

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION**

MICHAEL T. FLYNN,

Plaintiff,

v.

JIM STEWARTSON, et al.,

Defendants.

Case No.: 2023 CA 004264 NC

Division C Circuit

**PLAINTIFF'S MOTION FOR SANCTIONS ARISING FROM DEFENDANT'S
ANTI-SLAPP FEE MOTION**

Plaintiff, Michael T. Flynn, by and through undersigned counsel, hereby moves this Honorable Court to impose sanctions pursuant to Fla. Stat. § 57.105, including the award of Plaintiff's reasonable attorneys' fees and costs, against Defendant, Jim Stewartson, and his attorneys, George Thurlow, Craig Whisenhunt, Rahdert, Mortimer & Thurlow, and Ripley Whisenhunt, PLLC. In support thereof, Plaintiff states as follows.

1. "The central purpose of section 57.105 is, and always has been, to deter meritless filings and thus streamline the administration and procedure of the courts." *Davis v. Bailyson*, 268 So. 3d 762, 769 (Fla. 4th DCA 2019) (quoting *Mullins v. Kennedy*, 847 So. 2d 1151, 1154 (Fla 5th DCA 2003)). Fla. Stat. § 57.105 requires a court to award attorneys' fees where the opposing party or counsel knew, or should have known, that a claim or defense: (a) was not supported by the material facts necessary to establish the claim; or (b) would not be supported by the application of then-existing law to those facts. A party must

make reasonable efforts to determine whether a position is supported by fact and law before asserting it. *See Bowen v. Brewer*, 936 So. 2d 757, 762 (Fla. 2d DCA 2006). Fla. Stat. § 57.105 does not require a party seeking fees to show “the complete absence of a justiciable issue of either law or fact,” but, rather, permits fees to be recovered for any claim or defense that is insufficiently supported. *Infiniti Employment Solutions, Inc. v. MS Liquidators of Arizona*, 204 So. 3d 550, 553 (Fla. 5th DCA 2016).

2. On February 29, 2024, Defendant filed a Motion to Tax Costs and Attorneys’ Fees pursuant to Fla. Stat. § 768.295 (“Anti-SLAPP Fee Motion”) in response to the Court’s Order on Defendant’s motion to dismiss on January 30, 2024. DIN 94.

3. The Anti-SLAPP Fee Motion mistakenly and fatally relies upon the argument that Defendant is/was the “prevailing party” in this action pursuant to Florida’s anti-SLAPP statute, Fla. Stat. § 768.295. However, this Court did not dismiss General Flynn’s claims against Defendant pursuant to Florida’s anti-SLAPP statute. Therefore, Defendant cannot be considered the prevailing party, and the Anti-SLAPP Fee Motion is not supported by existing law, making Defendant’s continued prosecution of same sanctionable.

4. General Flynn’s Second Amended Complaint brought two counts against Defendant: (1) Defamation and defamation *per se* regarding fourteen different statements; and (2) injurious falsehood. DIN 59. Defendant moved to dismiss the Second Amended Complaint in its entirety. On January 30, 2024, the Court granted in part and denied in part Defendant’s motion to dismiss.

5. In the Anti-SLAPP Fee Motion, Defendant argues that because he moved under Florida’s anti-SLAPP statute, and the Court struck ten allegations from Count I for defamation, and otherwise dismissed Count II for injurious falsehood, he is the prevailing party under the anti-SLAPP statute. The facts and law do not support this argument.

6. Florida Statute § 768.295(4) states, in relevant part, that “A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section ... The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.” (emphasis added). The plain language of Florida Statute § 768.295(4) requires that the Court make an express finding that the lawsuit violated the statute. *See id.*; see also *McCloud v. State*, 260 So. 3d 911, 914 (Fla. 2018) (collecting cases: “If the statute is ‘clear and unambiguous,’ then this Court does not look beyond the plain language or employ the rules of construction to determine legislative intent—it simply applies the law.”). Courts interpreting this statute have arrived at the same conclusion.

