

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

STEPHEN LEE JOHNSON,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION
)	FILE NO. _____
SUSAN BOGGS,)	
TAMMY GRIENER,)	
PRISCILLA KILLINGSWORTH,)	
CHARLES O'NEILL, and)	
TAREY B. SCHELL,)	
in their individual and official)	
capacities, and)	
TERRELL MOODY, and)	
JAMES THOMAS,)	
in their official capacities,)	
)	
Defendants.)	

PLAINTIFF'S VERIFIED COMPLAINT

1.

COMES NOW Stephen Lee Johnson ("Johnson"), Plaintiff, and brings this Complaint seeking an order barring enforcement of a prior restraint on speech and "Order of Arrest" predicated solely on a website critical of employees of the Department of Family and Children's Services (DFACS). See Order of Arrest, Sept. 14, 2004 ("Johnson, Stephen Lee did post on a website made [sic] false and malicious statements....") (Exhibit A). Plaintiff seeks declaratory relief, injunctive relief and

damages against the defendants Susan Boggs, Tammy Griner, Magistrate Priscilla Killingsworth, Charles O’Neill, and Judge Tarey B. Schell, individually and collectively, to ensure that his website and right to criticize government officials is protected. Plaintiff seeks declaratory and injunctive relief against the defendants Coroner Terrell Moody and Sheriff James Thomas on the grounds that Magistrate Priscilla Killingsworth’s Order of Arrest explicitly authorizes these two individuals to take action against Plaintiff.

JURISDICTION AND VENUE

2.

This action arises under the authority vested in this Court by virtue of 42 U.S.C. § 1983, the First and Fourteenth Amendments of the United States Constitution, and pendent jurisdiction under Article I, § 1, ¶¶ I, II, V, VI, VII, IX of the Georgia Constitution. The actions of defendants were under color of law.

PARTIES

3.

Plaintiff Stephen Lee Johnson (“ Mr. Johnson”) resides in Zebulon, Georgia and is a citizen of Pike County Georgia. Mr. Johnson is subject to an Order of Arrest and prior restraint for having posted an allegedly libelous website.

4.

Defendant Tammy Griener is subject to the jurisdiction and venue of this Court. She is sued in her individual and official capacity for her verbal threats and commands that Mr. Johnson refrain from further postings to his website.

5.

Defendant Magistrate Priscilla Killingsworth is subject to the jurisdiction and venue of this Court. She is sued in her individual and official capacity for acts in clear absence of all jurisdiction.

6.

Defendant Judge Tarey B. Schell is subject to the jurisdiction and venue of this Court. He is sued in his individual and official capacity for acts in clear absence of all jurisdiction.

7.

Defendant Charles O'Neill is subject to the jurisdiction and venue of this Court. He is sued in his individual and official capacity for his acts of threatening legal action against Mr. Johnson and obtaining an arrest warrant for Mr. Johnson on the basis of Mr. Johnson's website.

8.

Defendant Susan Boggs is subject to the jurisdiction and venue of this Court. She is sued in her individual and official capacity for threatening legal action against Mr. Johnson for the postings on his website.

9.

Defendant Sheriff James Thomas of Pike County is subject to the jurisdiction and venue of this court. He is sued for equitable relief in his official capacity as he has been "COMMANDED to arrest the body of Johnson, Stephen Lee" subject to Magistrate Killingsworth's September 21, 2004 Order of Arrest.

10.

Defendant Coroner Terrell Moody of Pike County is subject to the jurisdiction and venue of this court. He is sued for equitable relief in his official capacity as he has been "COMMANDED to arrest the body of Johnson, Stephen Lee" subject to Magistrate Killingsworth's September 21, 2004 Order of Arrest.

FACTUAL ALLEGATIONS

11.

Plaintiff Johnson formed a group styled Advocates for Rights and Liberties of America (“ARLA”) which expresses critical views on its website concerning the Department of Family and Children’s Services (“DFACS”) and its employees.

12.

Mr. Johnson created ARLA to combat child abuse, and to express his and others views on needed changes at DFACS.

13.

ARLA’s mission is to “reduce and eliminate the child abuse caused by the very system instituted to protect them ... the injustice in family and juvenile courts, [CPS,¹ DFACS,² DFCS,³] unwanted adoptions and other family destroying systems.”
<http://www.angelfire.com/ga4/justice/ARLAMission.html>.

14.

ARLA’s website resides at: <http://www.angelfire.com/ga4/justice/>.

¹ CPS is the Children Protective Services.

² DFACS is the Georgia Department of Family and Children’s Services.

³ DFCS is the County Division of Family and Children Services.

15.

ARLA's website includes a disclaimer providing:

1. Any articles on this website that are written and published by the members of ARLA are their opinions. Some are from their first hand experiences [sic]; some from interveiws [sic] or other means and is protected under the "Free Speech amendment".

2. Any articles on this website that are written by authors other than the members of ARLA are their opinions and are protected under the "Free Speech amendment". Further, their comments are not necessarily the opinions of the publisher.

3. Anyone else placing a comment on this site is doing so at their own will. They too are protected by The Free Speech Amendments. Further, their comments are not necessarily the opinions of the publisher.

4. If anyone writes (address below) to the web site publishers and provides physical evidence that ANY information on this on this site is incorrect, that information will be removed or updated based on the evidence.

<http://www.angelfire.com/ga4/justice/Disclaimer.html>.

16.

On ARLA's website, Mr. Johnson posted information about Ms. Boggs stating that although Ms. Boggs was named DFACS Supervisor of the Year - 2004, she had previously been cited by a 1997 Federal Investigation for allowing children to be "stripped, sit on cold damp concrete floors, abused, mutilate themselves and

attempt suicide." <http://www.angelfire.com/ga4/justice/DepFamChiSer.html>.

17.

Presently, the ARLA website includes a picture of Ms. Boggs against the backdrop of a large black swastika on a red flag and a black mustache has been super-imposed on Ms. Boggs' face. The superimposed alterations are a form of protest against defendants' treatment of plaintiff in general, and ill treatment by Ms. Boggs in particular. When Magistrate Killingsworth issued the Order of Arrest this photo was unaltered and depicted Ms. Boggs in an office setting.

18.

Also on ARLA's website Mr. Johnson posted excerpts from an August 17, 2004 article published in the Pike County Journal-Reporter detailing Mr. O'Neill's drive from Punta Gorda, Florida to Zebulon, Georgia, following Hurricane Charley in August 2004. <http://www.angelfire.com/ga4/justice/DepFamChiSer.html>.

19.

For example, Mr. Johnson included the portions of a newspaper article that discussed the damage to Mr. O'Neill's car including:

The glass on all four doors was missing and the windshield was shattered, having been pelted by roof tile debris swirling in high winds. It was drivable though, and besides, there was no place in the area that could even repair it, thanks to Charley.

The ride back was made possible with plastic, duct tape

and earplugs (for the occupants), according to [Mr. O'Neill's] wife Catherine.

She, along with son Alonzo and daughters Seyward and Brianna, helped Charles navigate their way home, since [Mr. O'Neill's] view was somewhat hampered by the shattered windshield.

Tamra Jarrett, Charles Flees Charley: O'Neills Survive Hurricane, PIKE COUNTY

JOURNAL-REPORTER, Aug. 18, 2004, at 1;

<http://www.angfire.com/ga4/justice/DepFamChiSer.html>.

20.

Along with the excerpts from the Pike County Journal-Reporter, Mr. Johnson also posted questions to stimulate reactions to Mr. O'Neill's actions following Hurricane Charley. These questions included:

Why not just head home BEFORE the auto is damaged and the children are at risk?

If as the paper reported, it took them 9 hours to get here how fast was he going? "Maps On US" has the 517 mile trip a[t] 10.21 hours when driven WITHOUT the auto's "extensive damage."

Were there no auto rentals available in the big city of St. Petersburg?

With him charging \$175 per hour, and his wife also working by teaching, could they not afford a rental auto? Was his kids just not worth it?

Since the windshield was "shattered", how did the other three O'Neills help him "navigate" . . . hanging their heads out the windows?

Were the children not buckled in?

<http://www.angelfire.com/ga4/justice/DepFamChiSer.html> (emphasis in original).

21.

On or about February 2004 and September 2004, during custody hearings with Juvenile Judge Tarey B. Schell in Pike County, Judge Schell issued verbal orders, in clear absence of all jurisdiction, that Mr. Johnson take down his website.

22.

On or about February 2004 and September 2004, during custody hearings the Special Assistant to the Prosecutor, Tammy Griner, acting on behalf of DFACS, instructed Mr. Johnson to refrain from further posting to his website.

23.

On September 14, 2004, Mr. O'Neill had his attorney – Mr. Jack L. Park, Jr. – send a letter to Mr. Johnson threatening legal action in response to Mr. Johnson's postings at <http://www.angelfire.com>. The letter stated:

Be advised that slander is the "uttering of a misleading or untruthful statement about a third person with the intention of damaging that person or their reputation". Please be further advised that libel is "a false and malicious defamation of another, expressed in print, writing, pictures, or signs, ending to injure the reputation of the person and exposing him to public hatred, contempt or ridicule".

If you do not cease and desist posting false and malicious information at the above-named website regarding Mr. O'Neill's family and his professional integrity as an attorney I will initiate proceedings and seek actual and punitive damages including attorney's fees in an amount to punish you, and to deter you, from like conduct in the future.

Govern yourself according[ly].

Exhibit B.

24.

On October 4, 2004, Ms. Boggs sent a letter to Mr. Johnson threatening legal action in response to Mr. Johnson's postings at <http://www.angelfire.com>.

The letter stated:

Be advised that slander is the "uttering of a misleading or untruthful statement about a third person with the intention of damaging that person or their reputation". Please be further advised that libel is "a false and malicious defamation of another, expressed in print, writing, pictures, or signs, ending to injure the reputation of the person and exposing him to public hatred, contempt or ridicule".

