

**IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA**

MICHAEL T. FLYNN,

Appellant,

v.

Case No.: 2D24-0278

L.T. No.: 2023-CA-004264 NC

RICK WILSON,

Appellee.

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**RESPONSE IN OPPOSITION TO APPELLANT'S
MOTION FOR REHEARING**

Appellee, Rick Wilson, by and through its undersigned counsel, and pursuant to Florida Rule of Appellate Procedure 9.330(a), hereby submits this Response in Opposition to Appellee's Motion for Rehearing (hereinafter "the Motion") and states as follows:

Florida Rule of Appellate Procedure 9.330(a) requires a party moving for rehearing to, in relevant part, "state with particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its decision..." (Emphasis added). This Court has repeatedly stressed that motions for rehearing directed to this Court are overused, if not abused. *Lowe Investment Corporation v. Clemente*, 685 So.2d 84, 85 (Fla. 2d DCA 1996) (*citing Whipple v. State*, 431 So.2d 1011

(Fla. 2d DCA 1983); *Jackson v. United States Aviation Underwriters, Inc.*, 466 So.2d 1119, 1119-1120 (Fla. 2d DCA 1985). Judge Blue explained,

The motions seem to spring from a belief among some attorneys that this court failed to understand the arguments, ignored those same arguments, or worse, failed to consider the arguments. *None of these beliefs are valid*, but certain advocates seem to believe one of the above is the only explanation for their loss on appeal.

Lowe, 685 So.2d at 85. (Emphasis added). Moreover, the Court has stated time and again that,

Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court *that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind* as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

Whipple v. State of Florida, 431 So.2d 1011, 1013 (Fla. 2d DCA 1983) (citing to *State v. Green*, 105 So.2d 817 (Fla. 1st DCA 1958) (emphasis added); see also, *Lowe*, 685 So.2d at 86; *Anderson v. State*, 532 So.2d 4, 6 (Fla. 2d DCA 1988) (stating, “motions for rehearing should be filed only after careful, objective analysis and should not be used merely to reargue the merits of the court’s decision or express displeasure with its judgment.”); and, *Parker v. Baker*, 499 So.2d 843, 847 (Fla. 2d DCA 1986).

Here, the Motion does little more than express displeasure with the ruling. Flynn raises a number of baseless issues. Flynn argues that, “the Court assumes facts not in evidence”, but the Court relied on the voluminous record to contextualize the two tweets (a total of seven words) that are at issue here. Op. at 12.

Flynn thinks the Court, “placed too much emphasis on *Herring*.” (See, p. 3 of the Rehearing Motion). The Court clearly cited, understood and properly applied the case law. Op. at 12-14.

The argument concerning actual malice is completely unavailing. The Court considered this argument and rejected it. The summary judgment record completely undermines Flynn’s unsupported claims in this regard. Op. 14.

Finally, Flynn argues that this Court did not complete anti-SLAPP analysis. But the Court found, “we find no error in the trial court’s determinations that Flynn’s lawsuit against Wilson lacked merit and that it was brought ‘primarily’ because of Wilson’s exercise of his First Amendment Rights.” Op. 17. The record supports the finding that this lawsuit lacked merit and that it was brought primarily because of Mr. Wilson’s exercise of his First Amendment Rights.

The Court understood the importance of the constitutional rights implicated and the magnitude of political dialogue at play. Florida’s Anti-SLAPP law prohibits abuse of the legal process in precisely the circumstances presented by this case. This is a textbook violation of both Florida law and the U.S. Constitution’s First Amendment. The Florida Legislature intended to safeguard and protect these sacred statutory and constitutional rights---“Like it or not”. Op. 17.

CONCLUSION

Accordingly, for all of the foregoing reasons, Appellee Wilson respectfully requests that this Court deny Appellee’s Motion for Rehearing in its entirety without further comment or hearing.

Respectfully submitted this December 20, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to the following via electronic mail on December 20, 2024.

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