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07-16-00337-CV
SEVENTH COURT OF APPEALS
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APPELLANT REQUESTS ORAL ARGUMENT

07-16-00337-CV

IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
Fort Worth, Texas

MARY CUMMINS,
Defendant-Appellant,

v.

AMANDA LOLLAR,
Plaintiff-Appellee

On Appeal From County Court 3
Tarrant County, Texas
Trial Court Cause No. 2015-002259-3
Honorable Mike Hrabal Presiding

APPELLANT'S REPLY BRIEF

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References to the record will be as follows: “CR_*_@_#_” for the Clerk’s Record, “RR__@__” for the Reporter’s Record, * will be the volume, # will be the page number (per vol pg/per total pages). “Pla Exh __” for the Plaintiffs’ trial exhibits. “Def Exh __” for the Defendant’s trial exhibits, “RB__” for Appellee’s Reply Brief. “B” for Appellant’s initial brief. “P” for paragraph. Appellant/Defendant Mary Cummins will be referred to as “Appellant.” Appellee/Plaintiff Amanda Lollar will be referred to as “Appellee” and “BWS” respectively. All footnotes, hyperlinks were included in the motion to dismiss and are part of the record on appeal. Appellant requested that all 352-248169-10 records be included in this appeal.

STATEMENT OF THE CASE

This is an Internet defamation case. Appellee sued Appellant for defamation claiming in their petition (CR 1 @ 14) unspecified damages over items allegedly posted on the Internet. This appeal arises from a Motion to Dismiss (Original Motion CR 1 @ 24) (Amended Motion CR 7 @ 176) in the trial court. The Motion to Dismiss was per the Citizen Participation Act, Defamation Mitigation Act, Fraud, Forgery, Perjury by Appellee, Statute of Limitations and Lack of Jurisdiction.

In this current case Honorable Mike Hrabal denied Appellant's Motion to Dismiss at the hearing on May 17, 2016 (RR 2 @ 1). This appeal is taken from the final trial court order signed May 31, 2016 (CR 9 @ 105).

Appellee has made numerous false statements in their statement of the case. Appellant will correct them here.

No phrase or word was deemed defamatory in the previous case. The signed, filed, served court order and judgment (AOB Tab 2, CR 9 @ 2938) does not have the word "defamation" or "defamatory" in it. There was never a list of phrases that was deemed "defamatory." Plaintiff never even provided the Court or Defendant a list of allegedly defamatory statements. Plaintiff never even proved who allegedly made any alleged defamatory statements. The items in the original Exhibits 17 and 18 were never

authenticated. Items in Exhibit 18 were made by other known and unknown people. Appellee never bothered to subpoena those users or sue those users. Items in Exhibit 17 are the results of public information act requests. They are 20 years' worth of complaints against Appellee made by others including many government agencies in Texas and the US. Appellee never proved the elements of defamation in the 352nd trial court. Exhibit 19 was factual reports Appellant made to government agencies about Appellee. Appellee stated in trial they were not defamatory but fair reports. Everything in Exhibit 17 came from Exhibit 19 therefore Exhibit 17 was also not defamatory.

Appellant did not replace any item in the unconstitutional 352nd court order even though legally Appellant could have done so as the items Appellant made were all 100% the truth backed by physical evidence. The original page which contained some of the items was edited with "***" replacing the removed items[1]. That page is still on the internet.

Bat World Sanctuary was not ultimately awarded anything. The Appeals court reversed all claims as to BWS.

Appellant sought dismissal of Appellee's suit under not only the Texas Citizens Participation Act but also under the Defamation Mitigation Act,

[1] Items removed and never replaced http://www.animaladvocates.us/batworldlawsuit/

Fraud, Forgery, Perjury by Appellee and Appellee's attorney Randy Turner, Statute of Limitations and Lack of Jurisdiction.

STATEMENT REGARDING ORAL ARGUMENT

Appellant believes that oral argument will significantly aid in clarifying the issues involved in this appeal. The keystone of this appeal is the First Amendment protection for discussion of issues of public policy. This appeal deals with the recently enacted Citizen Participation Act and Defamation Mitigation Act which were passed to prevent frivolous lawsuits such as this case. Appellant respectfully requests oral argument if it can be done telephonically. Appellant is an indigent, out of state, disabled, pro se party without the financial or physical means to fly to Texas.

RESPONSIVE ISSUES PRESENTED

I. **Responsive Issue One**

(Responsive to Appellee's Reply to Appellant's Issues One and Three)

The trial court improperly denied Appellant's Motion to Dismiss brought under Chapter 27 of the Texas Civil Practice and Remedies Code.

A. Appellant has clearly shown that Appellee's suit is "based on, relates to, or is in response to Appellant's exercise of the right of free speech, the right to petition; and the right of association, as set forth in the TCPA.

