

IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
WILL COUNTY , ILLINOIS

JOHN NORTON)
v.)
)
LEONARD MCCUBBIN, JR., CONNIE) Case #2019 MR 000953
HALE FORSYTE, MICHAEL ESPOSITO)
CYNTHIA L. BRZANA, MARY JONES)
KIRK ALLEN, BECKY BECKER, ARLIN)
FRITZ)

**DEFENDANTS 2-619 MOTION TO DISMISS WITH PREJUDICE BASED ON
IMMUNITY UNDER THE CITIZEN PARTICIPATION ACT**

Now Comes CYNTHIA BRZANA, CONNIE HALE FORSYTE, BECKY BECKER
AND KIRK ALLEN (COLLECTIVELY HEREIN AS "DEFENDANTS"), by and through their
attorney Robert T. Hanlon, with their combined Motion to Dismiss With Prejudice based on
Immunity Under the Citizen Participation Act and for attorney fees, on the grounds that the
claims asserted by Plaintiff are barred by immunity granted under the Citizen Participation Act
735 ILCS 110/5 (the "CPA") and for attorney fees and costs provided for by statute and states as
follows:

Introduction:

Respondent filed with this court an incoherent complaint that fails to set forth a cause of
action. Defendants incorporate herein their motion to dismiss pursuant to 2-615 for the purpose
of establishing that the subject complaint is in fact a S.L.A.P.P. Plaintiff's claims surround
defendants actions surrounding petitioning government and attending government meetings and
in the free exercise of speech (Edgar County Watchdogs on-line government news media).
Importantly, the signage that plaintiff points to is in fact the exercise of free speech. Moreover,
the statements made on facebook and the on-line newspaper covering government corruption is

clearly a free exercise of free speech. It is ironic that plaintiff quotes sections from the CPA and then filed an action that is itself a SLAPP as hereinafter defined.

Argument

A. SLAPPs.

The purpose of the Citizen Participation Act ("CPA") is to counter "Strategic Lawsuits Against Public Participation" ("SLAPPs"), which have been used "as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs," 735 ILCS 110/5 (West 2008), the Act's purpose is to eliminate SLAPPs and protect citizen participation in public affairs by: (1) immunizing individuals from lawsuits based on acts taken in furtherance of their rights to free speech and to petition government; (2) creating an accelerated legal process to dispose of SLAPPs; and (3) providing attorney fees and costs to parties who prevail on motions under the Act. *Wright Development Group, LLC v. Walsh*, No. 109463, slip op. at 9-10 (October 21, 2010), 238 Ill.2d 620, 939 N.E.2d 389, 2010, See also: *Hytel Group, Inc. v. Butler*, 405 Ill.App.3d 113, 938 N.E.2d 542 Ill.App. 2 Dist., 2010.

In *Wright*, the Court noted that the legislature observed, "The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights," The CPA explains, "The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy." The Act further notes SLAPPs are an "abuse of the judicial process" which "can and have been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs." 238 Ill.2d 620, 939 N.E.2d 389, 2010 internal citations omitted.

B. Liberal Construction.

The Illinois State Supreme Court weighed in on the construction of the Citizen Participation Act. See *Wright Development Group, LLC v. Walsh*, 238 Ill.2d 620, 939 N.E.2d 389, 2010. There, in *Wright*, the Court found that the Act was so broadly written and ought to be construed liberally; and just as in this case, even statements made to a newspaper were covered by the CPA. This was despite the fact that the reporter could not provide a remedy for the grievances complained of and was not part of the adjudicative process. *Id.*, See also *Hytel Group, Inc. v. Butler*, 405 Ill.App.3d 113, 938 N.E.2d 542 Ill.App. 2 Dist., 2010 (as written, the Act appears broader than any other anti-SLAPP statute.) Here, Petitioners' tactic is an obvious attempt to interfere with Defendants' exercise of free speech.

C. Public Interest.

The Court, in *Wright*, further explained that the CPA's four explicit goals are in the "public interest." Those objectives are first, "to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government." Second, it attempts "to protect and encourage public participation in government to the maximum extent permitted by law." The third purpose is "to establish an efficient process for identification and adjudication of SLAPPs." Finally, the Act "provides for attorney's fees and costs to prevailing movants." See *Wright* at 7.

The CPA reads, in pertinent parts, as follows:

Applicability.

This Act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim *is based on, relates to, or is in response to* any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government. Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are

immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome. (Emphasis added).

