

CAUSE NO. DC-16-12579

MOHAMED MOHAMED, Individually	§	IN THE DISTRICT COURT
and on behalf of AHMED MOHAMED,	§	
a minor	§	
<i>Plaintiffs,</i>	§	
vs.	§	DALLAS COUNTY, TEXAS
	§	
THE BLAZE INC., GLENN BECK,	§	
CENTER FOR SECURITY POLICY,	§	
JIM HANSON, FOX TELEVISION	§	
STATIONS, LLC, BEN FERGUSON,	§	
BEN SHAPIRO & BETH VAN DUYNÉ	§	
<i>Defendants.</i>	§	162nd JUDICIAL DISTRICT

**DEFENDANT BETH VAN DUYNÉ'S MOTION TO DISMISS PURSUANT TO
CHAPTER 27 OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE**

TO THE HONORABLE COURT:

Defendant Beth Van Duyne, Mayor of Irving, Texas ("Mayor Van Duyne"), expressly subject to her Motion to Dismiss pursuant to Texas Civil Practice and Remedies Code §101.106(f), files this Motion to Dismiss pursuant Chapter 27 of the Texas Civil Practice & Remedies Code (§27.001 *et seq.*) and respectfully shows unto the Court the following.

**I.
INTRODUCTION**

The Honorable Beth Van Duyne is the Mayor of the City of Irving. *See* Plaintiff's Original Complaint, ¶¶ 33, 46. Plaintiffs bring this defamation suit against Mayor Van Duyne regarding statements made by her to the media, or statements by the media which she allegedly failed to correct, in connection with Plaintiff Ahmed Mohamed's arrest by the Irving Police Department for bringing a hoax bomb to MacArthur High School in Irving, Texas in September 2015. *See* Plaintiff's Original Complaint, ¶¶ 33, 46, 48, 49.

The Texas Citizens Participation Act (the “Act”) is an Anti-SLAPP statute that prohibits the use of lawsuits to intimidate or silence citizens, including public officials. TEX. CIV. PRAC. & REM. CODE §27.001 *et seq.* The Act allows a defendant to file a dismissal motion within 60 days of service to request a dismissal under the Act. Mayor Van Duyne, as a government employee, has filed a Motion to Dismiss in conjunction with her Original Answer on the basis of her immunity from suit, pursuant to Section 101.106(f) of the Texas Civil Practice and Remedies Code, which remains pending. Mayor Van Duyne files this Anti-SLAPP Motion to Dismiss prior to the Court’s ruling on her 101.106(f) motion to dismiss as a government employee because of the time requisites of the Act. If the Court determines that Plaintiffs have asserted claims against Mayor Van Duyne in her individual capacity, Mayor Van Duyne requests dismissal of Plaintiffs’ claims against her under the Act as an alternate remedy in this case.

II. EVIDENCE

In support of her motion, Mayor Van Duyne relies on the pleadings and exhibits on file with the Court in this case, including Defendants KDFW Fox 4 and Ben Ferguson’s Motion to Dismiss pursuant to Chapter 27 of the Texas Civil Practice & Remedies Code and Exhibits A-1 through A-17; Exhibits B-1 through B-5; and Exhibits C through H which are attached thereto and which Mayor Van Duyne expressly incorporates herein by reference.

III. ARGUMENT

In the event that the Court determines that Plaintiffs have asserted claims against Mayor Van Duyne in her individual capacity, Mayor Van Duyne moves to dismiss those claims under the Act.

A. Van Duyne’s statements are protected speech and therefore non-actionable under the Anti-SLAPP statute.

Before the enactment of the Anti-SLAPP statute, defamation claims proceeded through discovery and summary judgment just as any ordinary civil claim. Even if the concerned official ultimately prevailed on summary judgment, defendants would be forced to incur substantial attorney’s fees and costs to secure dismissal of the claims against them. Moreover, the defense of the case through discovery required defendants to expend additional resources. Thus, the mere threat of a lawsuit – even baseless lawsuits commonly known as “SLAPP” suits – created a chilling effect for concerned citizens, depriving citizens of vital information and robust debate on matters of public concern.

