

WASHINGTON CASE UPDATE

Vendetta Blogger "SLAPP"ed Down by Court of Appeals

case in point...

From the Desk of Kyle Riley: Are a blogger's written statements that are motivated by his personal dissatisfaction with being terminated from employment a matter of "public concern" for purposes of Washington's anti-SLAPP statute?

Claims Pointer: Washington was the first state to pass an anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, which allows a person engaging in protected speech to quickly dispose of lawsuits that are aimed at stifling free speech. In order to successfully strike a SLAPP suit, the moving party must show that its speech is protected speech. One area of protected speech is speech on a matter of "public concern" in a public forum. One of the risks of bringing a suit against a party for their speech is that the anti-SLAPP statute provides for statutory damages and costs if the moving party wins. Read on to see how the Court of Appeals ruled in the case of a disgruntled ex-employee that wrote for years about his discontent with his former employer and was sued by his former manager.

Johnson v. Ryan, --- Wash App ---, 346 P3d 789 (2015).

In 2010, James Ryan was hired as a full-time music director at the Spokane Civic Theatre ("the Theatre"), a non-profit performing arts theatre. Prior to Ryan's hiring, Yvonne Johnson had saved the theatre from financial collapse by raising ticket prices, expanding drama clinics for children, and engaging in significant fundraising. After two months, Johnson fired Ryan after receiving an anonymous email providing evidence suggesting that Ryan's marriage was nonmonogamous and that while working on Theatre premises Ryan propositioned others for sex online and used his employee photograph in some of the communications. Johnson wrote a lengthy termination letter explaining that Ryan had to be terminated because his lifestyle could scare off donors. In response, Ryan wrote a number of emails to Johnson. Ryan claimed that the information Johnson had received was incorrect and that a spurned lover had sent the misinformation to Johnson. Johnson refused to reinstate Ryan.

Soon thereafter, Ryan began blogging about his termination and what he perceived to be the public's dissatisfaction with Johnson's management of the Theatre. Ryan instigated a suit for wrongful termination against the Theatre and blogged regularly about his lawsuit. At some point, Ryan purchased domain names similar to the Theatre's website and used those sites to redirect web traffic to his blog. Ryan criticized Johnson and warned any potential theatre that they should not hire Johnson because she would be harmful to their organization.

In 2013, Johnson sued Ryan for interference with business expectancy and defamation. In response, Ryan brought a motion to strike under the anti-SLAPP statute, RCW 4.24.525, requesting statutory damages and attorney fees. Ryan alleged that his speech was a matter of "public concern," as evidenced by the amount of web traffic to his site. The trial court granted the motion to strike, finding that Ryan's blogging was a matter of "public concern," and awarded Ryan damages and costs. Johnson appealed.

The Court of Appeals reversed the trial court. The Court began by distinguishing the case before it with several

cases in which Washington courts had found that speech was of "public concern" (i.e., reporting abuse of an elder person, reporting news derived from public court documents, boycotting, and making defamatory statements about coworker relating to political campaign). The Court then compared Ryan's speech with that of the defendant in Tyner v. Department of Social and Health Services, 137 Wash App 545 (2007), who claimed that her speech was a matter of public concern when she expressed her opinion that a superior manager should not be assigned a particular task. The court in Tyner ruled that that speech was "based on Tyner's opinion" and "expressed only her personal dissatisfaction."

The Court reversed the trial court's finding that Ryan's speech was a matter of public concern because it "only tangentially implicates a public issue." The Court observed that (1) Ryan's blogging and other activities arose out of personal, private disputes that he had with Johnson and (2) the primary intent of the speech was to establish that Ryan's termination was unjustified. The Court stated that while Ryan mentioned the public concern of having a "tyrannical" manager in his blogs, the vast majority of content discussed his personal issues and vendetta against Johnson.

In a lengthy dissenting opinion, Judge Fearing took issue with the majority's holding, pointing out that the majority failed to state that speech is protected from SLAPP suits not just when the speech is a matter of "public concern," but when it is "in connection with an issue of public concern." The dissent stated that the majority incorrectly focused on the personal aspects of Ryan's speech, ignoring large portions of the blog that discussed the public's dissatisfaction with the management of the Theatre. The dissent highlighted the fact that motivation is irrelevant to whether written speech is a matter of public concern.



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