UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARY CUMMINS, Plaintiff, v. AMANDA LOLLAR aka BAT WOERLD SANCTUARY an individual person, et al., Defendants.	Case No. CV 11-8081-DMG (MANx) ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND RELIEF FROM JUDGMENT

On November 21, 2012, Plaintiff Mary Cummins filed a motion for reconsideration and relief from judgment (the "Motion") noticed for hearing on January 4, 2013. [Doc. # 111.] On December 12, 2012, this Court continued the hearing to January 11, 2013. [Doc. # 116.] On December 21, 2012, Defendants filed their opposition [Doc. # 119] and exhibit in support thereof [Doc. # 120]. Plaintiff has not replied to Defendants' opposition. On January 9, 2013, finding the motion appropriate for decision without oral argument, the Court vacated the January 11, 2013 hearing date and took the matter under submission. [Doc. # 124.]

Plaintiff challenges this Court's November 16, 2012 order granting summary judgment in favor of Defendants Amanda Lollar and Bat World Sanctuary ("Summary Judgment Order") [Doc. # 103]. This Court granted summary judgment because Plaintiff failed to present evidence showing a genuine issue of triable fact to challenge the

following: (1) the statement that Cummins' deposition was court ordered was true; (2) as to the Internet postings allegedly calling Plaintiff a "cyberstalker," a "crackpot," "psycho," and a "crackpot stalker," said statements were opinion and Plaintiff failed to present evidence that these statements were authored by Defendant Lollar; and (3) as to all of the alleged defamatory statements, Plaintiff was a limited public figure and has failed to present evidence of malice. For the reasons set forth below, Plaintiff's motion for reconsideration is DENIED.

I.
LEGAL STANDARD

Pursuant to Local Rule 7-18, a motion for reconsideration may only be made on the following grounds:

> (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

C.D. Cal. L.R. 7-18.

"Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. *School Dist. No. 1J Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

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II.

PLAINTIFF'S MOTION

By this motion, plaintiff seeks reconsideration of this Court's November 16, 2012 Summary Judgment Order contending (1) new facts have developed and (2) there is clear error in the Summary Judgment Order.

A. THE NEWLY DISCOVERED EVIDENCE DOES NOT WARRANT RECONSIDERATION

Plaintiff claims she has the following newly discovered evidence warranting reconsideration: (1) evidence that she has suffered damages by having been discharged from employment on October 15, 2012 as a result of her employer's receipt of an email message with links to Defendant Lollar's websites which contained defamatory statements and (2) on October 22, 2012, there was a reversal of an order that was issued by the Texas court in connection with the defamation action brought by Lollar against Cummins.

1. Damages Due to Employment Discharge

Plaintiff declares that on October 11, 2012, she was hired by In Defense of Animals ("IDA") as Director of the Wildlife Program, but that on October 15, 2012 she was fired because an email was received by IDA from a Dr. Allen Rutberg of Cummings School of Veterinary Medicine at Tufts University containing links to Defendant Lollar's websites and blogs. Plaintiff also provides a copy of the email message. Plaintiff, however, fails to specify what the allegedly defamatory statements are and fails to provide a copy of any of such defamatory statements. Moreover, evidence of damages would not warrant reconsideration as it would not be relevant to the issues on which summary judgment was granted.

2. Reversal of Texas Court Order

Plaintiff contends that on October 22, 2012, the court of appeals reversed an order of the Texas trial court in connection with the defamation action Lollar brought against

Cummins. Plaintiff fails to explain, however, what order was reversed and how such reversal could be relevant herein.[1]

B. NO CLEAR ERROR IN THE COURT'S GRANT OF SUMMARY JUDGMENT

Plaintiff contends that the Court erred in its findings that (1) the statement that Plaintiff's deposition was "court ordered" was true, (2) the statements accusing Plaintiff of being a "cyberstalker," a "crackpot," "psycho," and a "crackpot stalker," were statements of opinion, (3) as to the Internet postings allegedly calling Plaintiff a "cyberstalker," a "crackpot," "psycho," and a "crackpot stalker," Plaintiff failed to present evidence that these statements were authored by Defendant Lollar, (4) Plaintiff is a limited public figure with regard to the alleged defamatory statements, and (5) Plaintiff has failed to present evidence of malice.

1. Defense of Truth as to Cummins' Deposition

Plaintiff contends that her deposition was by agreement and Defendant's statement that the deposition was court-ordered was not true and, therefore, the Court's conclusion that the statement was true was clear error. As the Court explained in the Summary Judgment Order, however, because the Texas court granted a motion to compel her deposition and ordered the deposition to occur, the subsequent agreement by the parties to change the date of the deposition does not change the fact that the deposition was court ordered. Plaintiff fails to show clear error, or any error, in the Court's finding of truth.

Plaintiff goes on to complain that this is only one insignificant statement she is challenging and the fact that this statement is not defamatory does not mean that none of the other challenged statements are defamatory. The Court does not disagree. The

[1] In their opposition to this Motion, Defendants explain that the Texas Court of Appeal reversed a trial court ruling concerning the indigence of Cummins, remanding the matter for a rehearing allowing Cummins to appear telephonically to attempt to prove her alleged indigence. Even with this explanation, the Court is unable to even speculate on its relevance to the matter herein.

Summary Judgment Order only addressed this one statement with respect to the defense of truth.