To remedy this problem, the Texas Legislature passed an anti-SLAPP statute, the Citizens Participation Act, HB 2973, signed into law and effective on June 17, 2011. TEX. CIV. PRAC. & REM. CODE § 27.001 *et seq.* This law provides defendants with important substantive rights that allow them to efficiently dispense with baseless claims targeting free speech on matters of public concern. The Anti-SLAPP statute protects the rights of free speech relating to matters of public concern. TEX. CIV. PRAC. & REM. CODE § 27.001(3). Under the statute, a defendant may file a motion to dismiss within 60 days of service of the action. TEX. CIV. PRAC. & REM. CODE § 27.003(a) & (b). In ruling on the motion, the court shall dismiss the action if the movant proves that the legal action is based on his right of free speech. TEX. CIV. PRAC. & REM. CODE § 27.005(b). An exercise of a right of free speech means “a communication made in connection with a matter of public concern.” TEX. CIV. PRAC. & REM. CODE § 27.001(3).

The relevant facts are not in dispute, most of which are established in Plaintiffs’ Original Petition. The Honorable Beth Van Duyne is the Mayor of the City of Irving. *See* Plaintiff’s Original Complaint, ¶¶ 33, 46. On September 14, 2015, the City of Irving Police Department (“Irving

Police”) arrested Plaintiff Ahmed Mohamed (“Ahmed Mohamed”) on the charge of bringing a hoax bomb to MacArthur High School in Irving, Texas. *See* Plaintiff’s Original Complaint, ¶¶ 30-41. Irving Police ultimately dismissed the charges against Ahmed Mohamed. *See* Plaintiff’s Original Complaint, ¶44.

The incident received national and international media and social media attention. *See* Defendants KDFW Fox 4 and Ben Ferguson’s Motion to Dismiss pursuant to Chapter 27 of the Texas Civil Practice & Remedies Code, Exhibits A-3; A-4; A-9; A-11; A-13; A-14; A-15; B-4; and E. In the aftermath of Ahmed Mohamed’s arrest, the media interviewed Mayor Van Duyne on a few occasions concerning the incident. *See* Plaintiff’s Original Complaint, ¶¶ 46, 48 – 49. Plaintiffs’ defamation suit against Mayor Van Duyne stems from statements made by her to the media, or statements by the media which she allegedly failed to correct, in connection with Ahmed Mohamed’s arrest by Irving Police. *See* Plaintiff’s Original Complaint, ¶¶ 33, 46, 48 – 49.

Plaintiffs’ Original Petition, on its face, shows that any statements of which Plaintiffs complain made, or not corrected, by Mayor Van Duyne, were an exercise of her statutorily protected right of free speech. Mayor Van Duyne’s statements were protected free speech because they related to a matter of public concern. As defined in the Act, “matter of public concern” includes an issue related to:

- (a) Health or safety;
- (b) Environmental, economic, or community well-being;
- (c) The government;
- (d) A public official or public figure; or
- (e) A good, product or service in the marketplace.

TEX. CIV. PRAC. & REM. CODE §27.001(7).

The arrest of Ahmed Mohamed for bringing a hoax bomb to school is clearly an issue related to health or safety, community well-being, and the government. TEX. CIV. PRAC. & REM. CODE §27.001(7). Nothing is more paramount to safety and community well-being than ensuring that children are protected from threats of harm at school. Ahmed Mohamed’s arrest was made by the Irving Police, a department of the City of Irving, a local government. Since the arrest of Ahmed Mohamed was related to an issue of safety and community well-being and since the arrest was made by a government, Mayor Van Duyne was speaking on a matter of public concern and was exercising her right to free speech when she spoke to the media about Ahmed Mohamed.