In *Hytel Group, Inc. v. Butler*, 405 Ill.App.3d 113, 938 N.E.2d 542 Ill.App. 2 Dist.,2010, the 2nd

District Appellate Court observed the following with respect to the Citizens Participation Act:

In interpreting a statute, we must strive to interpret it so as to give meaning to all of its provisions and avoid interpretations that would render any provision superfluous. *Solon I' Midwest Medical Records Ass'n*, 236 Ill.2d 433, 440-41, 338 Ill.Dec. 907, 975 N.E.2d 1113 (2010). Reading the Act as a whole, we find that section 20(c)'s phrase "the acts of the moving party" is an unambiguous reference to the actions identified in section 15 as subject to the Act's protection.

Section 15 explicitly includes within the Act's reach suits filed "in response to" petitioning activity as well as those "based on" such activity, thereby encompassing facially unrelated but retaliatory claims. Section 15 also provides that the only circumstance in which a petitioning activity is excluded from protection is if that activity was "not genuinely aimed at procuring favorable government action." Similarly, the sole manner in which a motion to dismiss may be defeated under section 20(c) is by establishing, by clear and convincing evidence that the Plaintiff has a legitimate cause of action. This interpretation is consistent with the description in Section 5 of the Act's purposes, which include preventing abusive litigation that chills the exercise of first amendment rights: the target of such litigation may feel just as intimidated by a facially unrelated but clearly retaliatory lawsuit as by a lawsuit based more directly on the exercise of those rights. Noteworthy is the fact that the CPA is written in the disjunctive, meaning any of the grounds will constitute a SLAP P suit. Here, nearly every ground for CPA relief has been satisfied.

The threshold test before application of the CPA can be applied is to ascertain whether or not the complaint states a cause of action on its face. If the complaint does not set forth a cause

of action, the immunity from further proceeding springs into existence. See *August v. Hanlon*, 2012 IL App (2d) 111252, 975 N.E.2d 1234.

D. Plaintiff's Complaint is actually based upon actual petitions before the government as the CPA Defines Government. (They are even attached as Exhibits to the Amended Petition)

Plaintiffs, attached and incorporated into the 224 petition copies of comments that were posted on line, in a public forum, concerning a judicial candidate. These citizens are speaking to the public (the People, the Government) as part of the basis for petitioner's claims.

Since the claims of the Plaintiff are based upon an appeal to voters, this case is the exact type of communication the CPA was enacted to protect. Here, the Defendant's blog clearly is a forum to discuss local government. Voter asking other voters to consider the conduct of a person seeking public office. Accordingly, under *Wright*, the complaint must be dismissed with prejudice based on the immunity afforded the Defendant under the Act from any civil liability.

E. Plaintiff's Complaint Relates to Acts Taken in Furtherance of the Constitutional Right to Petition the Government and the Exercise of Free Speech.

Plaintiffs Complaint, clearly demonstrates that the purported statements of the anonymous posters "relate to" the electoral process, a fundamental right of participating in the petitioning of Government. The posters are participating as a person in most cherished legal right available in our Democratic republic.

In Illinois, it is not enough to reiterate the legal standard. *City of Chicago v. Baretta*, 213 Ill. 2d 351, 368-69 (2004). Rather, a plaintiff is obligated to set forth facts with sufficient particularity to demonstrate the elements of a cause of action. In *City of Chicago v. Baretta*, the Illinois Supreme Court stated the operative rules as it relates to pleading in Illinois:

Under our fact pleading standard, the Plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. The requirement that a complaint set forth facts necessary for recovery under the theory asserted is not satisfied, in the absence of necessary allegations, by the general policy favoring liberal construction of pleadings. Thus, in considering a motion to dismiss, a court must disregard the conclusions that are pleaded and look only to well pleaded facts to determine whether they are sufficient to state a cause of action against the Defendant. If not the motion must be granted regardless of how many conclusions the court may contain and regardless of whether or not they inform the Defendant in a general way of the nature of the claim against him.

Thus, based upon the Plaintiffs own petition, the Plaintiff has admitted that the complaint is about matters that relate to the petitioning of Government and that Petitioners lacked the necessary facts for any cause of action. Noteworthy is the fact that the definition of “Government” as used in the CPA is exceptionally broad and includes “the People”.

F. Plaintiff's Complaint is in Response to Acts Taken in furtherance of Defendant's Constitutional Right to Petition Government.

