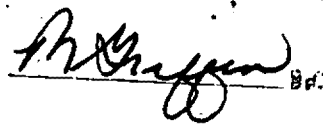


IN THE EIGHTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

2018 OCT 31 PM 3:30

STEPHEN R. ROBERTS, CLERK



THOMAS NATHAN LOFTIS, SR., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RANDY RAYBURN, )  
 )  
 Defendant. )

Case No. 17C-295  
On Remand From:  
M2017-01502-COA-R3-CV

ORDER AWARDING ATTORNEY'S FEES

This matter is before this Honorable Court upon remand from the Tennessee Court of Appeals for a determination of the amount of attorney's fees, if any, to be awarded to the Defendant, Randy Rayburn. *Loftis v. Rayburn*, No. M2017-01502-COA-R3-CV, 2018 WL 1895842, at \*13 (Tenn. Ct. App. Apr. 20, 2018). Pending before this Court is Defendant's Motion to Award Reasonable Attorney's Fees and Costs pursuant to Tenn. Code Ann. § 29-20-113 and Tenn. Code Ann. § 20-12-119(c).

On July 19, 2017, this Court entered a Final Order dismissing Plaintiff's, Thomas Nathan Loftis, Sr., Amended Complaint with prejudice for failing to state a claim upon which relief could be granted. *See* Tenn. R. Civ. P. 12.02(6). On April 20, 2018, the Tennessee Court of Appeals affirmed the trial court's decision in granting Defendant's Motion to Dismiss Plaintiff's claims for defamation by implication or innuendo and false light invasion of privacy.

On appeal, Defendant argued that he is entitled to attorney's fees pursuant to Tenn. Code Ann. § 29-20-113(a). This statute provides, in relevant parts, that if a claim is filed

"...against an employee of the State or of a governmental entity of the State in the person's individual capacity, and the claim arises from the actions or omissions of the

employee acting in an official capacity or under color of law, and that employee prevails, then the court on motion shall award reasonable attorney's fees and costs incurred by the employee in defending the claim".

Defendant further argued, in the alternative, that he is entitled to be awarded the mandatory fee set forth under Tenn. Code Ann. § 20-12-119(c). Tenn. Code Ann. § 20-12-119(c)(1), provides, in relevant parts, that,

"...Notwithstanding subsection (a) or (b), in a civil proceeding, where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion was granted the cost and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties".

Tenn. Code Ann. § 20-12-119(c)(4) provides "Notwithstanding any other provision of this section, the court shall not require a party to pay costs under this section in excess of a combined total of ten thousand dollars (\$10,000.00) in any single lawsuit." *Id.*

The Court of Appeals found that there was no finding by the trial court as to the Defendant's status in this matter. Therefore, "due to the absence of findings about Defendant, Mr. Rayburn's status under Tenn. Code Ann. §29-20-113(a) and the dictates of Tenn. Code Ann. §20-12-119(c)", the Tennessee Court of Appeals remanded the issue of the amount of attorney's fees, if any, to be determined by the trial court. Slip opinion, *Loffis*, 2018 WL 1895842, at 10.

Therefore, this Court, having heard arguments by both parties on October 19, 2018, upon reviewing the motions, and responses filed in opposition, the Order from the Court of Appeals of Tennessee, and all evidence presented, finds Defendant, Mr. Rayburn, is entitled to a reasonable

and necessary attorney's fee award pursuant to Tenn. Code Ann. § 20-12-119(c) in the total amount of Ten Thousand Dollars (\$10,000.00).

It is therefore, **ORDERED, ADJUDGED, AND DECREED** that pursuant to Tenn. Code Ann. § 20-12-119(c)(1)(4) Defendant, Mr. Rayburn, is hereby awarded **TEN THOUSAND DOLLARS (\$10,000.00)** as reasonable and necessary attorney's fees, for which execution may issue, if necessary.

It is further **ORDERED, ADJUDGED, AND DECREED** that court costs shall be taxed to the Plaintiff:

It is so **ORDERED**.

Enter on this 31<sup>st</sup> day of October, 2018.

  
\_\_\_\_\_  
KELVIN JONES, JUDGE

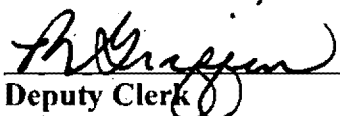
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order has been mailed by U.S. Mail, postage prepaid to:

W. Gary Blackburn, Esq.  
Bryant Kroll, Esq.  
213 Fifth Avenue North, Suite 300  
Nashville, TN 37219

Daniel A. Horwitz, Esq.  
1803 Broadway, Suite 531  
Nashville, TN 37203

On this 31<sup>st</sup> day of October, 2018.

  
\_\_\_\_\_  
Deputy Clerk