IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS , NORTHERN DIVISION

STEPHEN WARD **PLAINTIFF**

V. **Case No. 3:22-CV-00250-LPR**

HAROLD COPENHAVER, et al. **DEFENDANTS**

BRIEF IN SUPPORT OF THE PLAINTIFF'S MOTION TO STRIKE LISA TREVATHAN'S MOTION TO DISMISS AND AFFIRMATIVE DEFENSES

The Plaintiff submits this memorandum in support of his **BRIEF IN SUPPORT OF THE PLAINTIFF'S MOTION TO STRIKE LISA TREVATHAN'S MOTION TO DISMISS AND AFFIRMATIVE DEFENSES**

1. INTRODUCTION

The Plaintiff filed his FIRST AMENDED COMPLAINT on Oct 12, 2023 (DOCKET # 10).

The Defendants Harold Copenhaver, Carol Duncan, Larry Rogers, and Jeffrey Moore through their Attorney on 04/19/2024 filed their ANSWER to the Plaintiff's First Amended Complaint (docket # 33)

From early to late 2022 the Defendants worked together to harass and deprive the Plaintiff of his First Amendment of the United States Constitution right to panhandle and use his mini service pony to aid him because he is a Muslim..

Defendant Mayor Harold Copenhaver , Larry Rogers, Jeffrey Moore communicated directly with Defendant Wannda Turner who worked alongside Defendants Lisa Trevathan,Kimberly Randall,Stan Morris, Simrit Kaur (alias) and Melissa Morrison in what Defendant Larry Rogers stated as an effort to " Combat Pony Rides" when given by the Plaintiff. However these same Defendants sponsored, approved of and supported other pony ride events even at City Hall and City sponsored events. After months of harassment from the Defendants directly, they decided to stir up public outrage by making false claims publicly including but not limited to claims of animal abuse, animal neglect, animal cruelty, claims that the Plaintiff was a pedophile and should not be allowed to be around the children in the community etc . The Defendants collectively stirred the community outrage with their false claims and then once the community was outraged enough they directed the community to keep a community watch program and encouraged them to call the Jonesboro police dept to harass the Plaintiff with repeated police welfare checks. It got so bad that even the Jonesboro Police Officers stated that they were embarrassed to be there again stated that they were going to ignore the community calls since they had already checked so many times. The harassment continued as the Defendants made more libelous statements that the Defendants knew were not true due to the excessive number of Police welfare checks by the Jonesboro Police Dept. It was repeatedly reported by the Jonesboro Police officers

on scene that the ponies and horses were healthy. and that all the required paperwork was in order. They then used the pretext of the phone calls and outrage that they created to further their ultimate goal to " Combat Pony Rides" which was discovered from a FOIA act request where Wannda Turner was discussing with Defendant Mayor Harold Copenhaver as a solution for the animal display ordinance that they had tried to push through once before but failed.

Wannda Turner's and Lisa Trevathan's claims of simply taking unverified calls and directing everyone to call the police is simply a fraud upon the court. Lisa Trevathan, Wannda Turner, Stan Morris, Kimberly Randall, Simrit Kaur, Melissa Morrison are the ones that stirred public outrage with their libel and misinformation campaign against the Plaintiff to create the very phone calls that the Defendants claim they received. When asked about the complaints through a FOIA requests, there were never any other complaints except for the complaints from Defendants Wannda Turner and Lisa Trevathan themselves. Meanwhile, Defendants Larry Rogers, Harold Copenhaver, Carol Duncan, Jeffrey Moore who are employed by the city of Jonesboro created and passed an animal display ordinance intended to specifically stop the Plaintiff from engaging in his first amendment panhandling activities according to the email exchanges from Defendants Larry Rogers, Harold Copenhaver, Carol Duncan, and Wannda Turner. When the Plaintiff pointed out that he was still eligible to be granted a permit to

continue his pony rides. They refused to respond or issue a permit Harold Copenhaver, Larry Rogers, Carol Duncan, Larry Rogers and Lisa Trevathan are the "principal architects" with Jeffrey Moore, Simrit Kaur (alias), Stan Morris, Kimberly Randall and Melissa Morrison were "instrumental" in the implementation of a discriminatory policy against the Plaintiff because he is a muslim.