The actions complained of by Plaintiff were taken in furtherance of the right to petition government for grievances. Here, in this case, the simple act of reporting news and making comments concerning government and its elected officials could be characterized in no other way then to obtain favorable action by the electorate and a fair exercise of free speech. The “electorate” is the “Government” as that term is defined by the CPA and by our Supreme Court in the interpretation of CPA. See: *Wright Development Group, LLC v. Walsh*, 238 ILL2d 620, 939 N.E.2d 389, 2010.

G. Statements to the Media.

The Illinois Supreme Court opined that even statements made to news media¹ are covered by the broad nature of the Citizens Participation Act. See: *Wright Development Group, LLC v. Walsh*, 238 ILL2d 620, 939 N.E.2d 389, 2010. In *Wright*, a group of homeowners brought an action sounding in fraud against a real estate developer around May 5, 2006. Thereafter, (approximately 18 months) one homeowner, Walsh, was at a mingling session and spoke with a reporter about the developer. Thereafter, the developer brought a defamation action based in part on the words spoken to the reporter by Walsh where it was alleged that Walsh's statements were false. *Id.* Just as in *Wright*, in the case at bar, Plaintiff's action follows from a communication to a newspaper. Moreover, just as in *Wright*, it is the purported statements about a candidate for public office that serve as the purported basis for the Plaintiffs' claims in this case. They have a bearing on public opinion concerning her candidacy. In particular public opinion as to who ought to be elected to the office of Judge.

In *Wright*, our State Supreme Court concluded the following with respect to the CPA and definition of "government" as including the "electorate":

We turn to the trial court's distinction concerning the statement "after" the meeting. The Act makes no such restriction. By its terms, the Act applies to "any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to *any act or acts* of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." (Emphasis added.) 735 ILCS 110/15 (West 2008), Included in the definition of "government" is "the electorate." 735 ILCS 110/11 0 (West 2008).

Therefore, nothing in the words "any act or acts" suggests a requirement of direct appeal to a government official. The Court went on to say:

¹ In April 2017, the Illinois Attorney General issued an opinion that the McHenry County Blog was News Media.

Further, the Act does not limit the protected rights to petitioning the government only. The Act plainly includes the rights to "speech" and "association" as well. 735 ILCS 110/15 (West 7008). As these rights are to "be encouraged and safeguarded with great diligence," the legislature has provided that the Act is to be "construed liberally." 735 ILCS J 10/30 (West 20(8)). This clearly applies to Walsh's statement to a reporter... The trial court's misreading, based on its erroneous belief that the Act be strictly construed, has no basis in the statutory language and is antithetical to the legislature's express provisions.

The Court then concluded that the statements made to the reporter were covered by the immunity of the CPA. Here, Norton is complaining about information published on a government watchdog site, and signs posted yards and statements made in court proceedings.

In the case at bar, plaintiffs claims concerning Defendants sounds solely upon statements in a public forum to the Public and did not even concern Plaintiff. Thus, under *Wright*, the application of the CPA to Plaintiff's action is appropriate and the acts complained of by Norton are immune from any civil liability. The Defendants have established via its companion 2-615 motion that the complaint fails to meet the threshold pleading requirements and that the complaint focus is on statements to petition the government. These statements are not specified on the face of the complaint as it relates to Defendants, but Plaintiff eludes to Defendants statements posted in public forums and a government watchdog site. Therefore, Respondents have established that the subject complaint meets the definition of a SLAPP and therefore, this Court should enforce the mandates of the CPA and dismiss this case with prejudice, and award Defendants their reasonable attorney fees in bringing this motion before this Court.

WHEREFORE, Defendants, respectfully pray that this Honorable Court grant the following relief:

A) Enter a dismissal in favor of Defendant against Plaintiff on Plaintiff's Complaint with prejudice.

- B) Grant to Defendants CYNTHIA BRZANA, BECKY BECKER AND KIRK ALLEN costs and attorney fees in bringing this motion to be assessed upon subsequent motion for fees
- C) Grant Respondents Leave to file a petition for attorney fees.
- D) For such other and further relief as this Court deems just and equitable.

/s/ Robert T. Hanlon
Robert T. Hanlon, Esq.
One of Defendant's Attorneys

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CERTIFICATE OF SERVICE

I, Robert T. Hanlon, an attorney, state that I served this Defendant's **2-619 MOTION TO DISMISS BASED ON IMMUNITY UNDER THE CITIZEN PARTICIPATION ACT** by e- mailing a copy to the individuals shown on the service list on March 6, 2020.

Law Office of Robert T. Hanlon & Associates, P.C.

By: /s/ Robert T. Hanlon
Robert T. Hanlon

Service List

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