On the face of the pleadings, the Anti-SLAPP statute applies to protect Mayor Van Duyne from Plaintiffs’ baseless claims targeting her free speech on matters of public concern.

B. Plaintiffs’ claims should be dismissed because Plaintiffs do not have clear and specific evidence of the elements of their claims.

Since Mayor Van Duyne has established that Plaintiffs’ defamation claim relates to her right of free speech, the burden shifts to Plaintiffs to establish by clear and specific evidence a prima facie case for each essential element of the claim in question. *In re Lipsky*, 460 S.W.3d 579, 586 (Tex. 2015). If Plaintiffs cannot meet their burden, the Court must dismiss the legal action. TEX. CIV. PRAC. & REM. CODE § 27.005. Here, Plaintiffs have no evidence, much less clear and specific evidence, of the following elements of their defamation claim against Mayor Van Duyne:

1. That the statements about which Plaintiffs complain are capable of a defamatory meaning within the context of Texas law;

2. That the statements about which Plaintiffs complain are not absolutely or conditionally privileged pursuant to the constitutional, statutory and common law privilege accorded to “reasonable and fair comment[s] on or criticism of a . . . matter of public concern published for general information;”

3. That the statements about which Plaintiffs complain are not absolutely or conditionally privileged pursuant to the common law fair and neutral reporting privilege. This privilege, in addition to being recognized by statute, is compelled by the First Amendment to the United States Constitution and Article I, section 8 of the Texas Constitution;

4. That the statements about which Plaintiffs complain were not published with actual malice. Actual malice is an element of Plaintiffs' claim because Ahmed Mohamed is a public figure or at least, a limited-purpose public figure. *WFAA-TV, Inc. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998). Since Ahmed Mohamed is a public figure, Plaintiffs must show that Mayor Van Duyne's statements were made with actual malice. *Id.* at 922. Plaintiffs cannot carry the burden of showing actual malice;

5. In the alternative, that the statements about which Plaintiffs complain were not negligently published;

6. That the statements about which Plaintiffs complain are false or not substantially true; or

7. That the statements about which Plaintiffs complain damaged Ahmed Mohamed's reputation, that Plaintiffs suffered any injury from the statements, or that Plaintiffs' alleged injuries, if any, were proximately caused by Mayor Van Duyne.

C. Mayor Van Duyne is entitled to her attorneys' fees and costs.

A prevailing defendant under the Anti-SLAPP statute is entitled to recover its "court costs, reasonable attorneys' fees, and other expenses incurred in defending against the legal action." TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1). The Court may also award sanctions against a plaintiff "sufficient to deter the party who brought the legal action from bringing similar actions" in the future. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2). Plaintiffs should be sanctioned for bringing

this baseless lawsuit against Mayor Van Duyne in an attempt to harass, intimidate and silence her as a public official from speaking on a matter of public concern. Mayor Van Duyne moves the Court for an award of her costs, fees and expenses and any other sanctions deemed appropriate by the Court as authorized by the Act.

**IV.
PRAYER**

Mayor Van Duyne respectfully requests that her Anti-SLAPP Motion to Dismiss be granted, that Plaintiffs' claims against her be dismissed, and that she be awarded her attorneys' fees, court costs, and other expenses, that sanctions be assessed against Plaintiffs for bringing this action, and for such other and further relief, both general or special, at law or in equity, to which she may show herself to be justly entitled.

Respectfully submitted,

**CITY ATTORNEY'S OFFICE
CITY OF IRVING, TEXAS**

By: /s/ Janet M. Spugnardi
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**ATTORNEY FOR DEFENDANT
BETH VAN DUYNE**

CERTIFICATE OF SERVICE

A copy of the foregoing document has been served upon all parties or attorneys in accordance with Rule 21a of the Texas Rules of Civil Procedure on this the 5th day of December 2016.

/s/ Janet M. Spugnardi
Janet M. Spugnardi
Deputy City Attorney