B. Appellee's pleadings and other evidence combined with the judgment, findings of fact, and conclusions of law from the 352nd District Court of Tarrant County in the previous case as well as the Second Court of Appeals' opinion in *Mary Cummins v. Bat World Sanctuary and Amanda Lollar,* No. 02-12-00285-CV (Tex. App.–Fort Worth, April 9, 2015, pet. denied) do not provide any evidence which establishes a prima facie case for each essential element of Appellee's current defamation claim against Appellant. This current case was filed in 2015 well after the 2010 case, subsequent 2012 judgment and 2015 appeal opinion. New evidence has been found since the 2012 case from five years ago. Everything that Appellant has stated about Appellee is 100% the truth backed by factual evidence from government agencies and others.

II. **Responsive Issue Two**

(Responsive to Appellee's Reply to Appellant's Issues Two, Five, and Six)

Appellant's Issues regarding limitations, jurisdiction, and Appellee's non-compliance with the Defamation Mitigation Act were properly brought before this Court in this appeal.

The trial court did not have jurisdiction over this case. The case was not brought within the one year statute of limitations. All of the items were originally published in 2011-2013. The case was filed in 2015. Appellee did not properly comply with the Defamation Mitigation Act. TEX. CIV. PRAC. & REM. CODE §73.051. That is why Appellant appealed the motion.

III. **Responsive Issue Three**

(Responsive to Appellee's Reply to Appellant's Issue Four)

Appellant's Issue regarding alleged misdeeds by Appellee and Appellee's Attorney are properly before this Court in this interlocutory appeal. The trial court did not properly deny Appellant's Motion to Dismiss based on forgery, fraud and perjury against Appellee and Appellee's Attorney. That is why Appellant appealed the motion.

STATEMENT OF THE FACTS

Appellee and their attorney Turner have a long history of not being truthful to the court. The following is provided to correct Appellee's false statements in the statement of facts in I to VIII to show the Court that they are less than truthful.

I. The Parties

Just because Appellee states or writes something does not make it true.

Bat World Sanctuary (BWS) is not the "world's largest rescue/rehabilitation/teaching sanctuary dedicated exclusively to bats." That would be the Houston, Texas zoo which has more bats, more species of bats in much larger natural enclosures.

This next sentence is merely to show the court that Appellee has a tendency to overstate their reputation. In the original 352nd case Appellee stated that BWS was the largest bat sanctuary in the world with 300 bats.

The largest bat sanctuary in the world according to Guinness in 2010 is the Monfort Bat Sanctuary[2] which has 2.3 million bats.

Bat World Sanctuary (BWS) who is not a party to this case is not the only sanctuary in the world that is Global Federal of Animal Sanctuaries (GFAS) and American Sanctuary Association (ASA) accredited. There are many (CR 5 @ 1749) including Oasis Sanctuary, Project Perry, Jungle Friends Primate Sanctuary, WOLF, WildCat Ridge Sanctuary... GFAS and ASA are privately formed organizations generally made up of animal exhibitors. The gold standard of sanctuary accreditation is the American Zoo Association (AZA) which was founded in 1924. “U.S. agencies such as OSHA and the USDA consider AZA standards as the “national” standard, and they refer to AZA standards when evaluating institutions.”[3] ASA was formed in 1998. GFAS was formed in 2007. These associations ASA, GFAS were formed for sanctuaries which did not meet the much higher AZA standards.

The following is stated not to embarrass or attack Appellee. It is stated to show that Appellee has not been truthful to the Court.

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[2] Monfort Bat Sanctuary http://www.monfortbatsanctuary.org/

[3] AZA Accreditation https://www.aza.org/what-is-accreditation

Appellee initially stated under oath that Appellee Lollar graduated from the 10th grade (CR 5 @ 1724, Def Exh 15, footnote 22). Later again under oath Lollar stated only the 9th grade *Id*. Finally Appellee stated that Lollar did not go past the 8th grade *Id*. Appellee then stated under oath that Lollar received a GED at the age of 15 *Id*. Appellant requested a copy of the GED in discovery and Appellee refused. Appellant then searched an online Texas database of GED recipients and Lollar was not included *Id*.

Appellee co-wrote a book titled “standards and medical management for captive insectivorous bats” with Barbara Schmidt who graduated from undergraduate studies and has written many scientific books. That 222 pg book is not “the definitive medical reference book” “used worldwide by veterinarians and wildlife centers.” The definitive book edited by bat expert Susan Barnard is a four volume series with 2,400 pages, 160 medical articles written by 122 different Phds, bat veterinarians, researchers, scientists and true bat experts (CR 5 @ 1750). The true insectivorous bat expert in the world is well known Bat Conservation International in Austin, Texas. It was founded by bat scientists from around the world including

Susan Barnard. BCI honored women in bat conservation in 2016. Appellee Lollar was not on the list[4] which included bat rehabilitators.

Appellee stated she was nominated for a prize. Appellee should have clarified that statement by adding that she had her friend Dotti Hyatt nominate Appellee Lollar for the Indianapolis Prize, “In Amanda Lollar's own words Dottie Hyatt nominated her for an award, "Lollar explained she was nominated by Bat World Sanctuary Vice President Dottie Hyatt,”[5] The Indianapolis prize is not the top award for animal conservation. Appellee Lollar has never won the prize.

