retroactive application, which relies on Cady v. Boome County, 87 A.D.2d 964 (N.Y.A.D. 1982), and Hastings v. Earth Satellite Corp., 628 F.2d 85 (D.C. Cir. 1980), is without merit.

In Cady, a General Municipal Law providing certain benefits for police officers injured in the line of duty was amended to specifically include Deputy Sheriffs. 87 A.D.2d at 964. A Deputy Sheriff who was injured prior to the effective date of the amendment petitioned

² On July 27, 2006, Public Law 109-248, the Adam Walsh Child Protection and Public Safety Act (the "Walsh Act"), was signed into law. The Walsh Act, in part, increased the statutory minimum for damages for the Federal Child Pornography Claims referenced herein from \$50,000.00 to \$150,000.00.

Broome County for benefits pursuant to the amended statute. Id. At issue was whether the court should retroactively apply the statute. Id. The court held that the statute should be applied retroactively and that the officer was entitled to the benefits, reasoning that although legislation is generally construed as prospective, there is an exception for remedial statutes, which are those statutes “designed to correct imperfections in prior law, by generally giving relief to the aggrieved party.” Id. at 965 (internal citations omitted). Further, the court reasoned that “where, as here, the amendment is enacted to rectify an inequity by extending existing benefits to a class of person arbitrarily denied those benefits by the original legislation, the amendment is remedial and should be applied retrospectively.” Id.

At issue in Hastings was whether the repeal of a \$24,000.00 ceiling on awards for permanent-partial disability under the District of Columbia Workmen’s Compensation Act should be applied retroactively. Hastings, 628 F.2d at 92. The court held that the repeal should apply retroactively, reasoning that removal of the artificial ceiling created no injustice because it allocated to the employer an actual, measurable cost of its business. Id. at 94. In arriving at its holding, the court considered that” [m]odification of a remedy merely adjusts the extent, or method of enforcement, of liability in instances in which the possibility of liability previously was known.” Id. at 93.

The Supreme Court has provided the following guidance in addressing the retroactive application of a statute:

When a case implicates a federal statute enacted after the events in suit, the court’s first task is to determine whether Congress has expressly prescribed the statute’s proper reach. If Congress has done so, of course, there is no need to

resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

Landgraf v. USI Film Products, 511 U.S. 244, 280 (1994). The Court in Landgraf cited the Hastings court for the proposition that “[r]etroactive modification” of damages remedies may “normally harbo[r] much less potential for mischief than retroactive changes in the principles of liability,” but considered further that “that potential is nevertheless significant.” The Court reasoned that although retroactive application of a statute may vindicate its purpose more fully, “[t]hat consideration, however, is not sufficient to rebut the presumption against retroactivity.” Id. at 285-6.

Plaintiff’s alleged Federal Child Pornography Claims against Prewitt involve conduct that took place prior to enactment of the Walsh Act. Congress has not expressly prescribed that the Walsh Act should be applied retroactively. Retroactive application would not rectify an inequity, as in Cady. Rather, retroactive application would clearly increase the liability of Prewitt for his past conduct. Absent clear evidence of Congressional intent to the contrary, the Court concludes that 18 U.S.C. §2255(a) should not be applied retroactively.

Furthermore, Plaintiff's claims that Prewitt violated 18 U.S.C. §§ 2252(a)³ and 2252A(a)⁴ arise out of the same alleged conduct (i.e., transporting images of Plaintiff via computer or mail for distribution in interstate commerce). As a result, Court will only award statutory damages for one of these claims. The Court will also award statutory damages for the alleged violation of 18 U.S.C. §§ 2251(a), which makes it illegal to induce, persuade, entice, or coerce a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct. Thus, partial final judgment in favor of Plaintiff and against Prewitt for \$100,000.00 in minimum compensatory damages (\$50,000.00 for two of the alleged Federal Child Pornography Claims) is appropriate.

It is therefore ORDERED AND ADJUDGED that:

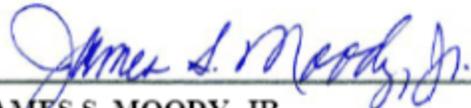
1. Plaintiff's Motion for Final Judgment Upon Default Against Paul A. Prewitt (Dkt. 182) is **GRANTED in part and DENIED in part** as set forth herein.
2. The Clerk is directed to terminate the final judgment entered on August 31, 2007 (Dkt. 332), and enter a partial final judgment in favor of Plaintiff against Paul A. Prewitt in the total amount of \$100,000.00.

³ Section 2252(a) makes it illegal for any person to knowingly transport or ship, receive, distribute or reproduce for distribution any visual depiction of a minor engaging in *sexually explicit conduct*. See 18 U.S.C. § 2252(a).

⁴ Section 2252A(a) makes it illegal for any person to knowingly mail, transport, receive, distribute or reproduce for distribution any *child pornography*. See 18 U.S.C. § 2252A(a).

3. Plaintiff's request for attorneys' fees is **DENIED**.

DONE and **ORDERED** in Tampa, Florida on September 6, 2007.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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