

IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NUMBER: 4D18-1221
L.T. CASE NUMBER: 2013-001321-CA

MAGGY HURCHALLA,
Appellant,

v.

LAKE POINT PHASE I, LLC,
and
LAKE POINT PHASE II, LLC,
Florida Limited Liability Companies,
Appellees,

**THE GUARDIANS OF MARTIN COUNTY, INC.'S
AMICUS CURIAE BRIEF
IN SUPPORT OF THE APPELLANT, MAGGY HURCHALLA**

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CONCISE STATEMENT OF IDENTITY AND INTEREST IN THE CASE

THE GUARDIANS OF MARTIN COUNTY, INC. (the “Guardians”) is a Florida corporation not for profit and designated under IRS section 501c3 as a charitable organization. The corporation has been incorporated for more than 9 years. Its principal corporate location is in Hobe Sound, Martin County, Florida. Its directors have always been residents (permanent or seasonal) of Martin County. The Appellant Maggy Hurchalla and a witness in the trial, Nathaniel P. Reed, are both shown on the Guardians’ letterhead as Honorary Advisors. The Guardians is run by an independent voting Board of Directors and neither Maggy Hurchalla nor Nathaniel Reed are on the Board of Directors.

As a 501c3 nonprofit, the Guardians regularly engages in nonpartisan analysis, study or research and making its results available to the general public or segment of members thereof. The nonpartisan analysis may and does often, advocate a particular position or viewpoint but only after a sufficiently full and fair exposition of the pertinent facts. This enables the public, or an individual, to form an independent opinion or conclusion.

The Guardians are uniquely interested in this case, as its directors, officers, agents and members are part of the group of citizens who, through their taxes, fund the contracts entered into by the SFWMD and Martin County. The payments to be made under the settlements entered into by the SFWMD and Martin County, are going to be paid in large part by these citizens. Their interest is direct not derivative.

The Guardians regularly use and employ experts/consultants in matters involving land zoning and comprehensive land use plan enforcement and interpretation, as well as matters that are environmental, including wetland designation and water quality.

These issues are complex and often driven by expert/consultant opinions which can vary widely, pro or con, depending on the uniqueness of the project. It is not unusual for experts/consultants, within the same discipline, within the same organization or same governmental agency, to hold differing opinions. All land development projects involve extremely large investments of money and high expectations of future profits. The governmental denial of any project always causes economic loss to the applicant.

SLAPP suits and WHIP litigation tactics are by design, intended to intimidate, harass and punish Private Citizens, Witnesses, Consultants, Experts, Advocates

and organizations like the Guardians. In this specific case, Maggy Hurchalla and Nathaniel Reed were victims of these tactics and they were members of the Guardians.

As a 501c3 nonprofit, the Guardians is available to and is prepared to respond to a governmental body's or committee's written request for technical advice on public topics and private projects. Government agencies and elected officials need this ability to interact with citizen funded nonprofits. Elected Officials need the option to have nonpartisan citizen groups gather data and analyze controversial projects and contracts. But the Trial Court's decision in this case on appeal, has had a "chilling effect" on any concerned citizen or non-profit group of citizens, speaking up or interacting with any government board or official.

Therefore, The Guardians of Martin County have a direct and substantial interest in the outcome of this appeal.

SUMMARY OF ARGUMENT

1. "SLAPP" SUITS

"Strategic Lawsuits Against Public Participation" a/k/a "SLAPP" suits (whether titled "Tortious interference with an Advantageous Business Relation" or whatever) are an unconstitutional and unethical use of the Judicial System as a weapon to deprive citizen defendants of their constitutional rights. The Court as the Gatekeeper of the Courthouse, has the duty and the power to protect citizens from this abuse.

2. "WHIP" LITIGATION TACTICS

"Witness Harassment Intimidation and Punishment" a/k/a "WHIP" litigation tactics are an unconstitutional and unethical use of the Court system as a weapon against non-party witnesses or persons who are close or related to a party and deprive the citizen witnesses or persons of their constitutional rights. The Court as the Gatekeeper of the Courthouse, has the duty and the power to protect these citizens from this abuse.

3. EMERGING LITIGATION/MEDIATION TACTICS

There are emerging litigation/mediation tactics with governmental agencies which are designed to shield and secret governmental activities from public view. Governmental agencies and Public Officials who have acted wrongfully, seek out and use the litigation privilege to meet in secret to settle litigation out of the view of the public. Similarly, Governmental agencies and Public Officials enter into mediated settlement agreements which contain confidentiality agreements which shield them from the Public view. The Court should not be a participant in this practice.

4. FREEDOM OF OPINION/SPEECH

Freedom of speech subsumes freedom of opinion. Spoken and written opinions of a citizen or citizen group which challenges the application or enforcement of governmental rules and violation of those rules by other citizens, is protected speech. There is no requirement that the opinions be correct. There is no requirement that the opinion be based on facts. There is no requirement that the opinions be offered in good faith. When simply offering a negative opinion about the government and any other citizen engaging with the government or conducting business with the government, the complaining citizen's right to criticize or to offer a negative opinion is fundamental.

5. FREEDOM TO ASSOCIATE WITH GOVERNMENT OFFICIALS

Freedom to associate, interact and speak with public officials and governmental employees is absolute. Similarly, the method of speech (oral or written /electronic or in person) is protected and the Citizen is not required to keep a record or recording of those communications.

