

IN THE COURT OF APPEALS
STATE OF GEORGIA

ATLANTA HUMANE SOCIETY and)
Society for Prevention of)
Cruelty to Animals, Inc., and)
BILL GARRETT,)
)
Appellants,)
)
VS.)
)
KATHI MILLS,)
)
Appellee.)

Case No. A03A2480

APPELLEE KATHI MILLS' APPELLATE BRIEF

Introduction

This appeal raises what the trial court labeled as a question of first impression: Whether the prohibition on a governmental entity suing for defamation extends to a private, non-profit entity that performs the essential and core governmental functions of animal control, animal shelter operations and enforcement of related ordinances pursuant to a government contract. Appellee asserts that the trial court correctly held such a bar should and does exist under Georgia law.

Appellee further asserts that the trial court correctly held that Appellant Bill Garrett is a limited purpose public figure; correctly denied partial summary judgment in favor of the Appellants; and, did not materially err in what Appellants have labeled the "Findings and Consequences" of the order.

I. Factual Issues

Pursuant to Court of Appeals Rule 27 (b) (1), Appellee takes issue with the recitation of facts in the Appellants' briefs and points out additional material information as follows. Otherwise, Appellee relies on her statement of facts in her cross-appeal in Case No. A03A2481.

The trial court correctly concluded that Fulton County Animal Control and the Atlanta Humane Society were one and the same, R-892, but the facts leading to that conclusion are either absent from or downplayed in the Appellants' briefs.

Pursuant to a February 3, 1982, contract with Fulton County and the city of Atlanta, the Atlanta Humane Society and Society for Prevention of Cruelty to Animals, Inc. operated the essential government functions of rabies and animal control for more than 20 years. R-373.

This contract provided in paragraph 6 that the Humane Society shall "enforce the Rabies Control Regulations of Fulton County and shall capture and impound dogs as provided in said regulations." R-375. Paragraph 14 provides that Humane Society employees "who are appointed as Deputy Sheriffs of Fulton County by the Fulton County Sheriff shall issue citations or make arrests, but such employees so authorized shall enforce leash law countywide, including the Fulton County portion of the City of Atlanta." R-378.

The Humane Society was required to issue dog licenses and collect dog license fees and impoundment fees pursuant to Paragraph 8 of the contract. R-376. The license and impoundment fees were "applied to the annual operating budget such that operational costs will be reduced by the income received thereby." R-376. Paragraph 16 further provided for funding, requiring the county to pay the Humane Society "in twelve monthly installments, payable in advance on the first day of each month, a sum in the aggregate which will cover the annual operating cost of the SPCA of providing the service contemplated in this contract. For each subsequent year, SPCA shall submit an annual operating budget for approval by County and City prior to

annual budget, adjustments to the same to be made on approval by County and City, but such approval to be not unreasonably withheld where increased operating expenses are shown." R-378. The contract goes on in Paragraph 17 to allocate costs between the county and city. R-379. "At the end of each budget year, actual expenses of the SPCA shall be compared to the amount of the County reimbursement for said year. Any underpayment or overpayment by the City to the County shall be carried forward as an adjustment to the first quarter billing of the ensuing budget year and reflected in the statement presented to the City by the County for payment." R-379.

Paragraph 7 imposed the duty of investigating and maintaining records of persons bitten by animals in Fulton County. R-376. The contract further provided in Paragraph 9 that the Humane Society conduct vaccination clinics. R-376.

The county assigned its animal control facility to the Humane Society, along with equipment that included motor vehicles used as pet ambulances. R-374.

These contract provisions, which show that the Humane Society performed essential governmental services, are not mentioned in Appellants' statement of facts, which primarily

focuses on the charitable aspects of the Atlanta Humane Society and Society for Prevention of Cruelty to Animals, Inc. Appellants' brief at 4.

