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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, a/k/a Ferrari,)
(dba Kitty Village))

Appellee)

Case No. A03A2480

REPLY BRIEF OF APPELLANTS
ATLANTA HUMANE SOCIETY and BILL GARRETT

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and Bill Garrett

This Reply Brief is filed by and on behalf of Appellants Atlanta Humane Society and Bill Garrett.

First, the Atlanta Humane Society is not a government or quasi-governmental entity. Mr. Bill Garrett and other Atlanta Humane Society employees are not government employees and they receive no government “benefits.” Even Ms. Mills acknowledges Atlanta Humane Society is a private, non-profit, charitable corporate organization. [R 731].

For 125 years, the principal activities of the Atlanta Humane Society are and have been charitable, non-governmental activities. The Atlanta Humane Society for some 25 years also operated Fulton County Animal Control, not for profit but as a community service. The zoonotic (government) “functions” of Fulton County Animal Control were operated under the name Fulton County Animal Control and not as “Atlanta Humane Society.” The Fulton County Animal Control functions were limited and circumscribed by contract [R 578] and have not **been** the major part of Atlanta Humane Society operations. The contractual duties and obligations of the Atlanta Humane Society, as set-forth by contract were not and are not the obligations and duties the trial court attributes to, or Appellee Mills wishes were imposed upon, the Atlanta Humane Society.

The polished patina of Mills' argument sounds compelling - but does not meet the sound legal tests established by law. Carroll City/County Hospital Authority sets forth in detail an (eight-fold) test and criteria to be applied. In fact and law, Atlanta Humane Society is not a government or quasi-government entity and does not fall within the ambit of the tests so established. Cox Enterprises vs. Carroll City/County Hospital Authority, 247 Ga. 39 (1981).

Appellee Mills is a mistress of diversion: sex, lies and "videotape" and issues of government powers and functions - when, really, case law is simple and clear. There is nothing novel about treating a non-profit, private charitable organization, as a private, non-profit organization, as explained by Carroll City/County Hospital Auth. and the Georgia Attorney General. It is novel and a matter of "first impression" to treat a private, non-profit organization as a governmental or quasi-governmental entity. [R 891].

There is no Georgia law (despite Appellees finely articulated argument otherwise) that suggests that a private, non-profit charitable organization may be considered a government or quasi-governmental entity. This is true even where a private, non-profit organization conducts "some" governmental functions. The principal activities of Atlanta Humane Society are not and never have been

or what she stated are found at Transcript pages 54-55, 140, 142 [R 668-669, 754 and 756]; and, that Mills expressly repeats her reference that Garrett delights in “slaughtering” pets for fun and profit, is at lines 8-11, Transcript p.151, [R 765]. Appellants submit that a reading of the entire deposition, as a whole, fully supports Appellants’ contentions, the pervasive mean recklessness of Mills and also the specific instances cited. ²

Secondly, Appellants disagree with Appellee’s recitation of facts and procedural posture of the case. Appellee Mills, with her motion for summary judgment, set forth her Statement of Undisputed Facts. [R 397.] Appellants responded, in a step by step rebuttal, as separately stated in Plaintiffs’ Statement of Disputed Material Facts [R 555] as well as Plaintiffs’ Statement of Material Facts As To Which There Is No Genuine Issue To Be Tried. [R 550.] Appellants disputed virtually each and every alleged “fact “ proffered by Appellee, and as provided by

² Appellants contend that the accusation of delighting in slaughtering pets for fun and profit is not merely derogatory but is both a damaging attack on the professional life of the Atlanta Humane Society and Garrett [OCGA §51-5-4 (3)] and states the imputation of the crime of animal cruelty [O.C.G.A §16-12-4]. Harcrow vs. Struhar, 236 Ga. App. 403 (1999).

Uniform Superior Court Rules 6.5.

Appellee Mills offered no response to Plaintiffs' Statement of Material Facts, as provided by rule. Plaintiffs' relied upon Uniform Superior Court Rule 6.5. Appellee Mills continues to disregard rules of court. ³

Appellants have set-forth contentions regarding the "videotape" question in a Supplemental Brief (re "videotape") of Atlanta Humane Society and Bill Garrett, filed in companion cross-appeal Case No. A03A2481. In their Brief and Affidavit, Atlanta Humane Society and Garrett endeavored to rely upon contemporaneous writings to support their contentions - not parol statements of counsel and others, potentially disputing one another or difficult or impossible to verify. [Both undersigned counsel discussed the "missing tape" by telephone with opposing counsel (Mr. Adelson), upon receipt and review of Mills summary judgment motion.]

