

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ATLANTA HUMANE SOCIETY,)	
)	
SOCIETY OF PREVENTION OF CRUELTY TO ANIMALS, INC., and)	
)	
BILL GARRETT,)	Case No. 01-A-13269-1
)	
Plaintiffs,)	
)	
v.)	
)	
KATHI MILLS,)	
)	
Defendant.)	
<hr style="border: 0.5px solid black;"/>		

DEFENDANT’S MOTION TO DISMISS SLAPP SUIT AND BRIEF IN SUPPORT

COMES NOW, Defendant Kathi Mills (Ms. Mills) and files this Motion to Dismiss and Brief in Support pursuant to O.C.G.A. § 9-11-11.1, which mandates the dismissal of improperly verified SLAPP (Strategic Lawsuit against Public Participation) lawsuits.

Background Facts and Introduction

Beginning in November of 2001, the WSB television (Channel 2) news department broadcast a series of “Whistleblower 2” reports concerning the inadequate performances of the Atlanta Humane Society, its Executive Director, Bill Garrett, and Fulton County Animal Control. Exhibit A to *Defendant’s Motion for Summary Judgement and Brief in Support*. The reports were extremely critical of the Humane Society’s and Fulton County Animal Control’s nearly total failure to assist authorities in the prosecution of animal cruelty cases, and their poor record for adopting out pets. The reports highlighted the entities’ ineffective history and pointed out that the Atlanta

Humane Society, which operates the Fulton County Animal Shelter, has amassed enormous resources during this time. The television exposes confronted Executive Director Bill Garrett for an explanation of the organizations' failure to assist in the prosecution of animal cruelty cases.

Defendant Kathi Mills, a professional Internet web site developer, is a pet rescuer and animal rights advocate who watched the WSB Whistleblower reports. Ms. Mills operates an Internet web site called "Kitty Village" to find homes for cats. Ms. Mills has volunteered with Gwinnett County Animal Control, the Humane Association of Georgia, and numerous other animal welfare organizations. Ms. Mills also participates in a members-only, Internet-based animal welfare discussion group called Atlanta Rescue.

The purpose of the discussion group is explained as follows:

The SPOT Atlanta Rescue list is a group of Atlanta area dog and cat rescuers who are actively working on projects that will reduce the number of dogs and cats killed in Atlanta area shelters.

This list is used in order to post information about SPOT - Stopping Pet Overpopulation Together, to post messages about dogs and cats in need of rescue at Atlanta area animal shelters and also to post messages about animals in dire need of rescue due to abuse, homelessness, etc. Postings may also be made about topics of interest to animal rescuers in Atlanta. However, postings about animals that are out of state, national petitions, fundraisers for rescue groups, pets lost from the general public and animals that are already safe in a rescue program should not be made.

Subscribers should live in the Atlanta vicinity and should want to become or already be involved in animal welfare, in animal rescue or in SPOT. This group is not for people who want to adopt a dog or cat. We suggest you contact a local shelter or rescue group if you would like to adopt a pet.

See <http://groups.yahoo.com/group/atlantarescue/>.

On November 1, 2001, after watching the first WSB Whistleblower report which was critical of the Atlanta Humane Society, its Executive Director, Bill Garrett, and

Fulton County Animal Control, Ms. Mills posted her opinion and commentary of the report to Atlanta Rescue discussion group. The message, which is attached as Exhibit B, is a summary of the November 1, 2001 WSB Whistleblower report with a couple of sentences of Ms. Mills' opinion. On November 7, 2001, Ms. Mills posted another message to the Atlanta Rescue discussion group. Exhibit C. Ms. Mills' November 7, 2002 message to the members-only group offers her opinions about the Humane Association of Georgia, Fulton County Animal Control, the Atlanta Humane Society, and Bill Garrett.

Within the next month or so the WSB news department broadcast more reports critical of the Atlanta Humane Society, its Executive Director, Bill Garrett, and Fulton County Animal Control. Exhibit A to *Defendant's Motion for Summary Judgement and Brief in Support*.