Appellant has never described her profession as “causing havoc on the web.” Appellant has been a licensed real estate broker, appraiser, legal expert witness in good standing since 1984 over 33 years working for cities, Judges and Courts (CR 7 @ 184/2345). Appellant works as a sole proprietor in Appellant’s name only for herself. Appellant had a back injury and was merely not actively doing physical appraisal work for a period of time. Appellee again misinterprets the court record without even citing the record.

II. Parties Background

[4] Bat Conservation International, “Meet the women who make a difference for bats” http://www.batcon.org/resources/media-education/news-room/the-echo/974-meet-the-women-who-make-a-difference-for-bats?highlight=WyJ3b21lbiJd

[5] Mineral Wells Index http://www.mineralwellsindex.com/local/x154989097/on-a-wing-and-a-prayer/print/

BWS offered an internship to Appellant. Appellant filled out a long multi-page questionnaire that included requests for detailed personal information, history and multiple references. Appellee reviewed all of the information and accepted Appellant into the internship. Appellant has passed many background checks to go to the police academy, have a gun (California law), to work with abused children and to receive professional licenses. Appellant has even passed a full SterlingBackcheck background check (CR 7 @ 184/2345).

Appellant has been a licensed wildlife rehabilitator for over 13 years (CR 7 @ 183/2345). Appellant has been a general animal rescuer for over 35 years. Appellant is a bat rehabber. Appellant was told that Appellant would receive two weeks of advanced bat rehab training with free boarding. Instead Appellant merely cleaned and fed baby bats from 7:00 a.m. to past midnight every day. Appellant did not learn anything Appellant didn't already know. Appellant fell in Appellee's "wild sanctuary" which was a dilapidated building with no occupancy permit open to the outside so wild bats could live there. After ten days of only cleaning, feeding baby and injuring herself, Appellant left with another rehabber and returned to Fort Worth, Texas. Appellant was not disgruntled. Appellee failed to live up to

the agreement to give training. Appellant also needed to go to Appellant's doctor for care for her injured back.

III. The Alleged Defamation

Appellant has never posted copyrighted photos or proprietary information on the internet. Appellant was sued for defamation not copyright violation which would have necessitated Federal Court. Appellant only posted photos taken by Appellant with full oral and written permission of Appellee per "General rules and Expectations during your internship" . Item 14 clearly states "Take as many pictures as you like of both procedures and bats" (CR 3 @ 1709). The contract was not signed by Appellant. The contract didn't mention copyright or proprietary information. Appellee continues to mischaracterize the facts and case. Appellee's book, techniques are all public. Appellee wrote a "how to" book which is posted on the internet. Therefore nothing can be proprietary. The 2nd Court of Appeals reversed the false breach of contract claim, attorney's fees and liquidated damages.

Appellant has never posted false statements about Appellee and BWS. Appellee never sent a cease and desist letter, email, fax asking Appellant to remove anything before filing the September 2010 complaint. Appellee admitted they never contacted Appellant after Appellant left BWS in 2010.

The real reason Appellee filed the false defamation claim was in retaliation for Appellant filing reports of animal, health, building and safety violations against Appellee. Appellant went through the police academy, humane academy to become a humane officer to enforce animal regulations and protect animals (CR 7 @ 183/2345). Appellant is on the HSUS NDART team which rescues animals in cockfighting, dogfighting, natural disasters and hoarding situations *Id*. Appellant is a mandatory reporter.

The reports Appellant made to authorities were video and photos with no captions. The rest were personal eye witness affidavit reports. Every item in the reports was the absolute truth backed up with physical evidence. The reports[6] were fair and privileged reports to government agencies (Exhibit 19, 352nd trial). In trial Appellee stated they did not want Exhibit 19 removed as they were fair reports (Trial Minutes p 808[7]), "We are not asking that Exhibit -- that that the 21 statements in Exhibit 19 be ordered to be taken down off the Internet. Those were reports to government agencies."

[6] Reports made to authorities http://animaladvocates.us/amanda_lollar_animal_cruelty_at_bat_world_sanctuary/

[7] Minutes 352-248169-10 Trial http://animaladvocates.us/mary_cummins_trial_transcript.pdf

Appellee was illegally breeding bats as they had no breeding permit. Appellee states they have the “only captive breeding colony of bats.” Appellee’s trial exhibit 1 footnote 13 contains the family tree of nine generations of bats which were bred in the facility. Appellee did commit fraud and forgery multiple times in this case and in cases against others. Appellee Lollar forged a contract in case BWS v Talking Talons Youth Leadership (CR 3 @ 2366). Appellee was performing surgery on conscious bats who died. Appellee was reprimanded by the various Texas and US agencies (CR 3 @ 1710).

Appellant posted the full video of Appellee Lollar trying to perform an episiotomy on a bat without captions. The video is what it is. Later Appellant posted the same video with captions. The captions correctly stated what the video and audio showed. Appellee Lollar in the video stated the things which were in the captions. The main veterinarian and bat expert for the USDA Dr Laurie Gage saw the uncaptioned video and agreed with Appellant （CR 2 @ 10/316-11/317).