Atlanta Humane Society and Garrett never considered the "tape" to be part of the record for the following reasons: (1) The tape was not served on and received by Plaintiffs with Defendant's summary judgment motion; (2) The "tape"

³ Mills' Appeal Brief fails to comply with margin and page limitations, prescribed by the Rules of the Court of Appeals. Rule 23.

was not admitted into evidence; (3) The “tape” was neither shown or used as support at hearing; and, (4) The tape was not referred to in the trial court order [R 883] below.

Further, arguendo, if the “tape” was considered by the trial court, and admitted into evidence (over Appellants’ objection [R 555-556]), then Appellants enumerate as error the admission of such “tape,” absent authentication or verification.⁴

⁴ The issue of the “tape” on appeal was not an “issue” prior to Mills’ motion to supplement the record on Mills’ cross-appeal (Case No. A03A2481). As the tape was not tendered into evidence, utilized at hearing or referred to by the trial court, Appellants have not considered the tape as part of the record or material.

If the “tape” was relied upon by the trial court (as to which the record is wholly silent), then Appellants ask for leave to supplement Appellants’ enumeration of errors to show error in admitting the “tape,” without authentication or verification in any way. In any event, each of the substantive matters in the TV program have been rebutted and disputed. [R 555 and 563, 565 at 586-597].

Third, this case presents “a question of first impression under Georgia law,” as noted by the trial court. [R 891]. Although in a different context, the official opinion of the Georgia Attorney General sets the matter correctly: **No “authority [is found] that would allow the Corporation (a private, nonprofit entity) to be considered a ‘governmental entity.’ ”**[1993 Ga. Op. Atty. Gen. 23, Ga. Op. Atty. Gen. No. 93-10, 1993 WL 154953 (Ga.A.G.)]

The Atlanta Humane Society is a private, non-profit corporate organization. The principal activities of the Atlanta Humane Society are and have been its charitable mission with respect to animal welfare - not zoonotics nor other governmental functions. Under contract with Fulton County, Atlanta Humane Society has supplied (at cost) a labor force to provide Fulton County Animal Control services. ⁵

For more than 25 years, no County personal property has been used by

⁵ Presumably, when “Acme” Painting and Decorating Co. is engaged to re-paint the State Judicial Building or when “Ace” Security, Inc. is engaged to provide (pre-9/11) security at the municipal airport, Dekalb County Courthouse or baseball stadium - such companies and employees (if engaged in certain governmental functions) are not considered governmental entities.

Atlanta Humane Society. For example, Atlanta Humane Society for more than 25 years has owned all of the vehicles used by its employees with respect to Fulton County Animal Control. The Atlanta Humane Society has paid for tags, title and annual ad valorem taxes. The Atlanta Humane Society has undertaken a limited function (zoonotics) as a community service and not for profit. And, the trial court's "list" of contract "government" functions [R 892] is almost entirely in error. [See, Atlanta Humane Society and Bill Garrett Appeal Brief(s), August 20, 2003, each at pp 5-6.]

Appellants' complaint is about what Appellee Mills wrote and published about Atlanta Humane Society and Garrett - not what she may have thought about Fulton County Animal Control, or others. Mills' critique does not name Fulton County Animal Control and does not name the government. ⁶ Her defamatory statements are, in fact, about Appellants, whom she names. [Mills Deposition Transcript, 115-118 @ 729-732).]

Through trick, artifice and first-rate lawyering of her counsel, Mills wishes to continue to defame Atlanta Humane Society and Garrett with impunity and Mills

⁶ No one contends the government possesses or should have a cause of action for defamation.

asks this Court to approve her license to malign, damage and defame Atlanta Humane Society and Garrett, now and for the foreseeable future.

On July 3, 1974 Fulton County and Atlanta Humane Society entered a Contract (amended February 3, 1982) [R 578] as a public health and safety measure, whereby Atlanta Humane Society was to operate Fulton County Animal Control. It was a limited and circumscribed measure for zoonotics and rabies control. It was not designed to establish a “humane society” and animal shelter, etc.

Under the contract, for example, Atlanta Humane Society was required to conduct not “clinics” but a single rabies vaccination clinic “once a year” [Contract ¶9 R 581)], and was expressly required to impound and receive pets impounded by municipalities. [¶12, R 582.]