Appellants point out that a portion of the trial court's order may have attributed duties to the AHS that do not appear in the plain language of the contract. Appellants' brief at 5. The trial court listed the following as among the animal control functions performed by the Humane Society: "receiving abandoned pets, facilitating pet adoptions, disposing of unwanted pets, performing rabies vaccination and promoting rabies prevention, and investigating and pursuing animal cruelty complaints." R-892. The Humane Society asserts that the contract did not impose upon it a duty to investigate and prosecute animal cruelty cases and abuse. Appellants' brief at 5. However, Appellant Bill Garrett's affidavit of June 14, 2002, states that animal control, a service he acknowledges was provided by the Humane Society under the contract with Fulton County, "is responsible for issuing citations for misdemeanor animal offenses such as leash law, licensing and dangerous dog violations as well as misdemeanor animal cruelty. Only sworn police officers can initially charge for felony cruelty of animals. Prosecutors may,

on occasion, upgrade misdemeanor animal cruelty to felony status. In Georgia, the felony animal cruelty code (section 16-12-4) became effective May 2000." R-591. Thus, it appears Appellants' quarrel is with the trial court's attribution of animal cruelty investigations as a contractual duty rather than one that it in fact carried out apparently under statutory authority.

Appellants further quarrel with the trial court that the contract did not require them to avoid euthanasia, hold or place pets for adoption, receive abandoned pets, facilitate adoptions or provide rabies vaccines more than once a year. Appellants' brief at 5.

Assuming without conceding that the trial court may have assigned to the Humane Society duties not required by the contract, the plain language of the contract shows that Fulton County and the city of Atlanta turned over operation of an essential governmental function, Fulton County Animal Control, to the Humane Society. R-373.

Appellee further disagrees with Appellants' characterization of her remarks as false, malicious and

defamatory, causing injury to reputation and other damages. Appellants' brief at 6.

Appellants have taken issue with the video tape Appellee attached as Exhibit A to her Motion for Summary Judgment. This Court has directed briefing on this issue in the cross-appeal, Case No. A03A2481. Accordingly, Appellee will reserve fully addressing the video-tape issue for the brief directed by the Court. For now, however, Appellee points out that the only objection made below to the tape was as to the authenticity of its contents. R-555-56. Appellants state in their brief that they "treated Appellee's 'reference' to the movie tape as immaterial to summary judgment issues" and that the alleged "absence of the tape was not pursued in view of 'immateriality,' Defendant's counsel assurance to furnish a copy (but never forthcoming) and Appellants stated objections." Appellants' brief at 6-7. The only citation to the record is to the original objection as to the tape's authenticity contained within Plaintiffs' Statement of Disputed Material Facts. R-555-56. There is no citation to the record to back up any of Appellants' other assertions. Appellee also notes that it appears that Appellants are conceding that they waived any objection they

might have had to the tape's authenticity by not pursuing it at the hearing for summary judgment.

Furthermore, even in making an objection to the tape's authenticity, Appellants agreed that news broadcasts occurred. R-555. Thus, Appellants' own admission establishes that there was a matter of public concern upon which Appellee commented in making the statements at issue in this case.

Appellants further note in footnote 4 of their brief that a tape of the broadcasts was rejected by a different trial court in a separate case. Such a ruling has no bearing on this case.

Without any citation to the record, Appellants assert in their briefs that Appellant Bill Garrett was interviewed for the television broadcasts that are the subject of the disputed tape. Even if this Court or the trial court was eventually to determine that the video tape is inadmissible, Appellee urges that this Court find that Appellants have made an admission *in judicio* that Appellant Bill Garrett was in fact interviewed for these broadcasts. This admission supports the trial court's finding that as few as one television appearance is sufficient to make a person a public figure and that Bill Garrett is in fact a public figure as regards the issues in this case.

Again without any citations to the record, Appellants go on to discuss information that they allegedly made available to the television reporter and the manner in which that information was handled. Because there are no citations to the record, pursuant to Court of Appeals Rule 27 (c) (3) (i), this information need not be considered by this Court.

Appellee does, however, point out that there were letters from the Attorney General's office asserting that the Humane Society is subject to the Open Records Act and those letters support the trial court's finding that the Humane Society is a quasi-governmental entity barred from bringing a defamation action. R-383-86.