2. LAW AND ARGUMENT

The Motion to Dismiss from Lisa Trevathan is in fact a " Motion for Summary Judgement" since the request is to dismiss the case entirely against Lisa Trevathan. The Defendants pleadings have not reached the level of particulars required by FRCP rule 56- Summary Judgement, such as Affidavits , or show that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

1. Paragraph 1 should be denied as a matter of law because the Defendant's attorneys have failed to follow FRCP rule 8 which states:

   (a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

And Therefore should be denied because Lisa Trevathan's Attorneys not only failed to provide a short and plain statement showing that the court had jurisdiction. In fact they claimed that the court did not have jurisdiction.

2. Paragraph 2 should be denied as a matter of law because the Defendant's attorneys have failed to state which Federal Law that " requires a party to be protected" , and then after building his straw man unsupported Federal Law claim he states "consequently" that the Motion should be decided prior to requiring her to ANSWER of appear for any discovery. Lisa Trevathan could have produced a " PROTECTIVE ANSWER" but chose not to. And Therefore should be denied.
3. Paragraph 3 is the result of Judge Rudoifsky's biased and Judicial misconduct and is the very thing that Judge Rudofsky anticipated would happen when he dismissed Lisa Trevathan from all other Counts. The

Plaintiff insist that Lisa Trevathan not be dismissed from this case based on the State Claims only approach because the State Claim is still included in this case and will likely need to stay since Defendant Wannda Turner is involved in both the Federal and The State claims which will prevent it from being dismissed as a matter of law. Since it has not and may not be dismissed then its premature to speculate that it may be dismissed. Unless we factor in the inconvenient truth that Judge Rudofsky signaled to the Defendants that it the court may decline to take up the state claim. With Wannda Turner being a part of The Federal and State claims and the fact that Lisa Tevathons and Wannda Turner's activities were a group effort and deeply intertwined within each other. It would be impossible to fully pursue Wannda Turner and the other Defendants if we severed the State Claims. This would also be inappropriate because it would leave Wannda Turner being sued in Stated and Federal Court for the same group of activities. And Therefore should be DENIED.

4. Paragraph 4 should be denied as a matter of law because Lisa Trevathan was served by Lisa Trevathans's supervisor who is someone over 18 years old FRCP rule 4 states that Service can be provided by:

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

And if additional service is needed the Plaintiff has 90 days to serve the Defendant according to FRCP rule 4m. If the Court finds that Lisa Trevathan was not served then the Plaintiff does not know why the US Marshall service would have not served Lisa Trevathan properly. However now that it has been brought to the Plaintiff's attention the Plaintiff request that Lisa Trevathan and her Attorneys make arrangements to be properly served. Additionally since Lisa Trevathan has not been served properly he Motion to Dismiss should be DENIED in its entirety since Lisa Trevathan has no standing to ask the case to be dismissed as she is not at this moment an actual party to this case. Defendant Lisa Trevathan's Attorneys appear to be stating that Lisa Trevathan should not be required to do anything because she hasn't been served, but then at the same time asks the court to make rulings in her behalf as if she is a party. Therefore Paragraph 4 should be DENIED.Additionally, On April 3, 2024 ,Lisa Trevathan was sent a Rule 4 Waiver of the Service of Summons.as prescribed by FRCP rule 4 (d) 1. And Lisa Trevathan failed to sign or respond to the request at all. As stated in FRCP rule 4 (d) 2 Lisa Trevathan is required to pay the expense of the service.

5. Paragraph 5 should be denied as a matter of law because Lisa Trevathan's Attorney makes only conclusory statements that are unsupported by any

evidence other than the facts the Lisa Trevathan's Attorney made the claim. He refers to post and phones calls but fails to quote, identify or give anyone any indication of what quotes, who made the phone calls, what the entire context of the phone calls were, what the complaints were about ETC. Lisa Trevathan's Attorney just blurts these things out as if his word is gospel. Well its not. Under FRCP rule 8 (2), Defendants Lisa Trevathan's Attorney has failed to support his claims and therefore is not entitled to a dismissal based upon his claims. Paragraph 5 should be DENIED as requested by the Plaintiff.

6. The Plaintiff MOTION TO STRIKE Lisa Trevath's "MOTION TO DISMISS" should be GRANTED as a matter of law based on FRCP reule 12f due its insufficient ,immaterial, impertinent,defenses .

7. The Defendant Lisa Trevathan's Attorney has used this poorly constructed Motion as a replacement for an ANSWER and did not provide an ANSWER or PROTECTIVE ANSWER at all as required by FRCP rule 12

(a) Time to Serve a Responsive Pleading.

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint;

8. Lisa Trevathan's Attorney has failed to state with particularity any of his main defenses that entitle Lisa Trevathan to a dismissal.