BWS funds did not “nearly dried up.” That is absolutely false. BWS’s income increased greatly after Appellant promoted them on Appellant’s Facebook pages before Appellant went to BWS. BWS income continued to increase steadily after Appellant left (CR 3 @ 2385/2386). In trial Appellee

admitted they had no proof of any financial loss to BWS, Appellee Lollar or proof of any causation of any damages by Appellant, “Appellant: Again, my only question right now is: Do you have any proof that I am the cause of certain of your finances being down? I mean, overall your finances are way up, they are almost double.” Appellee Lollar: “I don't have any proof that it was you” (Court transcript p 206[8]). The BWS financial documents shown at trial prove the same.

Appellee never stated that Appellee Lollar had any financial or other damages in the 352nd case. As Appellee does not have a job and does not take a salary from BWS, there is no way Appellee could be financially damaged. Right before the Court ruled was the first time Appellee Lollar ever stated Lollar was seeking compensation. In discovery Appellee refused to turn over Appellee Lollar’s personal financial documents. Appellee Lollar never lost one penny.

IV. The Trial

Appellee mischaracterizes the trial. Judge Bonnie Sudderth was the sitting Judge for that Court. On May 4, 2011 there was a temporary injunction hearing. Without any notice Appellant flew to Texas for the hearing. Appellees attorney Randy Turner came up to Appellant in the

[8] Trial transcript 352-248169-10
http://animaladvocates.us/mary_cummins_trial_transcript.pdf

court room and said “I’ve known this Judge for many years. He’ll sign anything I put in front of him.” 84 year old retired visiting Judge William Brigham was the judge for the hearing without any notice to Appellant.

Appellee’s attorney Turner did not file a motion or any exhibits before the actual hearing in Texas. Appellant is an out of state pro se party. All filings must have been filed and served 20 days before the hearing. The purpose is so the other party may research the exhibits and arguments. This was intentionally not done to deprive Appellant of a fair hearing. Appellant objected to this issue and was over ruled. Appellant had no opportunity to see if the exhibits existed, who owned the domains, who was the author…Most of the items were written by other known, unknown people and robots. The items which Appellant did make were 100% the absolute truth backed up by evidence linked in the text.

At the end of the hearing Judge Brigham granted the temporary injunction. Appellee’s attorney Turner handed Judge Brigham a six page single spaced proposed order. Without allowing Appellant to view the proposed order and without even reading the order Judge Brigham flipped to the last page and signed it with a malicious grin toward Appellant. Even though no bond was posted, the order included prior restraint, I didn’t write

most of the items, I didn't control most of the websites, I removed the few items which I did make. None of them were defamatory.

Later Appellant realized that Appellee's lawyer Turner and the Judges gamed the system[9]. For this reason before the trial Appellant kept calling the court to make sure there was not another substitution of Judge. The Court kept saying there was not. As soon as Appellant flew to Texas there again was Judge Brigham. Appellant checked the hallway, clerk's office… and there again was no notice of substitution.

Later Appellant did a judicial information act request. Judge Brigham did not reapply to be a visiting Judge[10]. He did not sign or file an oath of office *Id*. He did not take mandatory continuing education *Id*. Judge Brigham also signed the order when he had no jurisdiction over the case due to only five day jurisdiction in the court and a motion to recuse *Id*. Immediately after the trial Judge Brigham was interviewed for the Veterans History Project for the Library of Congress[11]. In that August 28, 2012 interview Judge Brigham stated he used to be able to type 95 words a minute but can no longer type at all *Id*. He also admitted to unethical, unprofessional behavior in the

[9] "Visiting Judges used to 'game the system'" http://web.archive.org/web/20110110030653/http://www.legalreform-now.org/menu2_4.htm

[10] Motion to strike judgment http://marycummins.com/motion_strike_order.pdf

[11] Judge William Brigham Interview http://memory.loc.gov/diglib/vhp/story/loc.natlib.afc2001001.87524/transcript?ID=sr0001

courtroom. Clearly Judge William Brigham was not fit to oversee the trial. Appellant believes that Appellee's attorney Turner took advantage of an elderly Judge for personal gain. Judge Brigham also had no jurisdiction over the case as he did not sign and file an oath of office. Appellee's attorney Turner would later brag in person that Turner controls all the judges in Fort Worth, Texas. That is why this case was transferred to this district.

None of the veterinarians who testified at trial were bat specialists. None had taken a wildlife or bat study in their training. One vet stated she learned about bats from Appellee Lollar who has not gone past the 8th grade. The other vet stated that he didn't know it wasn't legal to freeze an animal to death. No qualified bat veterinary expert stated that Appellee Lollar is the "gold standard." Appellant had bat expert Susan Barnard who has a long list of books, publications, experience and a college education. Barnard had Leukemia at the time and wasn't able to fly to Texas. Before Barnard died she stated her dying wish was for the unjust 352nd court order to be reversed. Barnard did not live to see that day.

A last witness and closing arguments were on the last day of the trial. Appellee Lollar never stated that Appellee Lollar lost one penny or had any damages in the complaint, hearings or at trial. Appellee BWS tried to argue

that BWS lost money and had damages even though this was false per their own exhibits. Appellee never stated in the trial that Appellee lost any money or had any damages. Appellee's attorney Turner then requested $3,000,000 in compensatory damages and $3,000,000 in punitive damages for only Appellee Lollar. BWS requested nothing. Appellee also requested $176,700 in attorney's fees and $10,000 liquidated damages for the breach of contract claim. Appellee did not prove any of the elements of defamation or breach of contract at trial. The breach of contract was only included in order to get jurisdiction and attorney's fees.