Appellants appear to try to take issue with, but do not substantially disagree with, Appellee's assertions in her Motion for Summary Judgment that a letter written by the Humane Society to Fulton County helps substantiate that it was performing government functions. Appellants' Brief at 8. R-381-82. Appellants characterize the letter as making "clear that two separate and distinct entities are described." Appellants' Brief at 8-9. Appellee is unclear what point Appellants are trying to make regarding "separate and distinct entities."

Appellants' Brief at 8-9. Appellee asserts that this letter shows that AHS acknowledges that it provided "vital services" to Fulton County in a "public/private partnership." R-381. Appellee's assertion is that having enjoyed the benefits of public funds, and having contractually assumed a public duty, the Humane Society must endure governmental burdens, which include an inability to sue for defamation along with a requirement that it open records to public inspection. R-326.

Appellee does not dispute making the statements at issue in this case, but disagrees that they are defamatory, lacked basis in fact, required verification, or that her motives were churlish or childish. Appellants' Brief at 12.

Appellee further takes issue with Appellants' characterization of excerpts from her deposition listed on Page 11 of Appellants' Brief as follows. Appellants state Appellee based her statements "on speculation" and just guessed without basis in fact, citing to Appellees' entire deposition, instead of pinpointing a specific page on which these alleged statements are made. Appellant states that Appellee "did not try **'to verify what'** she saw on TV," giving a cite to the record, R-728, that does not use any of the words that appear within the Appellants'

quote. The citation is instead to a discussion of Appellee's statement regarding the time period for holding animals before they are destroyed to be "legally" shown to be less than three days due to news coverage of a lawsuit brought by a woman whose dog allegedly was killed in two days. R-728.

The record citation on page 11 of Appellants' brief to pages 753-54 which Appellants state show "it's '**true**' she made no inquiry and has no facts upon which to base her conclusions" refers to a discussion of Appellee's disbelief that 80 percent of the animals that were taken to animal control were so sick or injured that they needed immediate euthanasia. R-753-54. Appellee states that she has not observed the killings, so that she cannot independently verify the need for euthanasia. R-753-54. Thus, she agrees that "you can say I don't have personal verifiable fact." R-753-54.

As for the statement on page 11 of Appellants' brief that Appellee knew the Atlanta Humane Society to be a private organization, this statement refers to a discussion that Appellee's e-mail reference was to the Humane Society's operation of the Fulton County animal control shelter, as opposed to the operation of the Humane Society shelter. R-729-

31. At R-730, Appellee refers to the animal control shelter as a "non-public facility" in the sense that people were not allowed to go in at will during hours of operation. At R-731, Appellee refers to the non-animal control shelter on Howell Mill Road as a private facility that is part of a private organization, but which allows the public to come in. Thus, Appellee was trying to distinguish between the animal control facility and the Humane Society shelter. R-729-31.

The statement attributed to R-754-55 that Appellee "still asserts that '**Yes**' the AHS is a house of slaughter, that Garrett is evil and delights in slaughtering pets for fun and profit" refers to a portion of the deposition in which Appellee affirms her continued belief that Garrett is evil, but makes no reference to slaughter.

As for the statement on page 12 of Appellants' brief that characterizes Appellee's motive as churlish, the context of the quoted material was an explanation of how the Humane Society is different from rescue organizations because the Humane Society holds fundraisers such as car raffles and has money in the bank, yet it does not spay and neuter the pets before the animals leave the facility with adoptive owners. R-666-67.

In addition, footnote 7 on page 12 of Appellants' brief regarding decreased contributions is a reference to Appellant Garrett's self-serving and conclusory affidavits which state donations are down, but provide no evidence to attribute this phenomenon to Appellee. R-597.

As for Appellants' procedural history of the case, Appellee disagrees with the statement on page 2 of Appellants' briefs that "Defendant filed no (subsequent) response to Plaintiffs' Statement of Undisputed Material Facts" to the extent that statement suggests that no response was filed. Appellee points out that she filed "Defendant's Response to Plaintiffs' Motion for Partial Summary Judgment." R-848-50. In that pleading, Appellee asked the trial court to strike Appellants' motion as untimely filed. R-849. In the alternative, the response stated, "Defendant hereby adopts the facts and arguments contained in her Motion for Summary Judgment and Brief in Support as her response to Plaintiffs' Motion for Partial Summary Judgment." R-849.

