

RONALD F. AVERY

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IN THE DISTRICT COURT

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VS.

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GUADALUPE COUNTY, TEXAS

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DYLAN BADDOUR;
HEARST COMMUNICATIONS,
INC.

*

2nd 25TH JUDICIAL DISTRICT

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Request for Findings of Fact and Conclusions of Law

Now comes, Plaintiff, Ronald F. Avery, and makes this his Request for Findings of Fact and Conclusions of Law. This is a mandated accelerated appeal under the Texas Citizen Participation Act (TCPA). The Appellant must file his brief 20 days after the record is filed at the Fourth Court of Appeals in Bexar County, Texas. The Court only has 10 days to file its record after the date the Notice of Appeal is filed. The Appellant only has 30 days from the date of his Notice of Appeal to file his brief and would like to be able to restrict his appeal to only those findings of fact and conclusions of law that the Court found in this rather large Motion to Dismiss under the TCPA.

The Plaintiff, requests Findings of Fact and Conclusions of Law on the following issues:

Phase One under the Act:

1. Did the Court find by a preponderance of the evidence that the Plaintiff's legal action against the Defendants was based on, relates to, or is in response to the Defendants' exercise of their Constitutional rights of free speech, petition and association?
 - 1.1. What facts or conclusions of law support their use of the TCPA?

Phase Two Under the Act:

2. Did the Court find that the Plaintiff established by clear and specific evidence each essential element of a prima facie cause of action for libel against the Defendants?
 - 2.1. Was there clear and specific evidence in the record to support the Plaintiff's claim that the Defendants made statements of fact, not opinion, in their web article and front page newspaper article?
 - 2.2. Was there clear and specific evidence in the record to support the Plaintiff's claim that the facts or opinions stated in the article could apply to him?
 - 2.3. Was there clear and specific evidence in the record to support the Plaintiff's claim that some facts stated in the articles exposed him to contempt, ridicule, and public hatred?
 - 2.4. Was there clear and specific evidence in the record to support the Plaintiff's claim that some of the facts were false?
 - 2.5. Was there clear and specific evidence in the record to support the Plaintiff's claim that the Defendant, Baddour, published false facts knowing they were false or with disregard for the accuracy of those facts and what result those inaccuracies might have on the Plaintiff?
 - 2.6. Was there clear and specific evidence in the record to support the Plaintiff's claim that the Defendants have refused to correct their errors regarding his membership in the "Republic of Texas" even now?
 - 2.7. Was there clear and specific evidence in the record to support the Plaintiff's claim that he was exposed to public hatred by the articles taken as a whole?

Phase Three Under the Act:

3. Did the Court find that the Defendants established by a preponderance of evidence each essential element of a valid defense against the Plaintiff's libel claim:

3.1. Defendants' claim that articles are incapable of a defamatory meaning:

3.1.1. Defendants' claim their articles are not defamatory under the doctrine of

"Fair Comment:"

3.1.1.1. Did the Court find by a preponderance of evidence that the articles were limited to Public Concern?

3.1.1.2. Did the Court find by a preponderance of evidence that the statements made were opinions not statements of fact?

3.1.1.3. Did the Court find by a preponderance of evidence that the statements of opinion, if any, made in the articles were reasonable, fair and made in good faith?

3.1.2. Defendants' claim that articles are not defamatory as a matter of law:

3.1.2.1. Did the Court find, by conclusion of law, that the statements made in the articles were restricted only to the rights of the Plaintiff to dissent?

3.1.2.2. Did the Court find, by conclusion of law, that the links provided in the web article could not defame the Plaintiff?

3.1.2.3. Did the Court find, by conclusion of law, that the articles linked to Defendants' web article could not defame the Plaintiff because the linked articles did not mention Plaintiff by name?

3.1.2.4. Did the Court find, by conclusion of law, that the articles and their links to other articles cannot defame the Plaintiff because the articles and their links did not describe or characterize Plaintiff in any way that went beyond what the Plaintiff has a right to do?

3.1.3. Defendants' claim that their articles are not defamatory as a matter of law under the doctrine of "Substantial Truth:"

3.1.3.1. Did the Court find by a preponderance of evidence and/or as a matter of law that calling someone who observes dissolution of a union the same as one who seeks secession of a state from a union?

3.1.3.2. Did the Court find by a preponderance of evidence and/or as a matter of law that the Defendants' assertion that the gist of their articles about Plaintiff being a secessionist are true?

3.1.3.3. Did the Court find by a preponderance of evidence and/or as a matter of law that the Defendants' assertion that the gist of their articles about Plaintiff being a secessionist were undisputed?

3.1.3.4. Did the Court find by a preponderance of evidence and/or as a matter of law that the Defendants' assertion that the gist of their articles about Plaintiff being a secessionist were of secondary importance and therefore the Plaintiff can be called a secessionist as a matter of law?

3.1.4. Defendants' claim that their articles are not defamatory as a matter of law because the truth was worse than any falsehood they may have told:

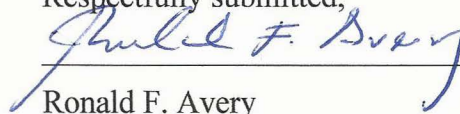
3.1.4.1. Did the Court find by a preponderance of evidence and/or as a matter of law that labeling the Plaintiff a secessionist, regardless of evidence that he has opposed it for 15 years, is better than accurately describing the truth about him?

3.1.4.2. Did the Court find by a preponderance of evidence and/or as a matter of law that the Plaintiff's admitted political beliefs render the articles substantially true and non-actionable?

Other Findings of Fact and Conclusions of Law

4. Did the Court find any other facts or make any other conclusions of law that were not mentioned above that support their decision to dismiss?

Respectfully submitted,



Ronald F. Avery

Pro Se

1933 Montclair Drive

Seguin, Texas 78155

830/372-5534

taphouse@sbcglobal.net

CERTIFICATE OF SERVICE

I certify that on March 29, 2016, I served a copy of this "Request for Findings of Fact and Conclusions of Law" on the parties listed below by Certified Mail RRR 7009 0960 0000 7721 9582:

Jonathan R. Donnellan
Kristina E. Findikyan
Jennifer D. Bishop
The Hearst Corporation
Office of General Counsel
300 W. 57th Street, 40th Floor
New York, NY 10019
(212) 841-7000
(212) 554-7000 (fax)
jdonnellan@hearst.com
Attorneys for Defendants:
Dylan Baddour and Hearst Communications, Inc.

I also certify that on the same date I emailed the above documents to the same above and also to:

Jonathan H. Hull
Reagan Burrus PLLC
401 Main Plaza, Suite 200
New Braunfels, Texas 78130
Ph: 830/625-8026
Fax: 830/625-4433
jhull@reaganburrus.com



Ronald F. Avery, Pro Se