7. In *Wentz v. Project Veritas*, the Middle District of Florida denied fees under Florida’s anti-SLAPP statute because the case was dismissed on alternative grounds. No. 6:17-cv-1164, 2019 WL 4621069, at *2 (M.D. Fla. Jul. 19, 2019), *report and recommendation adopted*, 2019 WL 4600964 (M.D. Fla. Sept. 23, 2019). The court found that a party is not entitled to anti-SLAPP fees simply by raising it as a defense. *Id.* Instead, there must be a “ruling as to its

applicability.” *Id.* An entitlement to fees in such a scenario, where there is no ruling on the statute’s applicability, “runs contrary to its express language.” *Id.* (citing *Berisha v. Lawson*, 378 F. Supp. 3d 1145, 1157 (S.D. Fla. 2018)).

8. Likewise, in *100PlusAnimalRescue, Inc. v. Butkus*, the Southern District of Florida held:

Here, the undersigned finds that Plaintiffs are not entitled to fees under the anti-SLAPP statute. *Defendant raised the anti-SLAPP statute* in both her motion to dismiss and her motion for summary judgment. However, after reviewing the transcript on the motion to dismiss, the order denying Defendant's motion for summary judgment, and the order entering judgment in favor of Plaintiffs, *the undersigned finds that no ruling was made in regard to the anti-SLAPP statute.*

...

Further, the Court's ruling on the motion to dismiss stated that the motion to dismiss was denied because Plaintiffs’ Second Amended Complaint satisfied the pleading standard. In other words, *the Court did not explicitly rule that Plaintiffs’ action did not violate the anti-SLAPP statute.*

Likewise, when examining the Court's Order on Defendant's Motion for Summary Judgment, the Court expressly stated that the “Court need not draw upon the supplemental remedies of the Florida anti-SLAPP statute as the Federal Rules of Civil Procedure—Rule 56—provide an adequate framework for expeditiously resolving the issues raised in Plaintiffs’ Second Amended Complaint.” The Court then proceeded to conduct a Rule 56 analysis and no ruling in regard to the anti-SLAPP statute was made.

Therefore, the undersigned finds that Plaintiffs are not the prevailing party under the anti-SLAPP statute because the Court rendered no such ruling. Thus, the undersigned recommends that Plaintiffs are not entitled to attorneys’ fees and costs.

No. 17-cv-61893, 2021 WL 4635819, at *2-3 (S.D. Fla. June 14, 2021), *report and recommendation adopted*, 2021 WL 5883110 (S.D. Fla. Dec. 13, 2021) (emphasis added).

9. In *Lee v. Animal Aid, Inc.*, the Fourth District Court of Appeal found that “there must be an express finding by the trial court that the petitioner’s suit violated the Anti-SLAPP statute for the defendant to be entitled to fees under section 768.295(4).” 388 So.3d 25, 30 (Fla. 4th DCA 2024). The court concluded that because the defendant “did not have the merits of the Anti-SLAPP claim adjudicated at the trial court,” the defendant was not entitled to fees under the anti-SLAPP. *Id.* Because there was no ruling on the anti-SLAPP, the defendant was not the prevailing party under the statute. *Id.* See also *Barrett v. North Broward Hosp.*, 2024 WL 3886813 (Broward Cnty. Cir. Ct. Aug. 15, 2024) (holding that “before attorneys’ fees can be granted under the anti-SLAPP statute a trial court must grant a dispositive motion on the merits in which the anti-SLAPP statute was raised with a specific finding the anti-SLAPP statute was violated.”).

10. In this action, Defendant moved under Florida’s anti-SLAPP statute, but the Court did not dismiss any of General Flynn’s claims pursuant to the anti-SLAPP.

11. In dismissing Count II for injurious falsehood, the Court ruled:

The Court dismisses Count 2 of the Second Amended Complaint in its entirety based on General Flynn’s failure to allege special damages. *This dismissal is under the normal four-corners analysis.* As injurious falsehood seeks damages for damage to property, the Court concludes that allowing amendment would be futile as the allegations here are more traditionally considered defamation. For that reason, the Count 2 dismissal is with prejudice with no leave to amend.

DIN 75 at 11–12 (emphasis added). The Court neither made an explicit finding that General Flynn’s injurious falsehood count violated Florida’s anti-SLAPP

statute, nor dismissed General Flynn's injurious falsehood count pursuant to Florida's anti-SLAPP statute as required under the law. Therefore, Defendant cannot be considered the prevailing party for purposes of entitlement to fees under Florida's anti-SLAPP statute for the dismissal Count II.