II. Argument and Citation of Authority

A. Trial Court Correctly Granted Summary Judgment to Appellee Because Humane Society Is Quasi-Governmental Entity

The Atlanta Humane Society performed the essential and core governmental functions of animal control, animal shelter operations and enforcement of related ordinances for Fulton County and the municipalities within its borders for more than 20 years. R-373. These were not charitable services, but rather were functions provided pursuant to taxpayer dollars allocated according to a government contract. R-373m 378-79. The trial court correctly recognized that the Humane Society and Fulton County Animal Control were one and the same. R-892. As a result, the Humane Society is subject to the longstanding legal principle, enunciated in Cox Enterprises, Inc. v. Carroll City/County Hospital Authority, 247 Ga. 39 (1981), that governmental entities cannot maintain an action for libel.

Appellants assert that the trial court based its decision on facts in dispute and that it misstated some facts. While Appellee acknowledges that the trial court may have attributed duties to the Appellants that are not mentioned in the contract

with Fulton County and the city of Atlanta, there is no dispute that the Humane Society operated key governmental functions pursuant to this contract. R-373. Nor is there any dispute that it performed these functions through taxpayer funding. R-378-79.

The trial court correctly relied on the Cox Enterprises decision, which involved a libel action brought by a hospital authority against a newspaper. 247 Ga. at 39. The Georgia Supreme Court found that while the hospital authority lacked some government attributes, such as the power to tax, it nonetheless was a government entity barred by the First Amendment from maintaining a libel action. Id. at 46.

Among the factors leading the Supreme Court to determine the hospital authority was governmental in nature were that it exercised public and essential government functions and it had the powers required to achieve its public purposes. Id. at 44. In addition, the hospital authority received tax dollars to carry out its functions. Id.

Appellants list other factors considered by the Court in Cox Enterprises in concluding the hospital authority was a governmental entity. The Court did not hold that all of these factors must be achieved in order to be determined a

governmental entity. As a result, factors listed in Cox Enterprises that are inapposite to this case, such as the power of eminent domain and the appointment of the board by local politicians, should be disregarded.

Appellants find inapplicable or downplay Cox Enterprises factors that square with the facts of this case. For example, Appellants dispute that the receipt of tax revenues is a factor in this case, when in fact Fulton County and its municipalities appropriated tax dollars each year to cover animal control costs not offset by fees charged for licenses issued pursuant to governmental authority. In addition, pursuant to two other Cox Enterprises factors, Appellants assert that the Humane Society is not a creature of statute and that the local governing body plays no role in the dissolution of the entity. However, this assertion overlooks the fact that the Humane Society performed an essential government function pursuant to authority tantamount to statute—a governmental contract—and that this contractual relationship can be dissolved by the local governing body.

“Criticism of government is at the very center of the constitutionally protected area of free discussion,” the Georgia

Supreme Court asserted in Cox Enterprises, quoting Rosenblatt v. Baer, 383 U.S. 75, 85 (1966). 247 Ga. at 40. The Georgia Supreme Court added that it had found no case allowing a government to recover for libel. Id. Quoting New York Times Co. v. Sullivan, 376 U.S. 254, 291 (1964), which itself quoted City of Chicago v. Tribune Co., 139 N.E. 86, 88 (1923), the Georgia Supreme Court stated that it was for “good reason” that no court of last resort has ever approved a prosecution for libeling a government. 247 Ga. at 40.

“Open discussion of governmental practices and policies requires that untrammelled criticism of government be protected; if critics of government, be they citizens or the press, speak only at the risk of being prosecuted for libel or slander, few will criticize government at all. Even where the critic is certain that his defense of truth would carry the day, the expense and inconvenience of defending the litigation could deter all but the most determined gadfly.” Id. at 41.