2. Certain of the Internet Postings are Opinion

In the Summary Judgment Order, the Court held that the statements accusing Plaintiff of being a "cyberstalker," a "crackpot," "psycho" and a "crackpot stalker," were not actionable for two reasons: (1) they are statements of opinion and not statements of fact and (2) Plaintiff failed to present evidence that these statements were authored by Defendant Lollar. In this reconsideration motion, Plaintiff claims that the Court erred because (1) the statements were statements of fact, not opinion, (2) Defendant Lollar admitted that she authored all of these statements, and (3) the results of Plaintiff's subpoenas to Yahoo, Twitter, WordPress, Facebook and YouTube/Google/Blogger, "show that Amanda Lollar did indeed make those defamatory statements and others." (Mot. at 10.)

Plaintiff claims that Defendant admitted authoring these statements. Plaintiff makes this bald statement in her legal brief, without providing any supporting *evidence*. Plaintiff's unsupported contention is insufficient to show that a genuine issue of fact as to this claim remains for trial. Moreover, Plaintiff fails to deny or even address findings in the Summary Judgment Order that Plaintiff admitted in her deposition that she did not have evidence that Defendant Lollar authored these statements.

Plaintiff also contends that the results from her subpoenas show that Defendant Lollar authored these statements. At the August 10, 2012 hearing on the summary judgment motion, Plaintiff requested additional time to supplement her opposition with new evidence that she anticipated receiving in response to outstanding subpoenas. Plaintiff has failed (both in this reconsideration motion and in her supplemental response to the summary judgment motion filed September 12, 2012) to provide evidence of these subpoena results. Plaintiff further contends that she "stated this in her reply to Defendants (sic) motion for summary judgment." (Mot. at 10.) The only relevant reference in Plaintiff's September 12, 2012 supplemental response to the summary

judgment motion that the Court could find was the following unsupported conclusory contentions: "Plaintiff just received the identities of the John Does. Defendant Lollar is a few of the John Does. Plaintiff can now attribute these newly discovered defamatory statements to Defendant Lollar." (Plaintiff's 9/12/12 Supplemental Response, at 5.) [Doc. # 86.] As before, Plaintiff has failed to provide any evidence to support these contentions.

3. Plaintiff is a Limited Public Figure with Regard to the Alleged Defamation

Other than arguing that she "is not a limited public figure in regard to the defamation" (Mot. at 10), Plaintiff fails to address the Court's determination that she is a "limited public figure with respect to . . . the personal attacks between herself and Lollar." (Sum. Judg. Order at 10.) Plaintiff does not argue that this determination is in error; she merely asserts that she is not a limited public figure and goes on to argue that the defamatory statements were made with malice. As such, reconsideration of this Court's finding that Plaintiff is a limited public figure with respect to the personal attacks between herself and Lollar, including these defamation claims, is not warranted.

4. Plaintiff Failed to Present Evidence of Malice as to Any of the Statements

Plaintiff challenges the Court's determinations that (1) Defendant's receipt of Plaintiff's cease and desist letter, without evidence that Defendant continued thereafter to post that plaintiff had been convicted of crimes, is not sufficient to foreclose summary judgment on the issue of malice as to such postings and (2) Plaintiff provided no evidence that Defendant continued to post that Plaintiff was held in criminal contempt after the Court's July 17, 2012 Order (in which this Court explained that Plaintiff was found in civil contempt, not criminal contempt). In both cases, Plaintiff argues that she presented sufficient evidence of continued postings such that the grant of summary judgment was error. Plaintiff fails, however, to support this argument with evidence.

With respect to the alleged Internet postings that Plaintiff had been convicted of crimes, Plaintiff challenges the Court's finding that she presented no evidence that Defendant continued to make Internet postings after receiving Plaintiff's cease and desist

letter. Plaintiff challenges this finding by now presenting evidence of an Internet post made on May 25, 2011. There are two problems with this "newly discovery evidence." First, Plaintiff fails to explain how, in the exercise of reasonable diligence, she could not have provided this evidence in response to the summary judgment motion. Second, the cease and desist emails sent by Plaintiff to Lollar's Texas counsel and attached as Exhibits 7 and 8 to Plaintiff's response to the summary judgment motion are dated May 2, 2011 and May 11, 2011. Plaintiff has not presented any evidence that her cease and desist demands were communicated to Lollar by her Texas counsel before May 25, 2011.

With respect to the statement that Plaintiff had been charged with criminal contempt, Plaintiff challenges the Court's finding that Plaintiff provided no evidence that Defendant continued to post the challenged statement after the July 17, 2012 Order. Plaintiff now challenges this finding contending that she did provide proof. Yet, Plaintiff supports this statement by referring to an Internet posting she found on November 21, 2012, *after* the summary judgment order was issued. As such, Plaintiff could not have provided this "proof" *before* the issuance of the Summary Judgment Order. Moreover, Plaintiff's assertion that it was defamatory to state she was "charged" with criminal contempt is problematic. The motion for contempt filed with the Texas court, requested a criminal contempt finding (i.e., the motion "charged" Plaintiff with criminal contempt). The Texas court's ruling, however, was a finding of civil contempt. As such, although Plaintiff was not found in criminal contempt, the motion for contempt, by alleging that she should be held in criminal contempt did, in fact, "charge" her with criminal contempt. The mention in the Internet posting that Plaintiff was "charged" with criminal contempt, could be referring to the motion seeking the criminal contempt finding rather than an assertion that Plaintiff was found in criminal contempt by the court.

Plaintiff also fails to explain how, in the exercise of reasonable diligence, she could not have provided evidence of Internet postings in response to the summary judgment motion. Moreover, a statement that Plaintiff was "charged" with criminal contempt is not a false statement.

III.

CONCLUSION

Based on the foregoing, Plaintiff has failed to show newly discovered evidence and/or error by the Court in its Summary Judgment Order to warrant the grant of reconsideration. Accordingly, IT IS ORDERED that the motion by Plaintiff for reconsideration is DENIED.

DATED: January 14, 2013

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE