

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

Michael T. Flynn,  
Plaintiff,

v.

Case No.: 2023 CA 004264 NC

Jim Stewartson,  
Rick Wilson,  
MeidasTouch, LLC,  
Defendants.

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**DEFENDANT STEWARTSON'S MOTION TO TAX COSTS AND ATTORNEY'S  
FEES**

Defendant, JIM STEWARTSON, by and through his undersigned attorneys, hereby moves this Court for entitlement to his attorney's fees and costs incurred in the filing and adjudication of the Motion to Dismiss the Complaint (DIN 21), Motion to Dismiss Plaintiff's Amended Complaint (DIN 25), and Motion to Dismiss Plaintiff's Second Amended Complaint (DIN 62), and in support thereof states as follows:

**I. PROCEDURAL HISTORY**

1. On June 30, 2023, Defendant filed a Motion to Dismiss the Complaint (DIN 21) under Florida's anti-SLAPP statute (Fla. Stat. § 768.295).
2. Subsequent to the filing of that Motion to Dismiss, Plaintiff filed an Amended Complaint on July 13, 2023 (DIN 23).
3. The Amended Complaint did not cure any of the issues alleged in the Motion to Dismiss the Complaint; rather, it was filed to add Rick Wilson as a Defendant and change the amount of alleged damages.
4. Subsequent to the filing of the Amended Complaint, Defendant filed a more in-depth Motion to Dismiss Plaintiff's Amended Complaint (DIN 25) under Florida's anti-SLAPP law on August 1, 2023.

5. On November 3, 2023, before this Court had an opportunity to hear Defendant's Motion to Dismiss Plaintiff's Amended Complaint, Plaintiff filed a Motion for Leave to Amend (DIN 37) to file a Second Amended Complaint. Like the previous amendment, Plaintiff did not cure any of the issues alleged in Defendant's Motion to Dismiss Amended Complaint but rather utilized amendment as a method to add another Defendant (MeidasTouch LLC) and change the amount of alleged damages.
6. On December 19, 2023, this Court held a hearing on Plaintiff's Motion for Leave to Amend, Defendant Stewartson's Motion to Dismiss the Amended Complaint, and Defendant Wilson's Motion to Dismiss and/or for Summary Judgment. Ultimately, this Court granted Plaintiff's Motion for Leave to Amend (DIN 55) without adjudicating the other Motions (DIN 58).
7. After this Court granted Plaintiff's Motion for Leave to Amend, Plaintiff filed its Second Amended Complaint on December 26, 2023 (DIN 59).
8. Shortly after Plaintiff filed the Second Amended Complaint, Defendant filed its Motion to Dismiss the Second Amended Complaint (DIN 62).
9. On January 19, 2024, this Court heard oral argument from counsel on Defendant's Motion to Dismiss Second Amended Complaint
10. On January 30, 2024, this Court entered an Order Granting in Part and Denying in Part Defendant's Motion to Dismiss Second Amended Complaint (DIN 75).
11. Specifically, this Court's order dismissed the case for defamation and defamation *per se* with prejudice under Florida's anti-SLAPP law as it pertains to ten (10) of the fourteen (14) alleged defamatory statements made by Defendant. The Court also dismissed the count of Injurious Falsehood in the Second Amended Complaint with prejudice.

**II. FLORIDA'S ANTI-SLAPP LAW REQUIRES THE AWARD OF ATTORNEY'S FEES AND COSTS**

12. Fla. Stat. § 768.295(4) states that “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.”
13. Thus, the award of reasonable attorney’s fees and costs to the prevailing party on a Motion made under Fla. Stat. § 768.295(4) is compulsory, and is not dependent on the discretion of the Court.

**III. DEFENDANT IS THE PREVAILING PARTY ON ITS MOTIONS TO DISMISS.**

14. For the purposes of this Motion, the Court must determine whether the Defendant is the prevailing party under the Court’s Order.
15. Based on this Court’s order, Plaintiff clearly violated Fla. Stat. § 768.295 in that it filed a lawsuit against Defendant because Defendant had exercised his free speech.
16. While some of Plaintiff’s claims against Defendant remain pending, this does not change the fact that Plaintiff was in violation of Fla. Stat. § 768.295 as it pertains to the allegations pertaining to the ten statements that were dismissed with prejudice.
17. When there is a statutory entitlement to attorney’s fees, such as under Fla. Stat. § 768.295, the prevailing party is the party that has prevailed on the significant issues of the case. *Moritz v. Hoyt Enters.*, 604 So. 2d 807, 810 (Fla. 1992).
18. In the Florida Supreme Court’s adoption of the “significant issues” test, it referenced the U.S. Supreme Court’s recitation of a similar test as being whether a party “succeeded on **any** significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” *Id.*, citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (emphasis added).

19. The Second District has ruled that the “significant issues” test applies to whether a party prevailed on any significant issues, and not whether the party prevailed on all significant issues. *Hayward Baker, Inc. v. Westfield Ins. Co.*, 313 So. 3d 772, 774-75 (Fla. 2d DCA 2020).
20. While not dispositive, in federal courts, a party is entitled to an award of fees if it prevails on achieves some but not all relief sought in a multi-count complaint. That is because the United States Supreme Court ruled that as long as that party prevails on **any significant issue** and receives **some** of the relief sought, the party is considered a prevailing party and is entitled to attorney’s fees. *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 789 (1989). Under this standard, it is not even necessary that the party prevail on the central issue and achieve the primary relief sought. *Id.*
21. While parts of this case are still pending, the Defendant prevailed on obtaining the dismissal of Plaintiff’s claims regarding ten (10) out of fourteen (14) alleged defamatory statements in Count I of the Second Amended Complaint, and the dismissal with prejudice of Count II of the Amended Complaint. This included all issues pertaining to Defendant’s commentary that Plaintiff was associated with QAnon, was associated with Russia and its government, attempted to interfere in the 2016 Presidential election, and was disloyal to the United States. Defendant prevailing on these issues means that he prevailed on significant issues in the litigation, and received some of the relief sought.
22. Notably, at this stage of the proceedings, the Plaintiff did not prevail on any significant issues. All that the Plaintiff managed to accomplish in its defense of this Motion was to survive a Motion to Dismiss on a few of its voluminous allegations in the Complaint.
23. Because the Defendant obtained a judgment in its favor as a result of this Court’s order, Defendant is entitled to be awarded his costs. *Wolfe v. Culpepper Constructors, Inc.*, 104 So. 3d 1132 (Fla. 2d DCA 2012).

WHEREFORE, Defendant JIM STEWARTSON respectfully requests that this Court grant him entitlement to his attorney's fees and costs pursuant to Fla. Stat. § 768.295(4), set an evidentiary hearing to determine the amount of reasonable attorney's fees and costs, and grant Defendant any other relief that this Court deems proper and just.

Dated: February 29, 2024

**/s/ Craig A. Whisenhunt**  
Craig A. Whisenhunt, Esquire  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and proper copy of the foregoing document was served upon all counsel of record via Florida E-Filing Portal and MeidasTouch LLC via US Mail on this 29th day of February, 2024.

**/s/ George K. Rahdert**

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