

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL
CIRCUIT IN AND FOR OSCEOLA COUNTY, FLORIDA**

KAILYN LOWRY,

Case No. 2021-CA-1817 OC

Plaintiff,

v.

**BRIANA SOTO p/k/a/BRIANA
DEJESUS,**

Defendant.

/

**ORDER GRANTING DEFENDANT'S ANTI-SLAPP
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court at the March 29, 2022, hearing on the Defendant's "Anti-SLAPP Motion for Summary Judgment under Fla. Stat. §768.295," and the Court having reviewed the court filings, heard argument of counsel and being otherwise duly advised in the premises, orders and adjudges as follows:

Factual Background

1. This case arises out of alleged defamatory statements made by Defendant, Briana Soto ("Soto"), about Plaintiff, Kailyn Lowry ("Lowry"), in a June 8, 2021, Instagram post and an "Instagram Live"¹ presentation on the same date.
2. Both Soto and Lowry are featured on an MTV reality series called "Teen Mom 2" which follows the lives of young women who gave birth as teenagers as they navigate through

¹ Instagram Live allows a user to post unedited video content in real time which can be viewed by the creator's followers. The original broadcast cannot be viewed again unless it is saved to the creator's "story." If so, it will "disappear" 24 hours after it was aired unless it was also saved to a computer hard drive or a camera roll. If the content was saved within 24 hours, then it can be re-posted on other platforms and viewed in perpetuity. Anyone with access to the creator's "story" has the ability to save to content. This particular broadcast can still be found on the internet.

the early years of motherhood. In addition to their notoriety from Teen Mom 2, both parties are actively involved with other media outlets. Both, for example, have extensive Instagram followers (with Lowry having over 4 million followers and Soto having more than 1 million). Lowry is also a New York Times best selling author and podcast host while Soto is a social media influencer.

3. The parties have been engaged in a feud since 2017 for various matters unrelated to the legal issues involved in this case and which will not be addressed here.
4. The relevant statements generally involve Soto commenting on why Lowry did not appear on an episode of Teen Mom 2. Lowry alleges Soto defamed her by claiming she (Lowry) broke into the home where the father of her children resided (Chris Lopez) and battered him².
5. In response to Lowry's one count Complaint for defamation, Soto filed a motion for summary judgment which raises two theories for dismissal: a) failure to comply with the pre-suit notice requirements of Fla. Stat. §770.01; and b) violation of Florida's "Anti-SLAPP" statute, Fla. Stat. 768.295, which prohibits so-called "strategic lawsuits against public participation." Each theory will be discussed below.

Fla. Stat. §770.01

6. Fla. Stat. §770.01 provides as follows:

Before any civil action is brought for publication or broadcast, in a newspaper, periodical, or other medium, of a libel or slander, the plaintiff shall, at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false or defamatory.

² Lowry was, in fact, arrested for an alleged physical altercation involving Mr. Lopez and the incident was widely reported in various newspapers and entertainment blogs although no charges were filed.

7. It is undisputed that Lowry did not give Soto notice before filing her defamation case and the issue before the Court is was Lowry required to do so.
8. Analysis of the notice requirement focuses on the form of the alleged defamatory content (newspaper, periodical, or “other medium”) and whether the defendant qualifies as a “media defendant” as opposed to “private party.”
9. With respect to the form of the statements at issue, there is little doubt an Instagram Live broadcast could qualify as “other medium,” and thus trigger the pre-suit notice obligation under 770.01. Courts have concluded a variety of internet-based communication qualifies as “other medium” that would require pre-suit notice. See, e.g., Comins v. Vanvoorhis, 135 So. 3d 545 (Fla. 5th DCA 2014), involving an internet blog; Alvi Armani Medical, Inc. v. Hennessey, 629 F. Supp. 2d. 1302 (S.D. Fla. 2008), involving an internet website; and Five for Entertainemtn, S.A. v. Rodriguez, 877 Fed. Supp. 2d. 1821 (S.D. Fla. 2012), where the court held any internet content could be considered “other medium” while focusing on whether the Defendant was a “media defendant.”
10. Because Instagram Live can be considered “other medium” for purposes of pre-suit notice, the key issue here is whether Soto qualifies as a “media defendant” which would mandate pre-suit notice from Lowry before filing the defamation lawsuit.
11. When determining who or what constitutes a “media defendant” courts have focused on whether the defendant “engages in the traditional function of the news media, which is to initiate uninhibited, robust and wide-open debate on public issues.” Mazur v. Ospina Baraya, 275 So. 3d 812, 817 (Fla. 2nd DCA 2019). Even though the “other medium” language in 770.01 can expand to cover new

information technologies (such as blogs and Instagram Live), the statute does not expand its reach beyond news media. See, e.g., Plant Food Sys., Inc. v. Irey, 165 So. 3d 859, 861 (Fla. 5th DCA 2015) (holding that “an internet publisher of various purportedly scientific, technical, and medical journals and information” was covered by section 770.01); Comins, 135 So. 3d at 559 (holding that a blog was covered by section 770.01 and noting that “many blogs and bloggers will fall within the broad reach of ‘media’ ” because many blogs have “primarily an informational purpose” and “usually provide … for public impact or feedback”).

12. Unlike the Defendant in Comins, however, who ran a blog in order to “publicly comment on issues of public concern,” and was thus more akin to traditional news media, Soto’s Instagram live posts relate only to her personal life and involvement with the Teen Mom 2 show. While Soto will comment on others involved in her life, and who may be affiliated with Teen Mom 2 (like the statements at issue here), the main focus of the broadcasts relate only to Soto, which does not qualify her as a “media defendant.” Accordingly, the Court rules that pre-suit notice under 770.01 was not required under the facts presented here.

Anti-SLAPP - Fla. Stat. §768.295

13. Generally, anti-SLAPP statutes are designed to protect rights of free speech and prevent people from using courts to intimidate people from exercising their right of free speech.

14. In Florida, §768.295 specifically protects “free speech in connection with public issues” which is defined, in part, as “any written or oral statement that is protected under applicable law and … is made or in connection with a play, movie, television

program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.” (emphasis added). Because the statements at issue relate to the Teen Mom 2 television show, analysis under anti-SLAPP is appropriate.

15. When analyzing an anti-SLAPP motion, the initial burden is on the SLAPP defendant to set forth a prima facie case that the anti-SLAPP statute applies; upon doing so, the burden shifts to the claimant to demonstrate that the claims are not primarily based on First Amendment rights in connection with a public issue and not without merit. Baird v. Mason Classical Academy, Inc., 317 So. 3d 264 (Fla. 2nd DCA 2021).
16. Here, because the statements at issue relate to a television show, Soto has met her burden that the anti-SLAPP statute applies. As such, the burden shifts to Lowry to demonstrate the claims are not primarily based on First Amendment rights with a public issue and not without merit. Under the facts presented here, she is unable to do so.
17. There are two statements at issue: 1) the Instagram written post and 2) the Instagram Live broadcast, both published on or about June 8, 2021. The written post cannot be considered defamatory because, as a matter of law, it contained protected speech regarding opinion or was factually accurate. With respect to alleged criminal conduct, the statement reads: “This was back when a child’s hair was cut and she was allegedly arrested after getting into a physical altercation with her baby daddy.” There is nothing defamatory about this statement because Lowry was, indeed, arrested for “allegedly” having a physical altercation with Chris

Lopez. The balance of the statement deals with matters related only to Soto or her opinions about things related to Teen Mom 2 and cannot be considered defamatory in nature.

18. The Instagram Live post, which lasts less than eleven minutes, primarily consists of Soto's opinions on various topics such as the nature of her relationship with Lowry and others on the Teen Mom 2 show, why certain footage was used over other footage on an episode, and why Lowry no longer wants to film about her "true life" on the show.
19. The essence of the alleged defamatory statement on the Instagram Live broadcast consists of the following statement: "... Kail did not want to film about the situation with the domestic violence, about her getting arrested, about her breaking and entering in Kail's mom, I mean into Chris's mom's house. She didn't want to film about her hitting Chris, because Chris cut her son's hair. She doesn't want to film about any of that."
20. As mentioned above, Lowry was arrested for a claim she battered Lopez in his mother's house related to her child's haircut. The mere addition of Soto's statement about "breaking and entering" does not change the gist of the statement that Lowry had been arrested. It was widely publicized that Lowry had been arrested for domestic violence and Soto's comments on the issue were substantially true. The damage to Lowry's reputation, if any, had already occurred when the incident was publicized by news media.
21. As a limited public figure, Lowry must also establish the statements were made with actual malice. To do so, she must prove by clear and convincing evidence that

Soto either knew the alleged defamatory statements were false, or published them with reckless disregard despite awareness of their probable falsity. Mile Marker, Inc. v. Petersen Publishing, LLC, 811 So. 2d 841, 845 (Fla. 4th DCA 2002). In doing so, a public figure plaintiff must provide proof that the defendant had a “high degree of awareness of … probable falsity” of their statements. Garrison v. Louisiana, 379 U.S. 64, 74 (1964). Lowry has provided insufficient evidence to establish by clear and convincing evidence that Soto knew, with a high degree of awareness, that her statements were false.

22. As mentioned above, Soto’s reference to breaking and entering did nothing to change the fact that Lowry was in fact arrested for domestic violence, and did not enhance the sting of previous publications about Lowry’s arrest. Lowry’s claim that Soto’s source of the information that Lowry broke into the house (Mr. Lopez) was unreliable does little to establish that Soto knew, with a high degree of awareness, the claim was false.

23. Even if the isolated statement regarding “breaking and entering” can be considered defamatory, there is insufficient evidence to establish that Soto knew the statement was false at the time it was made. As a matter of law, Lowry has not met her burden regarding the issue of malice.

Accordingly, it is Ordered and Adjudged as follows:

1. Soto’s Motion for Summary Judgment is hereby granted.
2. The case is hereby dismissed and Judgment is entered in favor of Soto and against Lowry.

3. The Court reserves jurisdiction to consider the issue of entitlement to attorneys' fees and the amount of same.

Done and Ordered in chambers this 18th day of April, 2022.

Robert Egan

Robert Egan, Circuit Judge

E-filed on April 18, 2022