12. As to Count I for defamation, the Court held:

The Court dismisses that portion of Count 1 of the Second Amended Complaint based on, *and otherwise strikes, the following allegations*: 46a, 46b, 46c, 46d, 46e, 46f, 46g, 46h, 46k, 46m, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 85, 87, 88, 89, 92, 93, 94, 95, and 96. The dismissal and striking of these allegations is required by the anti-SLAPP statute as construed by Gundel and its progeny.

Id. at 12 (emphasis added). Rather than dismissing Count I pursuant to Florida's anti-SLAPP statute, the Court struck specific allegations. Accordingly, Count I for defamation survived dismissal with the remaining allegations and was not otherwise dismissed pursuant to Florida's anti-SLAPP statute - this matter proceeded through discovery and pretrial based upon Count I.

13. In the same Order, this Court made separate and specific findings and rulings as to Defendant Wilson, where the Court explicitly found there was a violation of Florida's anti-SLAPP statute and dismissed all **claims** (not merely allegations) against him:

Defendant Wilson's Motion to Dismiss or in the Alternative Motion for Summary Judgment Pursuant to Section 786.265, Florida Statutes [DIN 63] is granted. The Court grants Mr. Wilson's motion both under the anti-SLAPP procedure established by section 786.265 as well as the "normal" summary judgment procedure under rule 1.510.

Id. at 11.

14. As noted above, there was no such explicit dismissal of **claims**

against Stewartson pursuant to the Anti-SLAPP statute.

15. Based on the foregoing, the Anti-SLAPP Fee Motion is entirely devoid of merit. Instead, it is abundantly clear that Defendant is pressing forward with his baseless motions for fees for improper purposes. On the day General Flynn voluntarily dismissed his claims, Defendant directed a post on X toward General Flynn, stating: “@GenFlynn this is not the end of anything. You tried to bully me and blinked. *We’re not done.* DefendSpeechNow.org.” (emphasis added).¹ In doing so, Defendant promoted his own 501(c)(4), attempting to raise money for his organization. The next day, Defendant posted: “Now that Q dropped his lolsuit, I’m trying to figure out how much of a dick I should be about it. There are a range of opportunities to really embarrass some people who deserve it. Anyway, here are 14 true things you can now say about Mike Flynn—worry free!”² And after General Flynn received a settlement in a separate litigation, Defendant posted: “Make sure he doesn’t spend it all Jesse. *I’m coming for it.*” (emphasis added).³ Defendant continued: “As General Crybaby Mike Flynn takes a victory lap over his \$1.2M hush money payment from DOJ, I’d like to remind everyone that it is TOTALLY LEGAL to say these 14 true things about him. @GenFlynn you’re going to pay my lawyers with that money. *And that’s just the beginning.*” (emphasis added).⁴

¹ Jim Stewartson (@jimstewartson), X (Mar. 11, 2026, at 4:02 PM), <https://x.com/jimstewartson/status/2031823197772136944>.

² Jim Stewartson (@jimstewartson), X (Mar. 12, 2026, at 5:51 PM), <https://x.com/jimstewartson/status/2032212821254213744>.

³ Jim Stewartson (@jimstewartson), X (Mar. 26, 2026, at 8:59 AM), <https://x.com/jimstewartson/status/2037152337828212744>.

⁴ Jim Stewartson (@jimstewartson), X (Mar. 29, 2026, at 1:02 PM),

16. It is clear that Defendant is not pursuing fees for any proper purpose, but rather, to harass General Flynn, continue to churn viewership, achieve notoriety from his involvement in this litigation, and raise money for his own organizations. Such purposes are improper and sanctionable.

17. Pursuant to Fla. Stat. § 57.105(4), Plaintiff served this Motion upon Defendant and Defendant's counsel and provided the required twenty-one (21) day safe harbor period prior to filing. Defendant has failed to withdraw his frivolous motion during that period.

WHEREFORE, Plaintiff, Michael T. Flynn, respectfully requests that this Court issue an order: (1) Granting this Motion; (2) Awarding General Flynn his attorneys' fees and costs incurred defending the Anti-SLAPP Fee Motion; Finding that Defendant and his counsel are jointly and severally liable for General Flynn's attorneys' fees and costs; and (4) Granting any other relief this Court deems proper.

Dated: April 29, 2026

Respectfully submitted,

/s/ Stephen B. French
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2026, I have caused a true and accurate copy of the foregoing to be delivered to counsel of record via e-filing.

/s/ Stephen B. French
Stephen B. French
(Fl. Bar No. 0078761)

Counsel for Michael T. Flynn