Ironically, in a December 17, 2001, letter to the Fulton County Board of Commissioners on behalf of the Atlanta Humane Society, Appellant Bill Garrett seems to acknowledge that criticism of its operation in a “public/private partnership” is

the type of distraction it must tolerate "especially when aligned with a government body as visible as that of Fulton County, its various departments and Board of Commissioners." R-381.

The trial court also was correct in finding persuasive letters from the Georgia Attorney General asserting that the Appellants were subject to the Open Records Act because they performed a service, pursuant to a government contract, which is the function of a public agency. R-383-86. The attorney general explained that under Northwest Georgia Health System, Inc. v. Times Journal, Inc., 218 Ga. App. 336 (1995), that private entities performing a delegated public duty must comply with the Open Records Act. R-384, 385.

Furthermore, the trial court correctly found persuasive a case, cited by the attorney general, from our neighboring state of Florida, Putnam County Humane Society, Inc. v. Woodward, 740 So.2d 1238 (1999), which held that a county humane society was an "agency" of the state and subject to open records requirements with respect to its investigations of animal abuse

and seizures of animals because it was performing a public function.¹

These two open records decisions are analogous to this case because they show that when a private agency takes on the responsibility of performing government functions it gives up

¹ Amicus Curiae American Humane Association states in its brief that it is unaware of any other court decision treating a humane society as a "quasi-governmental entity." Although that term is not used in the Putnam County case, the holding that the humane society was an agency of the state counters the American Humane Association brief's inference that the trial court decision in this case is unique. See also, State of Tennessee v. Adkisson, 2001 WL 121850 (Tenn. Crim. App. October 12, 2001) (holding county humane society president and vice-president were state actors performing a law enforcement function when they carried out a warrantless search of defendant's property in response to an anonymous animal cruelty complaint); Studer v. Seneca County Humane Society, 2000 WL 566738 (Ohio Ct. App. May 4, 2000) (holding county humane society whose agents executed search warrant in animal cruelty case was political subdivision of Ohio and thus immune from animal owner's suit for conversion).

privacy benefits and becomes subject to public interests. Other open government decisions applying public standards to private entities include: Macon Telegraph Publishing Co. v. Board of Regents of the University System of Georgia, 256 Ga. 443 (1986) (holding that various University of Georgia Athletic Association documents were public records subject to the Open Records Act even though they were prepared by employees of a private association); Red & Black Publishing, Inc. v. Board of Regents, 262 Ga. 848 (1993) (holding sessions of student court were subject to open meetings act, in part, because it derived authority from the Board of Regents and was financed with university funds); and, Hackworth v. Board of Education for the City of Atlanta, 214 Ga. App. 17 (1994) (holding that school bus records created and in the control of a private company were subject to the Open Records Act because they were received or maintained on behalf of a public officer or agency and thus the private company was performing a public function).

Apparently in support of their assertion that a private organization should not be barred from pursuing a libel claim despite its performance of a public function, the Humane Society's brief at page 15 contains the following quotation from

an incorrectly cited attorney general's opinion: "No 'authority [is found] that would allow the Corporation (a private, nonprofit entity) to be considered a 'governmental entity.''" This quotation is attributed to 1992 Ga. Op. Atty. Gen. 23. The opinion found at that citation involves the Marketing of Products Created From Department of Natural Resources' Wetland-Land Cover Database.

The quoted material is in fact found in Official Opinion 93-10, in which the attorney general stated that a private, nonprofit corporation that is leasing and operating health care facilities on behalf of a hospital may not self-insure its workers' compensation liability as an 'entity' of the authority. The quote, when placed in context, is completely inapposite to this case.

At issue in that opinion was a requirement of the Workers' Compensation Act for self-insurance that the employer become a member of the Self-Insurers Guaranty Trust Fund. As to exemptions from that fund, the attorney general stated:

Ironically, since the courts have found that hospital authorities are "governmental entities," they **are** exempt from belonging to the Self-Insurers Guaranty Trust Fund.

