

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS

JASON BROWN

PLAINTIFF

V.

CASE NO. 63CV-24-254

COURTNEY PARK and  
JOHN DOES 1-10

DEFENDANTS

**ORDER OF DISMISSAL**

Now on this day comes on for hearing the above captioned matter, the Plaintiff Jason Brown being represented by attorneys Gill Ragon Owen, P.A. and the Defendant Courtney Park by attorneys Sutter & Gillham, P.L.L.C. and for the Defendant's Motion to Dismiss the Court does find and order as follows, to-wit:

1. This Court has jurisdiction over the parties and subject matter and venue is proper.
2. The Plaintiff has brought this matter alleging the Defendant made certain defamatory statements against him. Among the allegations contained within his Complaint are the following statements of fact which are relevant to the Motion to Dismiss:
  - a) The Plaintiff was a candidate for the elected position of Mayor for the City of Bryant, Arkansas, the election occurred on or about March 5, 2024;
  - b) The Plaintiff was employed as the Director of the Greater Bryant Chamber of Commerce (hereinafter "the Chamber") until approximately May 2023 when his resignation as an employee became effective;

- c) During the time the Plaintiff served as the Director of the Chamber, the Defendant contracted to serve as a part-time bookkeeper for the Chamber from 2019 until approximately the middle of 2023;
- d) On or about February 15, 2024, roughly three weeks prior to the March 5, 2024 election, the Defendant posted on YouTube a video that was approximately six minutes long in which she is conversing with another person, who is off camera, concerning her work with the Plaintiff at the Chamber;
- e) It is alleged by the Plaintiff that certain statements made by the Defendant in the video were defamatory and were done with the knowledge that they were either false or with a high degree of awareness of their probable falsity. It is also alleged that these statements were made for the purpose of damaging the Plaintiff's reputation so that he would ultimately lose the mayoral election;
- f) The statements contained within the video which the Plaintiff alleges are both defamatory and false are contained within paragraph 14(a) through 14(h) of the Complaint and are summarized below:
  - i. The Defendant stated in the fall of 2020 some unidentified person approached her with concerns that the Plaintiff had "cashed in" a \$15,000.00 certificate of deposit from First Security Bank (hereinafter "the CD"). She further stated that this unidentified person said she was "spooked" and asked if her job was in jeopardy;

- ii. The Defendant stated that she prepared bank statement reconciliations on the Chamber's behalf. She stated that a few weeks after being asked about the CD, the Plaintiff approached her and asked that she not show that the CD had been sold on the monthly profit and loss reports she prepared for the Chamber's Board of Directors (hereinafter "the Board"). The Plaintiff alleges that the Defendant insinuates in the video that he misappropriated the funds from the CD for his own use;
- iii. The Defendant stated on April 24, 2023, that an unidentified person contacted her and "wanted answers" about the Bryant air show. The unidentified person asked her how much the air show made and she responded it made \$7,025.88. The unidentified person told the Defendant that she "could not believe it" because this figure was "drastically different" than what the Plaintiff had provided to the Board;
- iv. The Defendant stated that an unidentified person told her that the Plaintiff had not provided the Board with a profit and loss statement in at least a year;
- v. The Defendant stated that the City of Bryant provided \$129,000.00 in "seed money" for the air show and inquired "where is that"? The Plaintiff alleges that the Defendant

insinuates that he misappropriated these funds for a purpose other than to fund the air show;

- vi. The Defendant states that she is “extremely uncomfortable” working with the Plaintiff. She stated that one morning while working at the Chamber she was getting a file from a lower drawer of a filing cabinet. As she squatted down to do so, she stated that the Plaintiff was standing to her left and made the statement, “while you are down there,” and that as a result she was “horrified” (the Complaint indicates the Defendant was quoting the Plaintiff in reference to the statement about her location, the quote does not however indicate any further statements by the Plaintiff as to what he supposedly wanted; it is implied that this was a request of a sexual nature as opposed to something completely innocent such as a request for another file);
- vii. The Defendant stated that she did not say anything about this incident and that she didn’t know what to do;
- viii. The Defendant states that she decided to make the video because the Plaintiff “is not a good man, and not a good person.”