Immediately after Appellee asked for those sums which had never been mentioned previously Judge Brigham took out a pre-written statement which he read aloud which included those exact sums *Id*. This shows Judge Brigham knew what Appellee would ask for before the last witness and closing arguments.

The final order was written completely by Appellee's attorney Turner. Turner then sent that order to Judge Brigham's personal residence *Id*. Judge Brigham admonished Appellee for sending it to his personal residence and instructed Appellee to send it to the court [12].

[12] Letter from Randy Turner to Court apologizing for sending final judgment to personal residence of Judge William Brigham http://www.animaladvocates.us/batWorldLawsuit/judge brigham letter.pdf

The final order is a takedown order only. It contained prior restraint. Some of the items to be taken down were written by Appellee Lollar, government agencies or people other than Appellant. The final signed, served and filed order does not include the word “defamation” or “defamatory.” It does not include a list of statements which were deemed defamatory. There was never a list of statements anywhere which was deemed to be defamatory.

V. The Appeal

Appellant appealed the case to the 2nd Court of Appeals. Two amicus briefs were written on behalf of Appellant. One was written by attorney Paul Alan Levy who has been a freedom of Speech attorney for over 40 years with Public Citizen[13]. The other[14] was by lawyer David Casselman of Elephants in Crisis and The Cambodia Wildlife Sanctuary. These amicus briefs written by well-known and experienced lawyers supported all of Appellant’s claims in this case. The Citizens Participation Act and Defamation Mitigation Act were signed into law by Governor Rick Perry in 2011 and 2013 respectively. They were made law because of meritless, retaliatory cases to silence critics exactly like this case.

[13] Amicus brief by Paul Alan Levy, Public Citizen http://www.animaladvocates.us/cummins_amicus_brief.pdf

[14] Amicus brief by David Casselman, Elephants in Crisi, The Cambodia Wildlife Sanctuary http://www.animaladvocates.us/mary_cummins_v_bat_world_sanctuary_amicus_letter.pdf

It took the panel 18 months to write the 76 page opinion. Two Justices were substituted off the panel. One was Justice Sudderth as she was the sitting Judge in the 352nd case. Appellant filed a request to rescue. Justice Sudderth did not recuse herself voluntarily. The other left to take a position in a different court.

During this same time another identical case with almost double the number phrases released an opinion in mere months in Texas, *Carla Main et al v H. Walker Royall*, No. 05-09-01503-CV, 2010 Tex. App. That case was reversed, "Walker Royall has failed in his attempt to use this frivolous defamation lawsuit as a weapon to silence his critics," says Dana Berliner, a senior attorney at the Institute for Justice, which is representing Main and Encounter. "The appeals court has exposed the frivolity of Royall's lawsuit, holding that Royall failed to prove that a single word of *Bulldozed* defames him."

In the 2012 appeal Appellant proved that all of the 47 items in the final order were not defamatory[15]. Some were not even written by Appellant but Plaintiff, government agencies and others *Id*. The Appeals court stated that was not a list of the defamatory items. It was merely a takedown order. This would mean that Appellant never was notified what items if any were

[15] Appeal brief 352-248169-10
http://www.marycummins.com/mary_cummins_appeal.pdf

allegedly defamatory. It also means there is no list of specific items which were deemed to be defamatory by any court.

Appellee and the trial court stated that the items in Exhibit 19 i.e. Appellant's reports to authorities were fair and privileged reports *Id*. Justice Dauphinot stated "Cummins was not making a report to a government agency when she posted the statements on her website" (AB @ 17). As Appellee and the trial court stated those items are not defamatory, the Appeals court cannot state that they are defamatory.

Justice Dauphinot who wrote the opinion misquoted the record on the most important issues. *See Cummins v. Bat World Sanctuary*, No. 02-12-00285-CV, (Tex. App.–Fort Worth Apr. 9, 2015, pet. denied.) Dauphinot wrote,

"Cummins asserts that Lollar was "the subject of local and state-wide debate and discussion years before" Cummins's posting of statements about her on the internet. She points to numerous books and articles that Lollar had written in the years prior to Cummins's internship. These materials relate to the care and treatment of bats. These books do not show that Lollar was the subject of local and statewide debate."

Appellant actually wrote (Appeal p 10-11 *Id*) "Amanda Lollar and BWS were the **subject of** local and state-wide debate and discussion years

before Defendant interned at BWS. All told, the controversy was covered by at least 20 articles, editorials and books prior to the publication of comments by Defendant. Plaintiffs' own Exhibits presented at trial prove this. All of the articles and books mentioned Appellees by name[16]. This level of media exposure renders the controversy a very "public" one indeed."