Contrary to Mills’ implication, the contract does not give either broad or narrow police powers to the Atlanta Humane Society to issue citations or make arrests or otherwise. Rather, the contract provided that only those individual employees who were appointed deputy sheriffs (by the Sheriff) shall have such limited powers. It was not contemplated that all employees would have such powers or that such authority would ever be delegated to the Atlanta Humane Society, itself. [February 3, 1982 Contract, ¶14; R 583].

The mission of animal welfare, public education and enlightenment, and prevention of animal cruelty has been a hallmark of humane societies, as non-governmental organizations, since the establishment of the Royal Society for The Prevention of Cruelty to Animals in 1824 in England. The Atlanta Humane Society was established shortly after the Civil War, and its charter originally expressed concern for women and children and animals.

With Mills' defamatory attacks, the Atlanta Humane Society has suffered a diminution in public confidence. Atlanta Humane Society has also suffered a decrease in contributions. As a consequence, the Atlanta Humane Society has withdrawn altogether from its relationship with Fulton County and animal control functions. The Atlanta Humane Society now continues to focus on the principal activities it has long maintained: animal welfare, pet facilitated therapy, pet adoptions, charitable veterinary clinic, etc.

Fourth, the cases cited by Appellees are inapposite to the facts, law, and situation here presented.

The Georgia cases cited for the most part involve undisputably "government" agencies (public school and university systems) with respect to public and open meetings and records. The Georgia open records act is explicit

made applicable to “private” corporations in certain situations, but only to the limited extent that they are performing governmental functions. As stated by Appellee’s Exhibit G, “private entities”(such as Atlanta Humane Society) may be subject to “the Open Records Act[but only]...so far as it is performing a service or function of a public agency under its [government] contract...” [R 383.] This, and the cases cited by Appellee, do not lead to the conclusion that Atlanta Humane Society is a government or quasi-governmental entity.

Here, the trial Court’s “list” of government functions (erroneously) went far beyond the County - Atlanta Humane Society Contract. [R 578-585.]

The other cases (from outside the State of Georgia), cited by Appellee are also neither applicable nor controlling and deal with specific laws in other jurisdictions applied to factual patterns unrelated to and easily distinguished from the factual situation here.⁷

Cases cited by Mills are not mis-cited; they are just not applicable. None of the cases “convert” a non-government organization into a governmental entity.

⁷ For example, Putnan County Humane Society vs. Woodward, 740 So. 2d, 1238 (Fla. Dist. Ct. App. 1999) is simply an “open records” act case - fact sensitive to Florida laws.

Cases do recognize that some non-government organizations perform certain government “functions” and that with respect to those functions may be so treated for limited purposes. In this defamation case, where a non-governmental organization has been attacked, the non-governmental entity does not have and does not seek the shield of protection of governmental immunity. Appellee here seeks to use a misapplied government label to bludgeon a non-profit, private charity.

Finally, Appellee Mills asks this Court to establish her license to malign, defame and harm the Atlanta Humane Society and Bill Garrett. The Atlanta Humane Society and Bill Garrett have rights, claims and reputations justly to secure, and the halls of law and temple of justice should not be barred to them.

In view of O.C.G.A § 9-11-56, Uniform Superior Court Rule 6.5 and “facts” in dispute in this case, and Plaintiffs’ unrebutted Statement of Facts, it is respectfully submitted that the trial court erred in granting summary judgment against the Atlanta Humane Society (as a quasi-governmental entity) (as a matter of law). If anything, Cox Enterprises vs. Carroll County/County Hospital Authority, 247 Ga. 39 (1981) ⁸ dictates the conclusion that the Atlanta Humane Society is not

⁸ And, further, Carroll County/County Hospital Authority suggests that a mere “quasi-governmental” entity (vis-a-vis “government” entity) would not

a government nor quasi governmental entity. (See, also Brittain vs. Gast, 259 Ga.
App. 124 (2003).

Respectfully submitted,

September 18, 2003

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be barred from a right of action for defamation.

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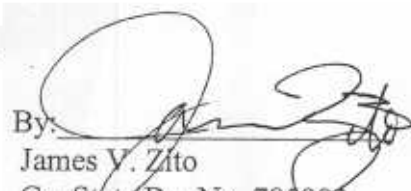
CERTIFICATE OF SERVICE

This is to certify that the Undersigned Counsel for Appellants, above named, has this day served Reply Brief of Appellants Atlanta Humane Society and Bill Garrett on behalf of said Appellants in connection with the above mentioned matter, upon opposing Counsel or all parties to be served and others by hand delivery or by depositing copies of same in the United States Mails in properly addressed envelopes, with adequate first-class postage pre-paid thereon, and directed as follows:

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This 18th day of September, 2003, Atlanta.

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