This contradictory result is based on the difference between a "governmental entity" and "political subdivision": while the two are often related, they are not synonymous. However, I could find no authority that would allow the Corporation (a private, nonprofit entity) to be considered a "governmental entity." Therefore, the Authority's exemption from membership in the Trust Fund would not apply to the Corporation.

When the quote is placed in context, it clearly does not support Appellants' assertion that "the trial court is simply wrong" and that legal authority compels the conclusion that "a private corporation may not be considered a quasi-government entity, barred from asserting a right of action for defamation." Appellants' brief at 15.

Instead, Cox Enterprises and a long line of open government cases show that when a private corporation performs a public duty at taxpayers' expense, it becomes subject to the same requirements placed on government. Thus, this Court should hold that the trial court was correct to find that the prohibition on a governmental entity suing for defamation extends to the Humane Society as a private, non-profit entity that performs the

essential and core governmental functions of animal control, animal shelter operations and enforcement of related ordinances pursuant to a government contract.

B. The Trial Court Correctly Determined Appellant Bill Garrett is a Limited Purpose Public Figure

The trial court found that Appellant Bill Garrett is a limited purpose public figure and thus is required to prove his defamation case by clear and convincing evidence of actual malice on the part of the defendant. Atlanta Journal Constitution v. Jewell, 251 Ga. App. 808 (2002).

In making this determination, the trial court applied the three-pronged test adopted by the 11th U.S. Circuit Court of Appeals in Sylvester v. American Broadcasting Company, 839 F.2d 1491, 1494 (11th Cir. 1988), and employed by the Georgia Court of Appeals in Jewell. 251 Ga. App. at 817. The test requires that the court isolate the public controversy, examine the plaintiff's involvement in that controversy, and determine whether the alleged defamation was germane to the plaintiff's participation in the controversy. Id.

Appellants quarrel with the trial court's definition of the controversy because it contains elements not specifically

contained in the Humane Society's contract. Appellant Bill Garrett's brief at 14.

The trial court defined the public controversy in this case as

whether the Atlanta Humane Society, acting by and through the leadership of Plaintiff Garrett, adequately performed the services which was required of it under its Contract with Fulton County, or whether such Contract should be terminated by Fulton County due to the alleged failure of Plaintiff Atlanta Humane Society to investigate instances of animal cruelty and abuse, avoid the euthanasia of animals, successfully place abandoned pets for adoption, and provide other related services to the public as required. Indeed, the reports on WSB directly challenged Plaintiff Garrett's role in such alleged deficiencies, with some former employees implying that it was his policies and directives which were at fault, i.e., his alleged policy that the Atlanta Humane Society would not investigate claims of animal abuse because the organization "lost money on every investigation." R-895.

It is immaterial whether or not these elements of the public controversy are specifically covered in the Humane Society contract. What is key is whether they were indeed elements of the public controversy. That is a point that Appellant Bill Garrett seems to concede in his brief when he states that these notions "may well be worthwhile and may well be deserving of endorsement by those concerned with animal welfare" but are not generally elements of "animal control." Appellant Bill Garrett's brief at 14. Indeed, that appears to be at the center of the debate—whether the Humane Society's "animal control" duties are limited to those stated in the contract and whether public critics and the county commission are realistic in their expectation of additional services. R-Video tape; R-389-93.

As for the second prong, a plaintiff may be "deemed a public figure if he purposely tries to influence the outcome of a public controversy or, because of his position in a controversy, could realistically be expected to have an impact on its resolution." Jewell, 251 Ga. at 817. The trial court correctly found what Appellant Bill Garrett admits—that he in fact did give an on-camera interview. Appellant Bill Garrett's

brief at 15. That the interview was not edited to Garrett's liking, and that Appellants did not court media attention matters not under Jewell. Id. at 818. In addition, the trial court correctly noted as few as one media appearance or interview may be sufficient to make a plaintiff a limited purpose public figure under Finkelstein v. Albany Herald Publishing Company, 195 Ga. App. 95, 97 (1990).

Indeed, under Jewell's either/or standard that a person may be a public figure if "because of his position in a controversy, [he] could realistically be expected to have an impact on its resolution," the trial court was otherwise authorized to find Garrett a limited purpose public figure. As head of the agency that was at the center of the public controversy, Garrett would be expected to have an impact on its resolution.R-381-82.