This distinction was vital to the case as it renders Appellee a limited public figure. Malice must be proven with public figures. In order to prove malice one must first prove the elements of defamation. None of the elements of defamation were ever proven in the trial court. The allegedly defamatory statements were not even identified in the trial court. Malice was still not proven as they didn't submit one bit of evidence to show that Appellant knowingly posted false and defamatory items about Appellee. Everything Appellant did post was 100% the truth backed by physical evidence.

VI. The Defamation Did Not Continue

[16] Plaintiff's 352nd trial Exhibit 1, "Captive Care and Medical Reference for the Rehabilitation of Insectivorous Bats," Exhibit 3, "Standards and Medical Management for Captive Insectivorous Bats," Exhibit 5, "The Bat in My Pocket," Exhibit 6, "Bats in the Pantry," Exhibit 7 "BWS Fall/Winter 2011," Exhibit 8, "Bat Conservation International Summer 1999," Exhibit 10 "Texas Parks & Wildlife August 2007," Exhibit 11 "Bat Conservation International Fall 2004," Exhibit 13 "Bat Conservational International Summer 2000," Exhibit 14, "Radical Virtues," and Exhibit 15, "Our Best Friends Autumn 2009."

Appellant has never posted anything defamatory about Appellee. Appellant never reposted the items ordered taken down in the final order. Appellant did not post a video with captions. The Appeals court stated that only the captions on the video were allegedly defamatory. The captions accurately reflected what was happening in the video and audio. They were not defamatory. Nonetheless Appellant posted the video by itself[17]. Appellant did add a copy of the 2011 email written by Dr Laurie Gage of the USDA in Colorado. That email (CR 2 @ 10/316-11/317) stated,

"I have reviewed the U-Tube footage and looked at the complaint about the bat that was mishandled by Ms. Amanda Lollar of the Bat World Sanctuary. This is indeed a violation of the AWA (Animal Welfare Act). Ms. Lollar should have sought veterinary assistance for the bat with the dystocia. It would be one thing if she were only assisting a birth, but the moment Ms. Lollar realized this was a dystocia requiring an episiotomy, she should have taken the bat to her attending vet or a local veterinarian. Apologizing in the video to the bat does not solve the problem. This mother bat clearly experienced pain and suffering at Ms. Lollar's hand, so much so t hat it appeared to lose consciousness during the procedure No anesthesia was given to the bat and no pain management was offered. I believe the mother bat could have survived if it had been properly anesthetized and the pup delivered using proper surgical techniques. It is possible the pup could also have survived if this case had been properly managed by a veterinarian."

The definition of animal cruelty is “pain, suffering and death.” The video is what it is. It can never be defamatory. Appellee admitted that was

[17] Video of Appellant performing episiotomy on a bat https://www.youtube.com/watch?v=t8n509HcfHY

Appellee in the video trying to perform an episiotomy on a conscious bat. This email is the crux of this appeal.

In fact Appellee was so embarrassed by the video of Appellee that Appellee forged emails allegedly by the head of the USDA clearing her of all wrong doing two years after Appellee lost their USDA permit (AOB @ 59-61). Appellee's attorney Randy Turner knowing full well that the email was forged added it to this lawsuit.

VII. Alleged Defamatory Statements

Appellee's Exhibit E contains approximately 2,116 statements. Appellant most certainly did not make all of these statements. Most of them are duplicates. Appellee submitted no evidence that these statements exist. Appellant showed evidence that many don't exist or were forged (Exhibits (CR 3 @1752-1773). Appellee submitted no evidence that Appellant made these statements. There are no John Doe parties in this case. Appellee has never tried to subpoena the sources to see who made the statements. They were never authenticated in the trial court. None of the statements Appellant made are false. Some of these statements were forged and made by Plaintiff.

Appellee lists some statements though not all from the take down order in the 352nd case. That was not a list of defamatory statements. It was only

a takedown order. The word “defamation, defamatory” are nowhere in the final written, signed, filed order. As some statements were made by others including Plaintiff, it could have never been a list of defamatory statements. As Appellee’s attorney Turner wrote the order he had the chance to add those words but he didn’t. Turner had the chance to remove exhibits 17, 18 and 19 but only chose 47 phrases from exhibit 17. Turner is a personal injury attorney and not a freedom of speech, defamation specialist.

Appellant proved in the Appeals court that all those statements were proven to be the truth *Id*. This is an internet defamation case. The items had to have been viewed on the internet. All of the statements were linked to government documents, Appellee’s own veterinary records, Appellee’s own manual … which support the statements. Some of the statements are quotes made by others. For example “The complaints going back 18 years were about alleged animal cruelty, animal neglect, violations of the health code and building and safety violations.” That statement was linked to pages of complaints against Appellee received in an information act request. Appellant did not write any of those statements. Government officials and others made those statements. Appellant never met Appellee until 2010. The statements were made 18 years earlier from that date by others.

VIII. Defamatory Video Captions

Appellant did not add any captions to the current video. It is just the video by itself. There is an image of the USDA email at the beginning of the video. Again, there are no captions. Appellant never sent a video with captions to the USDA. Appellee has never proven that the USDA saw a captioned video.