3. The Court has not viewed the video because under the motion to dismiss standard, the Court may only consider the Complaint on its face and not any other evidence. For purposes of consideration of a

motion to dismiss, the statements alleged within the Complaint are as taken as true and the Court views them in the light most favorable to the plaintiff. See *Perry v. Walmart Stores, Inc.*, 2023 Ark.App. 599. The summary of the statements alleged to have been made in the video by the Defendant in paragraph 2 of this Order are derived from the Complaint and no other source.

4. After filing the original Complaint on February 20, 2024, the Defendant timely filed a Motion to Dismiss asserting that the Plaintiff failed to verify his Complaint under A.C.A. §16-63-505.
5. Arkansas law provides that as a protection of the constitutional rights of free speech and right to petition the government for redress of grievances, that certain speech is immune from suit. The legislature has specifically found that the valid exercise of the constitutional rights of free speech directed toward the government and its officials should not be chilled through abuse of the judicial process. See A.C.A. §16-63-502. In protecting these rights, the legislature enacted the **Citizen Participation in Government Act** (hereinafter “the Act”). See Act 1843 of 2005. The immunity from suit privileges of this Act are codified at A.C.A. §16-63-501 et seq. The specific statute at issue reads as follows:

**Any person making a privileged communication or performing an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern shall be immune from civil liability, unless a statement or report was made with**

**knowledge that it was false or with reckless disregard of whether it was false. A.C.A. §16-63-504.**

6. This statute provides protection from suit in three different situations.

First, it protects any person who makes a “privileged communication” in connection with an issue of public interest or concern. A “privileged communication” is defined as being:

**A communication made:**

- (i) In, to, or about an issue of public concern related to any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government;**
- (ii) In the proper discharge of an official duty; and**
- (iii) By a fair and true report of any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government, or anything said in the course of the proceeding.**

**“Privileged communication” also includes:**

- (i) All expressions of opinion or criticisms in regard to any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government; and**
- (ii) All criticisms of the official acts of any and all public officers. A.C.A. §16-63-503**

7. Second, the statute protects an act in furtherance of the right free speech in connection with an issue of public interest or concern. Third, the statute also protects the right of a person to petition the government

for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern. The second and third situations are defined collectively as being:

**“An act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern” includes, but is not limited to, any written or oral statement, writing, or petition made:**

**(A) Before or to a legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government; or**

**(B) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or other body authorized by a state, regional, county, or municipal government. A.C.A. §16-63-503.**

8. The Defendant has filed a Motion to Dismiss based upon A.C.A. §16-63-505. This particular statute requires if a lawsuit is filed against a person which arises from a possible privileged communication or an act of free speech or the right to petition the government which *could reasonably be construed* as protected by the immunity provisions of the Act, the Plaintiff must attach a verification to his Complaint which basically states under oath the lawsuit is brought in good faith and not for an improper purpose. The Plaintiff has not included a verification in either his original or amended Complaint. The precise language of the statute reads as follows:

**For any claim asserted against a person or entity arising from possible privileged communication or an act by that person or entity that could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern, the party asserting the claim and the party's attorney of record, if any, shall be required to file contemporaneously with the pleading containing the claim a written verification under oath certifying that:**

- (1) The party and his or her attorney of record, if any, have read the claim;**
- (2) To the best of the knowledge, information, and belief formed after reasonable inquiry of the party or his or her attorney, the claim is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;**
- (3) The act forming the basis for the claim is not a privileged communication; and**
- (4) The claim is not asserted for any improper purpose such as to suppress the right of free speech or right to petition government of a person or entity, to harass, or to cause unnecessary delay or needless increase in the cost of litigation. A.C.A. §16-63-505 (Emphasis added)**

9. The determination of whether or not the Act applies to a cause of action is important not only from the standpoint of immunity from suit, but from the standpoint that if a lawsuit is brought in bad faith or was commenced in order to harass, intimidate, punish, or to maliciously inhibit a person from making certain communications or performing certain acts, a plaintiff could be required to pay compensatory damages



to a defendant, including reasonable attorney fees. See A.C.A. §16-63-506. Absent sanctions under Rule 11 of the Arkansas Rules of Civil Procedure, there is no such remedy for an aggrieved defendant in a defamation case which does not involve the protections of the Act.