On December 21, 2001, the Atlanta Human Society, the Society for the Prevention of Cruelty to Animals, Inc. and Bill Garrett filed their Complaint in this case against Ms. Mills, alleging that the following statements, quoted from Ms. Mills' November 1, 2001 and November 7, 2002 posts to the Atlanta Rescue discussion group, defamed them:

- (1) “. . . Mr. Kill is also the figurehead president of the Humane Association of Georgia . . .” Exhibit C.
- (2) “I am personally withdrawing my support from that group until they get a leader who does not delight in slaughtering pets for fun and profit.” Exhibit C.
- (3) “I am pretty sure that Fulton County pays the Atlanta House of Slaughter on a per-animal basis. So what would be the best way to maximize profits under this system?”

- (1) Kill the animals in three days or less (legally shown to be less in some cases)
 - (2) Refuse to spay or neuter the animals to make sure a new crop keep coming in [sic].
 - (3) Refuse to hold animals for either cruelty investigations or for rescue groups [sic]
 - (4) Overcrowd the kennels at the non-public facility. Exhibit C.
- (4) “Bill Garrett is not worthy to lick the dog or cat poop off our shoes. He is evil and it is time for the Atlanta rescue community to unite in ending his long and tragic career not only at AHS, but in every pet-related capacity.” Exhibit C.
- (5) “It would be more effective for us to target AHS’ corporate sponsors than the government good ol’ boys. We need to let them know that by subsidizing one of the largest and most disreputable pet slaughter houses in the Southeast, they are alienating the rest of the Atlanta welfare community.” Exhibit C.
- (6) “But it seems to me that he doesn’t bother because they’re just going to be killed in three days anyway.” Exhibit B.

In 1996 the Georgia General Assembly passed legislation known as the Anti-SLAPP (strategic lawsuits against public participation) statute, O.C.G.A. § 9-11-11.1. Exhibit D. The statute’s purpose is to protect Georgia citizens from abusive litigation while exercising their right of free speech, and specifically while addressing matters of public concern. O.C.G.A. § 9-11-11.1 (a). The Anti-SLAPP statute requires Plaintiffs to submit a sworn verification along with any defamation complaint stemming from commentary on an issue of public concern. One of the requirements for the SLAPP verification is that the Plaintiff and Plaintiff’s attorney swear to the best of their knowledge, “[T]hat the act forming the basis of the claim is not a privileged communication under paragraph (4) of Code section 51-5-7...”, O.C.G.A. § 9-11-11.1

(b). O.C.G.A. § 51-5-7 (4) refers the reader to O.C.G.A. § 9-11-11.1 (c) for the definition of an “issue of public concern”, which states, “...any written or oral statement...made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, or...made in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.” O.C.G.A. § 9-11-11.1 (c).

O.C.G.A. § 9-11-11.1 (b), provides that if a claim is verified in violation of this Code section, the court shall impose sanctions which include dismissal, payment of the Defendant’s attorney’s fees and costs, or both. Plaintiffs’ claim is improperly verified because Plaintiff knew or should have know that Ms. Mills’ statements, which formed the basis of Plaintiffs’ claim, were privileged communication under the definition in O.C.G.A. § 9-11-11.1 (c).

Defendant Mills now requests that this Court dismiss her from Plaintiffs’ SLAPP lawsuit and grant her both attorney’s fees and costs.

Argument

Ms. Mills’ statements, which formed the basis for Plaintiffs’ claim, were privileged communications under O.C.G.A. § 9-11-11.1 (c).

A. Ms. Mills statements were made in connection with issues of public concern under review by the Fulton County Board of Commissioners.

O.C.G.A. § 9-11-11.1 (c) defines an “issue of public concern” as, “...any written or oral statement...made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, or...made in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.”