Appellee again tries to argue that an email written in 2011 outside of the statute of limitations in Colorado outside of this jurisdiction by the main veterinarian for the USDA Dr Laurie Gage and sent to the head of the USDA Dr Robert Gibbens another veterinarian in Colorado is somehow Appellant's defamation. This email and corresponding email are the main issue in this case. Appellee wants this email hidden only because Appellee is embarrassed by her own cruel behavior being public. If Appellee felt that email was defamatory, they should have sued Dr Gage and the USDA in 2011 when they obtained the email or 2012 at the latest. They have never sued Dr Gage or the USDA. Instead Appellee and Appellee's attorney Turner have been defaming Dr Gage on the internet with false conspiracy theories and vicious attacks. They also mischaracterize her as only a big cat specialist. Dr Gage is also a bat specialist and has written about proper bat veterinary care. That is why she was asked to view the video in the first

place. Appellee's attorney Randy Turner has this hate page in his business website devoted to Appellant also attacking Dr Gage (CR 3 @ 1897-1946).

Appellant never acknowledged that the captions were defamatory. They are not. Appellant never acknowledged in the previous trial that Dr Gage's statements in the email were false. Appellant didn't get a copy of the email until after the June 2012 trial. It would be impossible for Appellant to admit something Appellant never saw was defamatory. These are just more false and bizarre statements by Appellee and their attorney Randy Turner.

Appellant did not get a copy of this email until after trial. Appellant will be using this email as the basis of a new appeal of the 352nd case. Appellant also has new evidence that Appellee committed perjury on the main issues in this case.

Appellee filed this frivolous suit to silence Appellant's freedom of speech in violation of the Citizen Participation Act. None of the statements were ever adjudicated to be defamatory in the 352nd case. Appellee never even stated which statements they felt were defamatory in that case. Appellee merely wants to hide the video and USDA email from the public because they are embarrassed they were caught being cruel and killing animals.

Appellee did not abide by the Defamation Mitigation Act. Appellee did not send a timely cease and desist letter *Id*. Appellee never sent proof that

the items are defamatory *Id*. The act mandates that if Appellant requests proof Appellee must send proof. Appellant went above and beyond the act and proved the statements Appellant did make are the absolute truth based on volumes and years' worth of physical evidence.

This is an appeal of the Motion to Dismiss per the Citizen Participation Act, Defamation Mitigation Act, Fraud, Forgery, Perjury by Appellee, Statute of Limitations and Lack of Jurisdiction.

Appellee Lollar forged most of the evidence *Id*. This is fraud. Appellee committed perjury when Appellee stated the items were exact copies of the originals online *Id*. They are not. Appellee has unclean hands so the case must be dismissed and Appellee and her attorney prosecuted for forgery, fraud and perjury. A complaint was made against Randy Turner's license for these causes.

All of the items are outside of the one year statute of limitations for defamation in Texas. Appellant didn't even make most of the statements.

The trial court and state do not have jurisdiction in this case as Appellee stated that Appellant made all of the allegedly defamatory statements while in California （CR 1 @ 16). Appellee tries to use a forged contract to falsely make the jurisdiction Tarrant County. The appeals court reversed the frivolous breach of contract claim. It was only added to the original case so

Appellee's attorney Turner could get legal fees. Appellee lied to her attorney stating that Appellant was very wealthy just so Turner would take the case pro bono.

For all of these reasons this case must be dismissed.

ARGUMENT AND AUTHORITIES

I. **Responsive Issue One**

(Responsive to Appellee's Reply to Appellant's Issues One and Three)

The trial court improperly denied Appellant's Motion to Dismiss brought under Chapter 27 of the Texas Civil Practice and Remedies Code.

A. Appellant has clearly shown that Appellee's suit is based on, relates to, or is in response to Appellant's exercise of the right of free speech, the right to petition; and the right of association, as set forth in the TCPA.

B. Appellee's pleadings and other evidence combined with the judgment, findings of fact, and conclusions of law from the 352nd District Court of Tarrant County in the previous case as well as the Second Court of Appeals' opinion in *Mary Cummins v. Bat World Sanctuary and Amanda Lollar,* No. 02-12-00285-CV (Tex. App.–Fort Worth, April 9, 2015, pet. denied) do not provide any evidence which establishes a prima facie case for each essential element of Appellee's current defamation claim against Appellant. This current case was filed in 2015 well after the 2010 case, subsequent 2012 judgment and 2015 appeal opinion. New evidence has been found since the 2012 case from five years ago. Everything that Appellant has stated about Appellee is 100% the truth backed by factual evidence from government agencies and others.

Appellant clearly showed in Appellants OB that Appellee is a public figure. Appellant's statements are of public concern. The elements of defamation were not shown in the 352-248169-10 case. The elements of

defamation were not shown in the Appeal of that case. No specific statements were deemed defamatory in the 352nd trial court. Again, the words “defamation,” “defamatory” are not in the judgment. The judgment is a takedown order only. Appellant didn’t even write all the statements. Some were written by Plaintiff. Appellant proved in the appeals court that all the statements in the takedown order were true using the evidence presented in the trial court. Appellee never told Appellant what statements they felt were defamatory. The truth or falsity of the statements was never litigated in the 352nd court. The 47 items in the takedown order were never adjudicated as defamatory.

