

STATE OF VERMONT

SUPERIOR COURT
Lamoille Unit

CIVIL DIVISION
Docket No. 22-CV-3376

ROBERT GRUNDSTEIN,
Plaintiff

v.

ELIZABETH KRUSKA,
Defendant

DECISION ON MOTIONS

Plaintiff filed a claim against Defendant for defamation based on content she wrote in a blog post. Defendant responded with a Motion for Leave to File a Motion to Strike (#1), seeking an extension to file a Motion to Strike (an anti-SLAPP motion), which by statute must be filed within 60 days of the filing of the case; as Defendant was not served until more than 60 days after filing she could not do so within the time required. Defendant simultaneously filed a Motion to Strike (#2) on the grounds that the complaint is barred by 10 V.S.A. § 1041(a), Vermont's anti-SLAPP statute.

The anti-SLAPP statute is intended to provide protection against "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and freedom to petition government for the redress of grievances." 2005, No. 134 (Adj. Sess.), § 1(1). The statute authorizes a defendant who was sued due to, or in anticipation of, the exercise of those rights, "in connection with a public issue," to file a special motion to strike the lawsuit at the outset of the case. 12 V.S.A. § 1041(a).

Defendant also filed a Motion to Dismiss (#3) on grounds of (a) insufficiency of service of process under V.R.C.P. 12(b)(5) since service on Defendant was beyond the 60-day deadline required by Rule 3(a) of the Rules of Civil Procedure, and (b) failure to state a claim under V.R.C.P. 12(b)(6) alleging failure to set forth a prima facie case of defamation as a matter of law.

On January 5, 2023 Plaintiff filed an Opposition to the Motion to Strike, a Motion for Defendant to withdraw the anti-SLAPP claim under Rule 11(c)(1)(b)¹(#4), and a Motion (#5) seeking a declaration that the Anti-SLAPP statute is unconstitutional because it shifts the burden of proof to Plaintiff to prove his case prior to discovery and also eliminates a plaintiff's right to a jury trial by calling for a court ruling on motion before trial. Plaintiff did not file a response substantively addressing Defendant's Motion to Dismiss.

¹ The court interprets this as reliance on Rule 11(c)(1)(B), seeking Rule 11 procedure on the court's initiative, as there is no Rule 11(c)(1)(b).

On January 31, 2023, Defendant supplemented the Motion to Dismiss seeking dismissal on the additional basis that no opposition to the motion was filed. V.R.C.P. 7(b)(4) states:

Any party opposed to the granting of a written dispositive motion, including a motion for summary judgment under Rule 56, shall file a memorandum in opposition thereto not more than 30 days after service off the motion, unless otherwise ordered by the court.

Defendant's Motion to Dismiss was originally filed December 22, 2022. No response was filed within 30 days, and none has been filed to date.

Analysis

The record shows that Defendant is entitled to dismissal on grounds of insufficiency of service. Plaintiff was responsible for completing service within 60 days of filing. V.R.C.P. 3(a). The complaint was filed on September 23, 2022. Defendant was not served until December 5, 2022. No motion to extend the time for service was filed pursuant to V.R.C.P. Rule 6(b) either before or after the service deadline. Thus, grounds for dismissal on this basis have been shown.

Defendant also alleged a second basis for dismissal, which was failure to state a claim upon which relief can be granted under V.R.C.P. 12(b)(6). Defendant argued that the content of the blog post did not set forth a false and defamatory statement as required to support a claim for defamation but simply reported on a Vermont Supreme Court decision. Plaintiff did not respond to this argument. Even if his multi-part filing on January 5, 2023 on other issues (described above) is generously reviewed for a response on this issue, despite no indication that it was intended as such, Plaintiff has not addressed Defendant's argument or pointed to any alleged "false and defamatory statement" that appears in the blog post.

A Motion for Dismissal is a dispositive motion. Defendant filed a supplement on January 31, 2023 arguing that since there had been no opposition filed within 30 days, Defendant was entitled to dismissal pursuant to V.R.C.P. 7(b)(4). Since that filing, nothing more has been filed.

Defendant is therefore entitled to dismissal on grounds of both insufficiency of service of process and lack of opposition to Defendant's Motion to Dismiss.

Order

For the reasons set forth above, the Motion to Dismiss (#3) is *granted*, and the case is dismissed. Motions 1, 2, 4, and 5 are therefore *moot*.

Electronically signed March 28, 2023 pursuant to V.R.E.F. 9 (d).



Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned