

07-16-00887-CV

IN THE COURT OF APPEALS
SEVENTH DISTRICT OF TEXAS AT AMARILLO

MARY CUMMINS,
Petitioner-Defendant-Appellant,

v.

AMANDA LOLLAR
Plaintiffs-Appellees

On Appeal from County Court at Law Number Three
Tarrant County, Texas
Trial Court No. 2015-002259-3; Honorable Mike Hrabal, Presiding

APPELLANT'S PETITION TO REHEAR

Mary Cummins
Appellant In Pro Per
645 W. 9th St. #110-140
Los Angeles, CA 90015-1640
(310) 877-4770 Direct
(310) 494-9395 Fax
mmmaryinla@aol.com

IDENTITY OF PARTIES AND COUNSEL

PETITIONER:

Mary Cummins

In Pro Per

645 W. 9th St. #110-140

Los Angeles, CA 90015-1640

Direct: (310) 877-4770

Fax: (310) 494-9395

Mary@MaryCummins.com

APPELLEE:

Amanda Lollar

Randy Turner

Law Offices of Randall E. Turner, PLLC

5017 El Campo Ave.

Fort Worth, Texas 76107

Direct: (817) 420-9690

Fax: (817) 887-5717

Randy@RandyTurner.com

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. “Pla Exh __” for the Plaintiffs’ trial exhibits. “Def Exh __” for the Defendant’s trial exhibits, “RB__” for Appellees Reply Brief. “B” for Appellant’s initial brief. “PR” for Petition to Rehear. “P” for paragraph.

Appellant Mary Cummins will be referred to as “Cummins.” Appellees Amanda Lollar and Bat World Sanctuary will be referred to individually as “Lollar” and “BWS” respectively, and collectively as “Appellees.”

APPELLANT'S PETITION FOR REHEARING

Appellant Mary Cummins ("Cummins") appeals from a judgment in a motion to dismiss in trial court No. 2015-002259-3. The Appeals Court released their opinion on this case May 3, 2018 affirming the District Court's order on the motion to dismiss.

ARGUMENT

Appellant makes this petition for rehearing because the opinion misstates the record and misinterprets the relevant statutes and case law. Appellant has never defamed Appellee.

OPINION MISSTATES THE RECORD

Rehearing should be granted to reconsider the opinion's misstatement of the record and facts of the case

The writer of the opinion has misquoted the court record on the most important facts. Appellant now corrects the misquoted record in order.

Appellant never reposted the items in the take down order. Appellant proved this to the Court by showing the Internet pages with the items removed replaced with "****." Appellee has not shown one bit of evidence that any item was reposted. Not only that but Appellant did not even write all of the items to be taken down. Appellee Lollar wrote some of the items as did government agencies and Appellee's veterinarian. Most of the items were quotes of what others stated linked to those documents.

Appellant did not repost the video with captions. Appellant did repost the video without any captions. The video is what it is. It can never be considered defamation. Appellee Lollar ordered Appellant to take the video. Appellant had written permission to take and share the videos. It is fair and privileged as Appellant had written and oral permission to take and share the video.

The final signed court order did not include the word “defamation” or “defamatory” see appendix. It was merely a takedown order. No words or phrases were determined to be defamatory in the District Court. Appellee never even stated what they felt was defamatory in the District Court.

The videos and photos were never found to be defamatory. Appellant went through the photos and videos asking Appellee if the photos and videos were defamatory and Appellee stated “no.” Appellee merely disagreed with the captions on one video. The captions stated what was happening in the video. They were not defamatory. Only that one video with captions was ordered to be taken down. Nothing else was reposted but the video without captions.

Appellant left Bat World in 2010 after witnessing animal cruelty, animal neglect, violations of the Animal Welfare act and other violations. Appellant is a mandatory reporter and reported the issues to government agencies.

Government agencies investigated and corroborated the violations.

Appellee then lost their USDA permit and were reprimanded by many other agencies.

Appellant did not state Appellee “mistreated her dogs.” Appellant quoted what Appellee’s veterinarian stated in Appellee’s veterinary records about the dogs. The veterinarian instructed Appellee to treat Appellee’s dog’s periodontal disease. Appellee did not follow the veterinarian’s instruction and instead ordered the dog euthanized. Appellant never said the euthanasia was “cruel.” The 19 year old dog is a different dog and was not euthanized until at least two years after Appellant left Texas. Appellant never stated that euthanasia was cruel. It was merciful.

The video of the episiotomy did not have misleading captions. The captions correctly stated what was happening in the video. In the video one can clearly hear Appellee Lollar apologizing to the bat for causing the bat pain while Appellee cut the bat’s vagina with scissors multiple times. The video stated “graphic animal cruelty” at the beginning to warn people that it indeed contained “graphic animal cruelty.” The main veterinarian for the USDA agreed with Appellant and stated in a 2011 email that Appellee “caused the bats pain, suffering” and “death,” “violated the Animal Welfare Act (CR 2 @ 10/316-11/317).

While Appellee stated that Bat World's donations had decreased and they were near bankruptcy, that was false. Appellant showed Bat World's 990's which show a great increase in donations. Appellee committed perjury by lying to the court under oath about finances. In the end Appellee Lollar and not Bat World asked for compensation. Bat World did not ask and did not get any award.

The judgment did not state that three websites were to be removed in their entirety, see judgment in appendix.

The video by itself is not defamatory. Appellee stated the video showed her performing "a life saving procedure" even though that is not what it depicted. The video can never be defamatory for those reasons. Appellee merely wants the video removed so the public cannot see what she actually does to bats.

The opinion by the Second Court of Appeals misquoted the record and came to the wrong conclusion. Appellee did not state what they felt was defamatory in the trial court. Appellee did not show even one element of defamation. Appellee never even stated who made or posted the statements. Some of the statements ordered to be removed were exact quotes of statements made by Appellee, Appellee's veterinarians and government agencies. As Appellee did not prove even one element of

defamation, it is legally impossible to prove malice. As all of the statements were the truth, there was no defamation and no malice. Appellant would gladly swear on a stack of bibles that every statement was the absolute.

Rehearing should be granted to reconsider the opinion's misinterpretation of the relevant statues

Issue 1. Texas Citizens Participation Act

While the Second Court of Appeals stated that the statements were not a matter of public concern that was false. Appellant posted statements about rabid bats and the treatment of rabid bats at Bat World which is a matter of public concern.

While the Second Court of Appeals stated that Appellee Lollar was not a limited public figure that was false. The Second Court of Appeals misquoted the record. The record stated that books, magazine articles had been written "about" Appellee. That would make Appellee a limited public person. Instead the Second Court stated that Appellee had "written" books and magazine articles. This misquote was intentional so Appellee would appear to not be a limited public figure.

Facts of the current defamation lawsuit are not the same as the previous defamation lawsuit. The original items were never reposted. Since the trial much has been discovered about Appellee. Even more articles have been written "about" Appellee making her a limited public figure. Appellee has

thrust herself into the public dialogue about bats when Appellee called a press conference and sent out national press releases about the issue of bats. The matter of law in the current case has not been disposed in the earlier case. That is false.

Appellee did not show that current statements are defamatory. Appellant asked for proof that any statement was false per the Defamation Mitigation Act and Appellee did not show this to Appellant or the Court. Appellant then proved that all of the statements are true with sufficient evidence.

The statements accusing Appellee of crimes is the absolute truth. The main veterinarian for the USDA supports this. The Texas Veterinary Board stated that Appellee was “practicing veterinary medicine without a license.” The board also stated that is was “animal cruelty.” Appellee admitted to Appellant that Appellee illegally possesses the rabies vaccine. Only a doctor or veterinarian may possess the rabies vaccine. If Appellee has been damaged at all it is by Appellee’s own behavior.

Issue 2. Texas Defamation Mitigation Act

Appellant did not repost any of the items ordered to be taken down. To this very day Appellant has not reposted those items. The video by itself was not found to be defamatory. Appellee merely didn’t agree with the

captions even though the captions showed exactly what was happening in the video.

None of the items in the take down order were declared defamatory. The word “defamation” or “defamatory” are not in the court order, see judgment in appendix. There is no list of defamatory statements.

Appellee did not show any evidence that any item was defamatory. On top of this the items included do not exist on the internet and have never existed. There are no tweets at all in the “mmaryinla” account¹ or in the “mmaryinla” myspace.com account². The blogs listed do not exist.

Because Appellant never defamed Appellee, Appellee had to forge exhibits and submit a perjured declaration stating the exhibits are exact copies of the originals online. Almost all of the links provided by Appellee do not exist or don't state what is in the complaint. Therefore it's impossible for Appellee to show defamation when the statements don't exist. This is an Internet defamation case. The Court has the responsibility to look at the items on the Internet in their actual form.

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¹ Mmaryinla Twitter account has no tweets <https://twitter.com/mmaryinla>

² Mmaryinla MySpace account has no posts <https://myspace.com/mmaryinla>

Issue 3. Sufficiency of the Evidence to Support Defamation with Malice

Appellant never defamed Appellee. All of the items which do exist are the absolute truth. Appellee has not proven defamation. It's legally impossible to prove malice if defamation has not been proven.

Issue 4. Forgery, Fraud and Perjury

Appellant clearly raised the issue of forgery, fraud and perjury in the trial court, in the hearing and in the motion to dismiss. Appellant raised the same issue in the first motion to dismiss before Judge Jennifer Rymell. After Judge Jennifer Rymell saw the obvious forgery, fraud and perjury, Judge recused herself. Appellant raised the same issue to the State Bar of Texas in a complaint against Appellee's attorney Randy Turner.

For this Court to state that the issues of forgery, fraud and perjury were not raised in the trial court is absolutely unbelievable injustice. This statement in the opinion is absolutely false. Appellant is not raising these issues for the first time in this appeal court. It is beyond unimaginable for Appellant to believe that this Court is willing to help an attorney and their client Appellee commit crimes against the rule of law. There is no way the public can feel any confidence in the court when this level of injustice exists. Randy Turner even bragged about the level of corruption in Court

“I’ve known this Judge for many years. He’ll sign anything I put in front of him.” The Judge did exactly that.

Issue 5. Statute of Limitations

Again, no item was found to be defamatory in the trial court. There is no “list of defamatory items.” That is absolutely false.

The only posts that fall within the one year statute of limitations are the posts forged by Appellee. Those forged posts which don’t exist on the Internet were conveniently just barely within the statute of limitations. Appellee and her attorney Randy Turner intentionally committed fraud upon the court by submitting those forged exhibits.

Issue 6. Lack of Jurisdiction

The photos and videos taken in Texas were not found to be defamatory. It does not matter where they were taken. Appellee has stated many times that the items were posted after Appellant left Texas and went back home to California.

This current case is not for breach of contract. Therefore there was no reason to include the contract in the complaint. The contract itself was not even included in the complaint. There was not one exhibit in the original complaint.

Randy Turner stated in Court “I’ve known this Judge for many years. He’ll sign anything I put in front of him.” The Judge did exactly that. Turner later bragged that he controls the Texas Appeals Court and is personal friends with members of the Supreme Court of Texas. It is very clear based on the opinion of the Texas Courts that Turner and his wife have used their 35 plus years as lawyers in Fort Worth, Texas to become friends with the very Judges and Justices ruling on these proceedings. The fact that Turner bragged in Court about the level of corruption involved shows that Turner clearly gamed the system and gets away with it.

CONCLUSION

The Opinion as it stands is a travesty of justice. Appellant has never defamed Appellee. The Opinion guts the first amendment, the Defamation Mitigation Act and the Citizen Participation Act. It also guts the protection of privileged and fair reports to authorities. People would not report others if they could be sued for defamation and have their lives ruined in this manner.

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will

faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.” Appellant believes this has not happened in this case. Appellee’s attorney has even bragged about how corrupt and unjust he and the Judge are. Appellant will rise above and continue to strive for justice in this case.



Mary Cummins
May 14, 2018
Appellant In Pro Per
645 W. 9th St. #110-140
Los Angeles, CA 90015-1640
Direct: (310) 877-4770
Fax: (310) 494-9395
mmaryinla@aol.com

CERTIFICATE OF COMPLIANCE AND WORD COUNT

This document complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Tex. R. App. P. 9.4(i), if applicable, because it contains 2,502 (<4,500 words) words, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1).

CERTIFICATE OF SERVICE

On May 14, 2018, 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.

APPELLANT'S APPENDIX

Signed Court Judgment

CAUSE NO. 352-248169-10

BAT WORLD SANCTUARY and AMANDA LOLLAR Plaintiffs, v. MARY CUMMINS, Defendant	§ § § § § § § § §	IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS 352 ND JUDICIAL DISTRICT
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JUDGMENT

ON the 11th day of June this cause came on to be heard. Amanda Lollar, Plaintiff whose last three digits of her Texas driver's license number are 000, appeared in person and by her attorney and announced ready for trial. Bat World Sanctuary, Plaintiff, appeared by and through its attorney and announced ready for trial. Mary Cummins, Defendant whose last three digits of her California driver's license number are 781 appeared *pro se* and announced ready for trial. No jury having been demanded, all questions of fact were submitted to the Court.

After hearing the evidence and arguments of counsel and the defendant the Court finds that the plaintiffs, Amanda Lollar and Bat World Sanctuary, are entitled to recover from the defendant, Mary Cummins.

IT IS THEREFORE ORDERED that Amanda Lollar recover from Mary Cummins actual damages in the amount of THREE MILLION DOLLARS (\$3,000,000.00).

IT IS FURTHER ORDERED that Amanda Lollar recover from Mary Cummins exemplary damages in the amount of THREE MILLION DOLLARS (\$3,000,000.00).

IT IS FURTHER ORDERED that Bat World Sanctuary recover from Mary Cummins actual damages in the amount of TEN THOUSAND DOLLARS (\$10,000.00).

IT IS FURTHER ORDERED that Bat World Sanctuary recover from Mary Cummins attorney's fees in the amount of ONE HUNDRED SEVENTY SIX THOUSAND SEVEN HUNDRED DOLLARS (\$176,700.00).

IT IS ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <http://www.animaladvocates.us/batWorldLawsuit/>:

1. They breed animals in the facility.

2. Pretty ironic for this group to certify Bat World Sanctuary when the health department told her to leave town and they had to gut the building and remove her belongings.
3. Vet recommended blood and stool tests. Lollar declined. She just wants empirical therapy. If that doesn't work, she wants to euth the dog. She refused treatment. When I was at Bat World June 19, 2010 to June 28, 2010 I saw her use her fingers to pull out one of the dog's teeth, i.e. oral surgery on dogs.
4. The current method she suggests is also inhumane. The bats die of suffocation. She also forgets to mention that the drugs she suggests must be used under the direction of a veterinarian. She doesn't even administer the gas legally, humanely, or safely.
5. He should not be working for free for someone who commits animal cruelty.
6. I doubt he'll be speaking about this embarrassing little case where he is actually representing someone who commits animal cruelty and neglect.
7. She took the money that came from the dissolution of Bonnie Bradshaw's group and bought a new silver Honda Eclipse. That money was supposed to go for animals. This is what Lollar does with money that is given to Bat World.
8. Lollar never even washed her hands before surgery, you can see dirty finger nails in the photos, no surgical garments, no mask, hat, nothing. Night and day.
9. Just confirmed that Amanda Lollar of Bat World Sanctuary is illegally obtaining human and animal rabies vaccinations. ...Again, breaking the law. I'm amazed she admitted to having the vaccine and buying it when she is doing it illegally.
10. She does not state that it died from neglect of care. She also chose to euth it instead of treating it as her vet suggested. She'd previously turned down care which her vet suggested.
11. When I was at Bat World she told me the place where she buys her rabies vaccine thinks she's a doctor.
12. Earlier in the year the vet noted the dog had major dental issues yet she didn't have the vet treat them. You know how painful it would be to have a mouth full of rotten teeth? That's animal neglect.
13. BREAKING NEWS!!! Amanda Lollar of Bat World Sanctuary admits in writing that she and Bat World Sanctuary are being forced to leave Mineral Wells because of all the complaints to the City and Health Department.
14. The dogs rear claws are super long. There is no way she could stand. ... She has to drag herself on cement.
15. She tells people to use Isoflurane illegally, inhumanely and unsafely in her book.

16. He didn't care that she admitted to illegally having the human rabies vaccination, admitted to using drugs not according to the label or that she "proudly" admitted to performing surgery.
17. In the video Lollar takes tweezers and just pulls out the molars of a conscious bat that is fighting and biting her while it bleeds. Lollar is proud of this and posted this video in her book and online. Bat experts know that bats must be unconscious and intubated to remove molars. Can you imagine the pain that bat felt?
18. Pulling molars out of conscious bats is not "cutting-edge" though cutting open conscious bats might fall into that "category." Operating on bats using the drop anesthesia technique or amputating wings instead of pinning them is also not cutting edge but cave man veterinary practice.
19. Lollar is exposing people to rabies by not checking their cards.
20. Her recent story about the episiotomy at the depo was that, that was not the bat's vagina and uterus being pulled out. It was the "placenta separating." It clearly was not.
21. She'd already yanked out the placenta which is what helped cause the prolapse, besides cutting way too much and pulling too hard. She really needs to get her vision checked. Someone with very bad vision is the last person who should be slicing into microbats.
22. Yeah, I look like crap in the videos but at least there are no videos of me hacking an animal to death.
23. She's been breeding her bats illegally. She's committing fraud asking for money for a project she cannot and will not do.
24. She said she would use the bag for the trip then return it to Walmart for a refund. She admitted to me with an evil laugh that she does this frequently.
25. Rabies complaint against Bat World Sanctuary. General sanitation laws, harboring high risk rabies animals, allowing them in downtown.
26. Amanda Lollar and her buildings have been written up so many times for building violations, safety issues, rabies, histoplasmosis, no address, unsightly building, build up of guano 6-8 feet... People have been reporting her smelly building and rabid bats for over 15 years.
27. She's basically experimenting on bats. The bats are dying because she doesn't take them to the vet. That's okay because she can just go get more bats.
28. Amanda Lollar of Bat World Sanctuary found guilty of illegally breeding bats at her facility. It is a violation of her permit.