10. The Defendant has asserted that this case falls under the Act and therefore the verification is required to be attached the Complaint. The Defendant asserts that the underlying facts of the case pertain to the Plaintiff running for public office and statements allegedly made by the Defendant pertain to his fitness to serve the citizens of Bryant in that capacity.
11. The Plaintiff however contends that the Act does not apply to this case and no verification is required. He asserts that the alleged statements do not fall within the protected category of being a “privileged communication” under the Act.
12. The determination of whether or not the verification requirement of the Act applies to this cause of action is a necessary determination at this juncture of the case. If the Act does apply, the Plaintiff’s cause of action against the Defendant will have to be dismissed. The Act has a mandatory dismissal requirement for failing to verify the Complaint under A.C.A. §16-63-506. The Plaintiff has not verified either his original or amended Complaint and has declined to do so. The time for him to include a verification under the Act has now lapsed.

13. While the Plaintiff's arguments have centered around whether or not the alleged statements constitute a "privileged communication", which was the first category of protected speech, the Court finds that the alleged statements of the Defendant *could reasonably be construed* as being protected under the Act under the second category of activities which is enumerated in paragraph 7 of this Order, in that the Defendant was allegedly "performing an act in furtherance of the right of free speech....in connection with an issue of public interest or concern" which is the relevant section of the statute in this case. See A.C.A. §16-63-504.
14. When reviewing issues of statutory interpretation, the first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving words their ordinary and usually accepted meaning in common language. When the language of a statute is plain and unambiguous, there is no need to resort to the rules of statutory construction. See *Cruz v. State*, 2019 Ark.App. 91. Here, the statutory language of the Act is plain and unambiguous.
15. The statements of the Defendant pertain to the alleged fitness of the Plaintiff as a candidate for public office and were made just prior to an election for office. The publication of the video on YouTube along with her statements in connection with the Plaintiff's fitness for public office *could reasonably be construed* as "an act in furtherance of the Defendant's right of free speech". These statements were made in

connection with the election of a public official, that being the position of Mayor of the City of Bryant, which *could reasonably be construed* as “a matter of public interest or concern”.

16. When, as required by the Act, the claim asserted against the Defendant *could reasonably be construed* as arising from an act in furtherance of the right of free speech in connection with an issue of public interest or concern, the verification requirement becomes mandatory. As such, the verification section of the Act applies to this cause of action and the Plaintiff's Complaint and Amended Complaint should have had the required verification attached.
17. The parties also differ on whether or not an election is a “proceeding” of a state, regional, county, or municipal government within the definitions of A.C.A. §16-63-503. The Court is of the opinion that whether or not an “election” is a “proceeding” is not dispositive of the issue of applicability of the Act to this cause of action. The statute provides that the categories listed within the definition section of an act of free speech are not all inclusive. The precise language is that the categories of protected activities “include, but is not limited to....” The Court finds that an “election” is “a matter of public interest or concern” even though it may not be specifically recited within the statute. It would be included within the catch all provision of the definition at a minimum. Therefore, an “election” is within those governmental

activities the Act seeks to secure public protection in the area of free speech.

18. It is important to note that under the Act, that if this matter is refiled with a verification attached, the immunity protections of the Act have yet to be determined. As stated in the statute, immunity from suit does not apply if the Defendant's statements were made with knowledge that they were false or with reckless disregard of whether they were false.

19. The Court by its decision today is only stating the verification aspect of the Act as stated in A.C.A. §16-63-505 applies to this cause of action and the Complaint should have been verified in compliance therewith. The Plaintiff intentionally did not verify his Complaint and the mandatory dismissal requirement of the Act necessitates that this Court dismiss this cause of action for that reason.

20. For these reasons, the Plaintiff's cause of action is dismissed without prejudice to refiling.

IT IS SO ORDERED.

  
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Brent Houston  
Circuit Judge  
5/15/2024  
\_\_\_\_\_  
Date