Ms. Mills comments listed above have been and are the subject of multiple Fulton County Commission meetings. Exhibits E and F. At both the December 19, 2001, and January 16, 2002 Board meetings the exact subject matter contained in Ms. Mills statements was discussed. Exhibits E and F. Commissioner Emma Darnell stated in reference to the issues of animal control raised at the December 5, 2001 meeting of the Board, “[T]his is an issue which is of great concern to many, many citizens of Fulton County.” Exhibit E 12/5/01 Fulton County Commission minutes at 244. On November 21, 2001, The Fulton County Commissioners requested that their staff prepare a report on animal control. Exhibit E 12/5/01 Fulton County Commission minutes at 240-1.

There can be no question that the Fulton County Board of Commissioners is a legislative body within the meaning of the term used in O.C.G.A. § 9-11-11.1 (c). As evidenced by Exhibits E and F, issues surrounding Plaintiffs’ performance of their duties has been and is a frequent topic of discussion in Fulton County Board meetings. This clearly shows that these issues, the same issues raised in Ms. Mills’ comments, are of public concern. Ms. Mills’ comments express her opinions on these issues of public concern in a colorful, and at times brutally honest way. Therefore, Ms. Mills’ statements clearly meet the requirements for privileged communications outlined in O.C.G.A. § 9-11-11.1 (c), and as a result Plaintiffs have falsely verified their SLAPP complaint.

B. Ms. Mills statements are privileged communications because they generally address matters of public concern.

Ms. Mills’ comments are privileged for purposes of the Anti-SLAPP statute because they generally address matters of public concern. Georgia courts have expanded the definition of what may constitute a privileged communication as it relates to O.C.G.A. § 9-11-11.1 (c). In *Hawks et al v. Hinley et al*, 252 Ga. App. 510 (2001), the

court dismissed the Plaintiffs' claim with prejudice under the Anti-SLAPP statute because Plaintiffs' complaint was improperly verified. The particular communications at issue were recall petitions for elected officials, which were filed before any court proceeding had taken place. The court, speaking on the issue of whether the Anti-SLAPP statute applied, rejected Plaintiffs' narrowly constructed argument, "[T]hat the Anti-SLAPP statute encompasses only statements made to existing 'proceedings'..." *Id. at 513*. "The [Plaintiffs'] myopic construction would produce such undesirable and illogical results and consequences. The legislative intent behind the Anti-SLAPP statute is to protect the public's right to petition the government for the redress of grievances on matters of public concern." *Id. citing O.C.G.A. § 9-11-11.1 (a)*.

The *Hawks* court clearly expands the scope of what may be considered privileged communication under O.C.G.A. § 9-11-11.1 (c), to include comments regarding issues of public concern prior to the initiation of any judicial, legislative, or executive inquiry. *Id.* Ms. Mills' comments served to express her opinion, in an ongoing public debate by the Fulton County Board of Commissioners, on issues surrounding the performance of Plaintiffs' duties. Exhibits E and F. The expanded scope of what constitutes privileged speech unquestionably encompasses Ms. Mills' comments. Ms. Mills' case is precisely the type of case that the General Assembly had in mind when it enacted the Anti-SLAPP statute. "[T]he intent of the statute is to encourage the exercise of free speech and afford a procedural protection to acts of communication on public issues." *Denton et al. v. Browns Mill Development Company, Inc. et al.*, 275 Ga. 2, 6 (2002).

In one of the most recent opinions on the issue, *Denton et al. v. Browns Mill Development Company, Inc. et al.*, 275 Ga. 2, (2002), the Georgia Supreme Court affirms

a decision to dismiss an improperly verified complaint pursuant to O.C.G.A. § 9-11-11.1 (b). In *Denton et al.*, Denton prepared and published a written report to highlight perceived performance deficiencies of state and local regulatory agencies. The report documented the alleged failure of several private real estate development companies to use proper erosion and sedimentation controls. Two of the private real estate development companies sued Denton for libel and slander. *Id. at 3*. The court dismissed Plaintiffs' complaint because they did not properly verify their complaint, and to be exact they did not submit a verification. *Id.*