If you do not cease and desist posting false and malicious information at the above-named website regarding Susan Boggs and my professional integrity as a Supervisor with the Department of Family and Children Services I will initiate proceedings through my attorney and seek actual as well as punitive damages including the attorney's fees in an amount to punish you, and to deter you, from like conduct in the future.

Exhibit C.

25.

On December 2, 2004, Mr. Park, again on behalf of Mr. O'Neill, sent another letter to Mr. Johnson. Again, this letter categorized Mr. Johnson's website as the dissemination of false and malicious information and threatened legal action.

Exhibit D.

26.

On September 13, 2004, Mr. O'Neill signed an oath before Magistrate Killingsworth stating that he believed Mr. Johnson was a threat to the safety of others predicated solely "on the following facts: Johnson, Stephen Lee did post on a website made [sic] false and malicious statements against my family." Exhibit E (emphasis in original).

27.

Predicated solely on the website allegation, Magistrate Killingsworth set a probable cause hearing for September 21, 2003.

28.

On September 21, 2004, Magistrate Killingsworth issued "Order of Arrest" based only on "cause made known to me in the above affidavit" (concerning the website) and: "COMMANDED to arrest the body of Johnson, Stephen Lee" and further that upon arrest, plaintiff be subjected to "a JUDGE OF THIS COURT to be dealt with as the law directs. Herein fail not." Exhibit A (emphasis in original).

29.

As of the filing of this Complaint, plaintiff has not yet been arrested or prosecuted, and no criminal proceedings have begun, however, the Order of Arrest and threat of prior restraint force plaintiff to either forgo his free expression and remove his website (or some undefined portions thereof), or expose himself to arrest and an undefined criminal sanction.

CLAIMS FOR RELIEF

30.

Plaintiff re-alleges all the within and foregoing allegations for each and every claim for relief.

31.

The Order of Arrest is an impermissible restriction of free speech in violation of Mr. Johnson's rights to freedom of speech under the First and Fourteenth Amendments of the United States Constitution, the privileges and immunities, due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution, and Article I, § 1, ¶¶ I, II, V, VI, VII, IX of the Georgia Constitution.

32.

Mr. Johnson's protest website is protected speech as it is neither libelous nor defamatory. However, even if the speech were libelous or defamatory, ordering the removal of this speech from a website, preventing future statements and issuing an order for arrest is unconstitutional because such speech may not be enjoined. Singer Mfg. Co. v. Domestic Sewing Machine Co., 49 Ga. 70, 72 (Ga. 1873) ("[l]ibel and slander, however illegal and outrageous, will not be enjoined").

33.

Indeed, courts traditionally find that the grant of injunctive relief against libel or defamation infringes constitutionally guaranteed freedom of speech by setting up what would be a system of judicial censorship.

34.

Further, the verbal threats and commands for Mr. Johnson to remove his website and refrain from further posting are acts of censorship and unconstitutional prior restraints of Mr. Johnson's speech as they sought not only to freeze, but to forever bar, Mr. Johnson from freely expressing his views on the Internet. See Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 71 (1963) (discussing that any system of prior restraint bears a heavy presumption against constitutional validity).

35.

Judge Tarey B. Schell acted in clear absence of all jurisdiction when he verbally ordered Mr. Johnson to remove his website during custody hearings in both the February 2004 and September 2004 custody hearings.

36.

Similarly, Magistrate Killingsworth acted in clear absence of all jurisdiction when authorizing the Order of Arrest based on Mr. Johnson's website. Thus, the

defendants, and all persons, acting in concert therewith, should be enjoined from enforcing said order.

PRAYERS FOR RELIEF

Wherefore, on the basis of the foregoing, Plaintiff prays that this Court:

(1) Issue an order declaring null and void Defendants' actions, policies, and procedures, embodied in Order of Arrest and prior restraint, to the extent that they criminalize expressive speech which is protected under the free expression and petition clauses of the First and Fourteenth Amendments of the United States Constitution, the privileges and immunities, due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution, and Article I, § 1, ¶¶ I, II, V, VI, VII, IX of the Georgia Constitution.

(2) Enjoin all Defendants, their officers, agents, successors, employees, attorneys, and those acting in concert therewith, from enforcing the Order of Arrest and prior restraint.

(3) Grant to Plaintiff actual and nominal damages against Defendants Susan Boggs, Tammy Griener, Magistrate Pricilla Killingsworth, Charles O'Neill, and Judge Tarey B. Schell in an amount reasonable and commensurate with the losses imposed upon him by Defendants' unlawful acts;

(4) Grant reasonable attorneys' fees and expenses as permitted by law; and

(5) Grant such other and further relief as may be necessary or proper.

DATED: This the ___ day of April, 2005.

Respectfully submitted,

Gerald Weber, Legal Director

Georgia Bar No. 744878

Elizabeth Littrell

Georgia Bar No. 454949

Margaret F. Garrett

Georgia Bar No. 255865

ACLU of Georgia Foundation
70 Fairlie Street, S.W., Suite 340
Atlanta, Georgia 30303
(404) 523-6201