9. Affirmative defenses may be challenged by motions to strike them from the pleadings under FRCP Rule 12(f).

10. The U.S. Supreme Court's decision in Bell Atlantic Corp. v.Twombly retired the widely recognized federal pleading standard that requires a fair notice of the nature of their pleading and constructed to allow the other parties to prepare for trial.

11. Affirmative defenses may be challenged by motions to strike them from the pleadings under FRCP Rule 12(f).

12. .a few dozen district courts had weighed in and most had ruled that plausibility pleading also applied to the pleading of affirmative defenses.66 Today, however, thousands of cases have addressed the issue.67 While many courts still select to extend the plausibility pleading standard to affirmative defenses.

13. Barnes v. AT&T Pension Benefit Plan73 cited to Hayne in support of its proposition that "the vast majority of courts presented with the issue have extended Twombly's heightened pleading standard to affirmative defenses."

14..[Defendants] needed to support their defenses with some factual allegations to make them plausible.

15. The Second Circuit's stated intention in drafting the GEOMC decision was to "clarify" matters relating to the pleading of affirmative defenses and resolving motions to strike them. Unfortunately, it does not seem likely that the Second Circuit's decision will meaningfully affect that goal. While the lower courts in the Second Circuit must follow the GEOMC

16. .In Conley, the Court solidified what had previously been a generalized rule: claims should be allowed to stand unless the plaintiff can proffer "no set of facts" under which the claim will succeed.The Court based this conclusion on Rule 8, which does not require a plaintiff to articulate all of the facts upon which a claim is based. Rather, the Court interpreted the "short and plain statement" language of Rule 8 to require a plaintiff to offer only such allegations as are sufficient to give a defendant "fair notice of . . . the plaintiff's claim . . . and the grounds upon which it rests." This "notice pleading" standard would go on to govern federal pleadings for fifty years. The U.S. Supreme Court's decision in Bell Atlantic Corp. v.Twombly courts now apply the heightened Twombly pleading standard to affirmative defenses reasoning as follows: ● Fairness dictates that both plaintiffs and defendants should be subject to the heightened plausibility standard because:

● just as plaintiffs bear the burden of proof on their claims, defendants bear the burden of proof on their affirmative defenses; and ● the same concern for giving adequate notice to opposing parties applies to complaints and affirmative defenses. ● A heightened pleading requirement promotes litigation efficiency by discouraging boilerplate affirmative defenses. ● Courts have historically applied the same pleading standard to both claims and affirmative defenses regardless of the textual differences in FRCP 8. ● Any perceived prejudice or unfair burden to defendants based on the shorter time they have to prepare the answer is a red herring. The defense is "always on their he Sentry Select Ins. Co. v. Guess Farm Equip., Inc., No. 12-cv-03504, , at *10 (D.S.C. Oct. 25, 2013) Hammer v. Peninsula Poultry Equip. Co., Inc., No. 12-cv-1139, , at *5 (D. Md. Jan. 8, 2013) Figueroa v. Stater Bros. Mkts., Inc., No. 13-cv-3364, , at *3 (C.D. Cal. Sept. 3, 2013) Birabent v. Hudiburg Auto Grp., Inc., No. 11-cv-1189, , at *2-3 (W.D. Okla. Apr. 25, 2012) In 2019, however, the United States Court of Appeals for the Second Circuit decided GEOMC Co. v. Calmare Therapeutics Inc., and became the first circuit court to consider the question directly. The Second Circuit ruled that the plausibility pleading standard shall apply to affirmative defenses, with some qualifications

3. CONCLUSION

For the reasons stated in Paragraphs 1-16 The Plaintiff asks that his Motion to Strike Lisa Trevathan's Motion to Dismiss and AFFIRMATIVE DEFENSES be Granted and Lisa Trevathan's Motion to Dismiss and AFFIRMATIVE DEFENSES be removed from the record and DENIED. The Plaintiff asks this court to STRIKE any future pleadings because Defendant Lisa Trevathan's Attorney has failed to provide an ANSWER and or PROTECTIVE ANSWER and as a result has waived his right to further plead as the Plaintiff is entitled to Summary Judgement. The Plaintiff asks that if the court finds that additional service is required that the Plaintiff be granted 90 days to provide service. The Plaintiff requests that Defendant Lisa Trevathan be required to pay for the expenses or service since she failed to respond to the Plaintiffs request to waiver service. The Plaintiff also request that the US Marshall's service attempt to serve Lisa Trevathan at the time and place designated by Lisa Trevathan's Attorneys within the specified time.

Respectively submitted

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