II. **Responsive Issue Two**

(Responsive to Appellee’s Reply to Appellant’s Issues Two, Five, and Six)

Appellant’s Issues regarding limitations, jurisdiction, and Appellee’s non-compliance with the Defamation Mitigation Act were properly brought before this Court in this appeal.

The trial court did not have jurisdiction over this case. The case was not brought within the one year statute of limitations. All of the items were originally published in 2011-2013. The case was filed in 2015. Appellee did not properly comply with the Defamation Mitigation Act. TEX. CIV. PRAC. & REM. CODE §73.051. That is why Appellant appealed the motion.

Appellant properly appealed the Motion to Dismiss per the Citizen Participation Act, Defamation Mitigation Act, Fraud, Forgery, Perjury by Appellee and Appellee’s attorney Turner, Statute of Limitations and Lack of

Jurisdiction.

The statute of limitations for defamation in Texas is one year. The time begins to run when the item is first published. If the item is republished at a later date, the time still begins to run when it was first published. All of the statements in question were made by others from 2011-2013. Appellee had the opportunity to add John Doe defendants, subpoena the identities of those authors and add them to the suit. Appellee did not because it's easier to sue an indigent, out of state, pro se party and just blame them for the posts of others. The actual authors of some of those articles were on the articles.

County court 3 does not have jurisdiction of this complaint. Appellant did not sign the contract making the forum Tarrant County. The appeals court reversed the breach of contract claim. The contract was not included in the complaint filed in county court 3. There was not one exhibit attached to the complaint.

Appellee admitted under oath that all statements made by Appellant were made in California. Appellant was lured to Texas for the internship under the false premise that Appellant would receive training. Appellant didn't receive any training. Instead Appellant was used to merely feed babies and clean.

Appellee did not comply with the Defamation Mitigation Act. They did not send a cease and desist before filing the complaint. That is the purpose of the act, to prevent these frivolous cases from being filed and wasting court time and money.

Appellee per the Defamation Mitigation Act must show proof that any of the items are defamatory if the Appellant requests it. Appellant requested proof that the items are defamatory on two separate occasions in email (CR 3 @ 1574-1582). Appellee never provided any proof that any item was false. Per the disclaimer on Appellant's blog "Mary Cummins Investigative Reporter" Appellant will edit or delete any incorrect item. Appellant has written exposes about other animal rescue organizations and public figures. Appellant has not received any requests as Appellant works very hard to prove all allegations with evidence which is always linked in the articles. Back in 1998 when Appellant wrote the first articles about securities fraud Appellant offered anyone $1,000 if they find a mistake or error in any of the reports. No one was able to find a mistake. Even then Appellant was sued twice for defamation for writing articles about people and companies who commit securities fraud. Appellant represented herself and won both cases. One was represented by the largest law firm in Philadelphia. Appellant was

extremely fortunate to have just Judges oversee those cases, i.e. Judge Flora Barth Wolf and Judge Naomi Reice Buchwald.

III. **Responsive Issue Three**

(Responsive to Appellee's Reply to Appellant's Issue Four)

Appellant's Issue regarding misdeeds by Appellee and Appellee's Attorney are properly before this Court in this appeal. The trial court improperly denied Appellant's Motion to Dismiss based on forgery, fraud and perjury against Appellee and Appellee's Attorney. That is why Appellant appealed the motion.

Appellant provided ample evidence that Appellee Lollar forged exhibits and committed perjury in Appellee's sworn statements which is fraud upon the court. Appellant also provided ample evidence that Appellee's attorney Turner signed and filed the reply to motion to dismiss knowing the exhibits were forged and the sworn statement was perjury. For all these reasons Appellee and her attorney Turner have unclean hands. For that reason this case must be dismissed.

SUMMARY

Despite well-established law and an overwhelming and uncontested factual record, the trial court mistakenly denied Appellant's motion to dismiss. That decision and judgment should be reversed.

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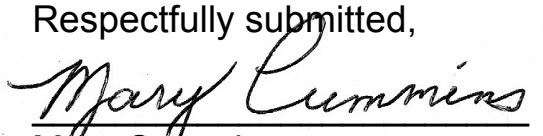
PRAYER

For the foregoing reasons, and pursuant to Texas Rule of Appellate Procedure 43, Appellant Mary Cummins asks this Court to sustain the issues presented, hold that the trial court erred in ruling for Appellee, reverse the district court's order, and render the judgment the trial court should have rendered. Appellant also requests that the April 2014 Second Court of Appeals opinion be reversed for the defamation claim for all the reasons stated herein. Appellant requests all other appropriate relief to which Appellant is entitled including fees and all related costs.

Respectfully submitted,



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CERTIFICATE OF SERVICE

On January 5, 2017, in compliance with Texas Rule of Appellate Procedure 9.5, I served a copy of this brief upon all other parties to the trial court's judgment by electronic filing via eFileTexas.gov deliverable as follows:

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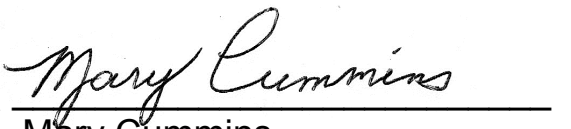

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