29. Amanda Lollar of Bat World Sanctuary is now sending threats of extortion from Mineral Wells, Texas. Because she's sending it over the computer it's a Federal crime.
30. She has violated the following regulations listed on her permit. "15 a. Permit holder is prohibited from a. Propagating, selling or bartering animals or animal remains received or held under authority of this permit." She is allowing the bats to breed.
31. The complaints going back 18 years were about alleged animal cruelty, animal neglect, violations of the health code and building and safety regulations.
32. The complaints stretching back 18 years were about animal cruelty, animal neglect, violations of the health code, violations of Texas Parks & Wildlife regulations, violations of the Animal Welfare Act, building violations and a report about a rabid bat biting a toddler directly next door to Bat World Sanctuary.
33. Here is the disgusting photo of my face which they photoshopped semen onto. They then added the caption "Yep, screw you too, Mmmmary!" They named the file "mmmm." This is how disgusting and childish these people are.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ordered to immediately and permanently remove from the following URL's in their entirety:

1. http://www.animaladvocates.us/batWorldLawsuit/Amanda_Lollar_Bat_World_Sanctuary_Breeding_Bats.pdf
2. http://www.animaladvocates.us/batWorldLawsuit/amanda_lollar_1994_manual_original.pdf
3. <http://www.animaladvocates.us/batWorldLawsuit/mmmm.jpg>

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at http://www.animaladvocates.us/mary_cummins_sues_amanda_lollar_bat_world_sanctuary

1. She's the one who handles rabid bats with her bare hands.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <https://www.facebook.com/marycummins>:

1. Update: Health Dept. forced Bat World Sanctuary to leave town. In January they gutted the building, cleaned it and removed her property.

2. Amanda who runs bat sanctuary just uses her bare hands. The rabid bats even bite her.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <https://www.facebook.com/AnimalAdvocatesUSA>:

1. Update: Health Dept. forced Bat World Sanctuary to leave town. In January they gutted the building, cleaned it and removed her property.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <https://plus.google.com/107575973456452472889>:

1. Bat World Sanctuary admits in writing they are being forced to leave the City because of all the complaints to the City and Health Dept.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <http://twitter.com/MMMARYinLA>:

1. Bat World Sanctuary admits in writing that they are being forced to leave the City because of all the complaints to the City and Health Dept.
2. Update: Health Dept. forced Bat World Sanctuary to leave town. They gutted her building, cleaned it and removed her property.
3. Amanda Lollar commits animal cruelty at Bat World Sanctuary <http://goo.gl/fb/ufv4x>

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and she is ORDERED to immediately and permanently remove from the internet the following statements which currently appear at <http://www.myspace.com/mmmaryinla>:

1. Health Dept. forced Bat World Sanctuary to leave town. They gutted her building, cleaned it and removed her property.
2. Bat World Sanctuary admits in writing they are being forced to leave the City because of all the complaints to the City and Health Dept.

IT IS FURTHER ORDERED that Mary Cummins be permanently enjoined and prohibited from posting on the internet or publishing to any person any video recording of any episiotomy that was recorded or made at Bat World Sanctuary.

IT IS FURTHER ORDERED that the total amount of the judgment here rendered will bear interest at the rate of five percent (5%) per year from the date of this judgment until paid.

All costs of court spent or incurred in this cause are adjudged against Mary Cummins, defendant.

All writs and processes for the enforcement and collection of this judgment or the costs of court may issue as necessary.

All other relief not expressly granted in this judgment is denied.

SIGNED this 27 day of August, 2012.


JUDGE PRESIDING