The trial court also correctly applied the third prong of Sylvester to determine that the alleged defamatory statements were germane to Appellant Bill Garrett's participation in the controversy because they were criticisms of decisions he allegedly made on behalf of the Humane Society. R-389.

Appellant Bill Garrett on page 18 of his brief mischaracterizes himself as a private person working for a

private charity. Instead, he was the head of an agency performing an essential government service at taxpayer's expense whose performance of those duties were at the center of controversy, which resulted in him granting a media interview. R-Video tape.

Thus, the trial court correctly found that Appellant Bill Garrett is a limited purpose public figure who must prove actual malice to succeed with his defamation claim.

**C. The Trial Court Correctly Denied Plaintiff's
Counter-motion for Partial Summary Judgment**

Appellants argue that they are entitled to summary judgment because Appellee failed to dispute their statement of undisputed facts and because Appellee conceded essential facts in her deposition. Appellant Bill Garrett's brief at 25.

As stated earlier in the section of this brief regarding the facts of the case, Appellee filed "Defendant's Response to Plaintiffs' Motion for Partial Summary Judgment." R-848-50. In that pleading, Appellee asked the trial court to strike Appellants' motion as untimely filed. R-849. In the alternative, the response stated, "Defendant hereby adopts the facts and arguments contained in her Motion for Summary Judgment and Brief

in Support as her response to Plaintiffs' Motion for Partial Summary Judgment." R-849. Accordingly, Appellants are in error in their contention that Appellee did not respond to their factual assertions.

Furthermore, Appellee does not deny making the statements that are at issue in this case. R-59. But, as stated more thoroughly in her brief in Case No. A03A2481, she asserts that these statements are not libelous as a matter of law because they simply do not inflict injury, hatred, contempt, or ridicule upon Plaintiffs. O.C.G.A. § 51-5-1; R-61. Other comments are simply Appellee's subjective opinions of Appellants' performances in administering public functions. Davis v. Sherwin-Williams Company et al., 242 Ga.App. 907 (2000). In addition, some of the comments employ "rhetorical hyperbole" that "cannot reasonably be interpreted as stating actual facts about an individual." Horsley v. Rivera, 292 F.3d 695, 701 (11th Cir. 2002).

Appellants rely primarily on Harcrow v. Struhar, 236 Ga. App. 403 (1999), in support of their contention that Appellee defamed them by imputing the crime of animal cruelty. However, unlike Harcrow where the suggestion that a neighbor shot a cat

would constitute animal cruelty, the Appellants are authorized by law to perform euthanasia pursuant to O.C.G.A. §4-11-5.1. Thus, to say that Appellants kill animals does not impute a crime because they are in fact authorized to do so by statute.

Appellee takes issue with the assertion on page 22 of the Humane Society's brief that she did not make the statements at issue in good faith. Appellee is an independent cat rescuer and animal welfare advocate whose statements focused squarely on the topic of animal welfare - a matter of intense concern to the public. R-636; 638; 670; R-Videotape.

Conclusion

The Atlanta Humane Society and Fulton County Animal Control cannot prosecute a libel action because they are in effect governmental entities. Likewise, Appellant Garrett, as a public figure, cannot maintain the above-styled libel action against Appellee. While Appellants' feelings may be hurt by the television broadcast and Appellee's opinions, such criticism is "at the very center of the constitutionally protected area of free discussion." Cox Enterprises, 247 Ga. at 40.

For all the foregoing reasons, Appellee respectfully asks this Court to uphold those portions of the judgment of the

Superior Court that found the Atlanta Humane Society is barred from bringing a defamation action, that Appellant Bill Garrett is a limited purpose public figure, and denying Plaintiff's Motion for Partial Summary Judgment.

Respectfully submitted this _____ day of September, 2003.

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Certificate of Service

I certify that I have served opposing counsel with a copy of the foregoing brief, by United States Mail, with sufficient postage, and addressed to the following address:

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This ____ day of September, 2003.

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