While the exact reasoning behind the *Denton et al.* complaint dismissal is different from Ms. Mills' case, other facts and circumstances in *Denton et al.* closely mirror the facts and circumstances in this case. Like Denton, Ms. Mills published comments with the intention of highlighting what she believed were performance deficiencies by Plaintiffs, and as a consequence Plaintiffs filed a defamation claim. Denton's report was not published directly to or in association with any current judicial, executive, or legislative proceeding. It was merely published to some government officials and media outlets as a fair commentary directed to address perceived deficient performance. Likewise, Ms. Mills' comments were not directly posted to or in association with any current judicial, executive, or legislative proceeding. They were posted to an animal rescue Internet discussion group as a fair commentary directed to address perceived deficient performance by Plaintiffs. The Court's decision affirming dismissal of Plaintiffs' improperly verified complaint in *Denton et al.* can be reasonably extended to afford the same treatment for Plaintiff's improperly verified complaint against Ms. Mills. While there is no case law directly on point for this issue the Georgia

Supreme Court in *Denton et al.* briefly addresses the issue of free speech and privileged communication. *Id. at 6.*

Conclusion

The Anti-SLAPP statute is relatively new legislation, enacted in 1998, and there are few cases dealing with the issue of improperly verified complaints and their subsequent dismissals. There are no opinions which directly address the issue presented, dismissal of a SLAPP complaint when Plaintiffs improperly verify that the act forming the basis of the claim is not a privileged communication. However, the General Assembly's intent was clearly stated in the Anti-SLAPP statute itself, to protect Georgia citizens from abusive litigation while exercising their right of free speech, and specifically while addressing matters of public concern. O.C.G.A. § 9-11-11.1 (a). Exhibit D.

It is clear through WSB's reports and through multiple meetings of the Fulton County Board of Commissioners, that the matters of animal control and Plaintiffs' performance of their duties are matters of public concern. Exhibits A to *Defendant's Motion for Summary Judgment and Brief in Support*, E and F. Ms. Mills' comments were merely her opinions on these issues, and should not be silenced by the equivalent of legal bullying. Free speech and allowing our citizens to criticize institutions and officials regarding matters of public concern is a Constitutionally protected right, and Georgia has added an extra layer of procedural protection to this right through the Anti-SLAPP statute. Allowing Plaintiffs to silence their critics through legal action flies in the face of the General Assembly's intent for the Anti-SLAPP statute.

As demonstrated above Ms. Mills' comments fit into the definition of privileged communication as set out by O.C.G.A. § 9-11-11.1 (c). Plaintiffs improperly verified their complaint when they swore that the bases of their claim, Ms. Mills' comments, were not privileged communications. Plaintiffs' complaint should be dismissed with prejudice pursuant to O.C.G.A. § 9-11-11.1 (b).

WHEREFORE, for the reasons set forth above, Defendant requests that Plaintiffs' complaint be dismissed and that Plaintiffs pay Defendant's costs and fees pursuant to Georgia's Anti-SLAPP statute.

This 3rd day of September, 2002

Respectfully Submitted,

ALAN I. BEGNER
GA BAR NO. 046875

1280 West Peachtree Street, Suite 230
Atlanta, GA 30309
Begner & Begner, P.C.
(404) 872-5727

ROBERT M. ADELSON
GA BAR NO. 005035

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ATLANTA HUMANE SOCIETY,)	
)	
SOCIETY OF PREVENTION OF CRUELTY)	
TO ANIMALS, INC., and)	
)	
BILL GARRETT,)	Case No. 01-A-13269-1
)	
Plaintiffs,)	
)	
v.)	
)	
KATHI MILLS,)	
)	
Defendant.)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing,
Defendant's Motion to Dismiss SLAPP Suit and Brief in Support, by United States Mail
with sufficient postage addressed to:

James Zito
Edward Greenblatt
Lipshutz, Greenblatt, & King
2300 Harris Tower, Peachtree Center
233 Peachtree Street
Atlanta, Georgia 30303-1529

This ____ day of September, 2002.

ROBERT M. ADELSON
GEORGIA BAR No. 005035

Begner & Begner, P.C.
1280 West Peachtree Street, Suite 230
Atlanta, GA 30309
(404) 872-5727