6. CITIZEN AS THE REAL PARTY TO LAND/WATER USE CONTRACT

The citizen is the real party in interest in any governmental contract with a third party relating to land use and land development, as well as water use and water quality. Government acts only for the benefit of its citizens. Government does not act for the benefit of government or the benefit of government officials. The citizen or the citizen group has the right to oppose third party contracts entered into or to be entered into by their Elected Officials. Citizens have the right of review and

inspect of all information used to make determinations and to hear, see and participate in all debate, discussion and negotiations of their public officials. The citizen has the right to compel the proper performance of all contracts and offer opinions freely about the poor performance or breach of the contract. Thus, Government acts as the Trustee and Fiduciary of the citizens and on their behalf. Citizens are thereby exempt from a claim of interfering with a contract to which they are a party and a contract which is solely for their benefit.

7. SALE OF PUBLIC WATER

The sale of public water, held in trust for the citizens of the State of Florida, by a private entity is forbidden. Governmental agencies cannot purchase water for public use from a private entity that has taken public water from the citizens of Florida.

ARGUMENT

Many of these issues and arguments are intertwined within the Appellant's Brief and within other Amicus Briefs, so the Guardians will not restate those arguments. The Guardians are compelled to address the WHIP tactics used against Mr. Nathaniel Reed by the Appellee and its law firm. Nathaniel P. Reed was an 84-year resident (seasonal and permanent) of Jupiter Island, Martin County, Florida. He received his Bachelor's degree from Trinity College in Connecticut. He served honorably as an officer in the United States Air Force. He devoted most of his adult life to public service and personally advocating for the environment in Florida and throughout the United States. He served as the United States Assistant Secretary of the Interior under two U.S. Presidents. He served as the Special Assistant to the Governor of the State of Florida for the Environment. He had been a member of the Governing Board of The South Florida Water Management District. He had been an officer and director of numerous environmental Non-profit organizations including the National Audubon Society, the Nature Conservancy, the National Resources Defense Council, and 1000 Friends of Florida.

Mr. Reed was widely known and regarded as an expert in matters involving the South Florida eco-system, the Everglades and Florida State water quality.

Mr. Reed had also had the unique experience of managing and directing a private water company which provided water to Jupiter Island and South Martin County, Florida.

Mr. Reed had known the Appellant, Maggy Hurchalla and been her friend for many decades. Nathaniel P. Reed and Maggy Hurchalla were both shown on The Guardians of Martin County, Inc.'s letterhead as Honorary Advisors to The Guardians. Both are recipients of numerous awards and honors from State and National Non-profits for their efforts to protect the environment and the natural resources.

In short, Mr. Reed was a citizen. The very best kind of citizen.

Mr. Reed was not a party to litigation involving the Appellees, Lake Point Phase I & II, but he was directly and intentionally targeted for harassment, intimidation and punishment by the Appellee and its lawyers. Mr. Reed had been voicing his concern and opposition to Lake Point's plan to divert water belonging to the citizens of the State of Florida to its mining site and for Lake Point to then sell it back to the City of West Palm Beach. Mr. Reed had been voicing his concerns that the SFWMD had a secret meeting with Lake Point and as a result of that meeting, SFWMD then agreed as part of their law suit settlement to support Lake Point's efforts to obtain State water and sell it back to governmental agencies. Mr. Reed held the opinion that the Sale of State water is illegal. For that reason, Lake Point used "WHIP" litigation tactics against him to coerce his silence. But Mr. Reed would not be silenced. So, Attorney Loeb subpoenaed Mr. Reed for a deposition. Mr. Reed appeared voluntarily and without the assistance of legal counsel. Months after the deposition and in advance of trial, Mr. Loeb wrote and sent Mr. Reed a letter. Mr. Loeb shared the letter with his law partners who were copied on the letter but Mr. Loeb did not share the letter or copy the letter to the opposing lawyers in the litigation.

In the letter Mr. Loeb threatened Mr. Reed with perjury in an attempt to get Mr. Reed to change his deposition testimony to support Lake Point. Mr. Reed refused and wrote a letter back to Mr. Loeb telling him that he stood by his testimony.

These 2 letters are exhibits in the record and part of a motion filed by Maggy Hurchalla to sanction the Appellee and their Lawyers for their use of these kinds of unethical tactics. When presented to the Trial Court, it did nothing. (see the Record Entry #R-5095-5165 and #R-5166-5250). The Trial Court did absolutely nothing.

That single refusal of the Trial Court to protect an innocent nonparty witness and to refuse to discipline a litigant and an unethical lawyer, sent a chill through the Guardians' leadership.

But that chill was just the beginning and the verdict against the Appellant destroyed faith that the Judicial system would protect citizens.

Mr. Reed died July 3, 2018.

CONCLUSION AND RELIEF REQUESTED

Using the Court as a weapon against citizens exercising their Constitutional rights is sanctionable. This Court is duty bound to Protect the rights of the citizens and to control the litigants and the lawyers who come before the Court. The Litigation in the lower court was instituted and maintained in bad faith. It was knowingly continued for malicious purposes. It was a fraud on the Judicial system. As such, all pleadings of the Appellee it should be declared void from the inception and stricken. The parties should be returned to their original positions as of the date of the original filing.

The Guardians respectfully request that this Court issue a written opinion that is bold, direct and specific and that it address and confirm the Constitutional rights and protections of citizens and citizen groups like the Guardians. That it condemn in the strongest terms “SLAPP” suits and “WHIP” litigation tactics.

Further that this Court direct the Chief Judge of the Nineteenth Circuit to dismiss the case of the Appellee with prejudice. That the Chief Judge of the Nineteenth Circuit reverse and vacate the Final Judgement against the Appellant and that the Jury verdict be set aside. That the Appellee and its Lawyers be required to reimburse the Appellant all of her Attorney fees and costs and that a final judgement in her favor be entered.

Lastly that this Court refer the unethical actions of the Appellee’s attorneys to The Florida Bar.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed through the Florida eDCA Portal and served via electronic mail on counsel of record listed below this 19th day of September, 2018.

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I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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