DOC. NO.: X06-UWY-CV-21-5028294-S	:	SUPERIOR COURT
NANCY BURTON	:	JUDICIAL DISTRICT OF WATERBURY
v.	:	COMPLEX LITIGATION DOCKET
DAVID PHILIP MASON, ET AL.	:	MAY 1, 2024

MEMORANDUM OF DECISION RE MOTION FOR SUMMARY JUDGMENT #460

On April 21, 2021, the plaintiff, Nancy Burton, filed this action against numerous defendants, including Elinore Carmody. In the operative pleading, the fifth amended complaint filed on April 12, 2022,[1] the plaintiff alleges the following facts that are germane to the motion for summary judgment that is currently before this court. The plaintiff resided on property located at 147 Cross Highway in Redding for thirty-five years. Throughout her lifetime, the plaintiff became involved in numerous environmental causes including the anti-nuclear power movement. In furtherance of this objective, the plaintiff adopted many goats and began testing their milk in order to ascertain their radioactivity. After adopting her goats, however, the plaintiff began experiencing problems with certain neighbors such as Carmody and her husband Dennis

[1] The current state of the record makes it difficult to determine the operative complaint. On April 12, 2022, the plaintiff filed her fifth amended complaint. This court granted a motion to strike certain counts from this complaint on July 22, 2022. Thereafter, on August 22, 2022, the plaintiff filed a motion to file a late substitute complaint along with a proposed substitute complaint. The court initially granted the plaintiff permission to file same on October 25, 2022, however, by order dated January 11, 2023, the court noted that the plaintiff's substitute complaint did not comply with Practice Book § 10-44 in that it was not "accompanied by a document showing the additions and deletions made to the previous filing." Accordingly, the court ordered the plaintiff to file a new substitute complaint that complied with the Practice Book by January 23, 2023. Although the plaintiff has since filed two more versions of her complaint, neither of these complaints complied with the court's order or the requirements of the Practice Book. For that reason, the court will consider the April 12, 2022 complaint to be operative in this matter. Notably, Carmody also directed her summary judgment motion to this iteration of the plaintiff's complaint.

Gibbons. The plaintiff alleges that these individuals started to harass her and complain about the presence of the goats on her property.

Specifically, in count one sounding in defamation, the plaintiff alleges that on July 22, 2020, Susan Winters[2] posted an article online titled "Goats: an ongoing issue" that was "replete with malicious and unfounded falsehoods targeting plaintiff in a reckless character assassination and relying on false and malicious statements provided by the defendant Carmody." The plaintiff additionally alleges that "[d]efendant Carmody and Winters have widely and publicly circulated and published false and defamatory screeds targeting plaintiff, accusing her falsely . . . of 'using the law to break the law' . . . ." Furthermore, the plaintiff alleges that Carmody "[i]nstigat[ed] publication of defamatory falsehoods about plaintiff and the goats as published on online social media channels operated by . . . Winters to incite negativity and malice and discourage goat adoptions." Although the plaintiff previously alleged multiple causes of action against Carmody, only the defamation claim found in count one remains active in the case.[3] In response to the plaintiff's defamation cause of action, Carmody raises the following four special defenses: (1) truth; (2) collateral estoppel; (3) the statements are protected by the first amendment because the plaintiff is a public figure; and (4) qualified immunity.

After the publication of the allegedly defamatory statements, the state instituted an action pursuant to General Statutes § 22-329a seeking an order of custody of the plaintiff's goats. Following a hearing, the court, *Cobb, J.*, issued a decision granting the relief requested by the

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[2] Although she was originally also a defendant in this case, on October 12, 2021, the court granted Winters' motion to dismiss on the basis of improper service of process.

[3] On November 29, 2022, the court granted a motion to strike all the remaining counts alleged against Carmody. After the plaintiff failed to file a substitute complaint that complied with the Practice Book, the court granted a motion for judgment on the stricken counts on March 5, 2023. The plaintiff's appeal of this decision was dismissed by the Appellate Court for lack of a final judgment as to Carmody on July 26, 2023.

state. *State* v. *Sixty-Five Goats*, Superior Court, judicial district of Hartford, Docket No. CV-21-6139702-S (April 9, 2021, *Cobb, J.*).[4] In particular, Judge Cobb explicitly found "that while in the . . . care [of the plaintiff in this matter], the sixty-five goats were in imminent harm, and were neglected and cruelly treated by the [plaintiff]. The court, therefore, determines that the [s]tate has met its burden to establish reasonable cause to find that the animals' condition and the circumstances surrounding their care . . . require that temporary care and custody continue to be assumed by the [s]tate to safeguard the goats' welfare." Although the plaintiff certainly disagrees with the substance of this ruling, it remains a binding order of the court at the present time.

On August 21, 2023, Carmody filed a motion for summary judgment along with a memorandum of law in support of her motion. The plaintiff filed her objection and memorandum of law in opposition to the summary judgment motion on October 27, 2023. Carmody filed a reply memorandum on November 1, 2023. The parties have filed numerous exhibits in support of their respective pleadings, and these exhibits will be specifically referenced only as necessary in this memorandum of decision. On April 15, 2024, the court heard oral argument on the motion for summary judgment and the plaintiff's opposition thereto.

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414–15, 195 A.3d 664 (2018). "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way. . . .

[4] This case was subsequently transferred to the Waterbury Complex Litigation Docket, and it currently has a docket number of X06-UWY-CV-21-6064254-S.

[A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party. . . . [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant*, the trier of fact could not reasonably reach any other conclusion than that embodied in the verdict as directed." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Dugan* v. *Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003). "[T]he genuine issue aspect of summary judgment requires the parties to bring forward before trial evidentiary facts, or substantial evidence outside the pleadings, from which the material facts alleged in the pleadings can warrantably be inferred. . . . A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Citation omitted; internal quotation marks omitted.) *Buell Industries, Inc.* v. *Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002). "[T]he party moving for summary judgment . . . is required to support its motion with supporting documentation, including affidavits." (Internal quotation marks omitted.) *Romprey* v. *Safeco Ins. Co. of America*, 310 Conn. 304, 324 n.12, 77 A.3d 726 (2013). "The existence of the genuine issue of material fact must be demonstrated by counteraffidavits and concrete evidence. . . . If the affidavits and the other supporting documents are inadequate, then the court is justified in granting the summary judgment, assuming that the movant has met his burden of proof." (Internal quotation marks omitted.) *Rivera* v. *CR Summer Hill, Ltd. Partnership*, 170 Conn. App. 70, 74, 154 A.3d 55 (2017).

In her memorandum of law in support her summary judgment motion, Carmody argues that she is entitled to judgment as matter of law on count one because there is no genuine issue of material fact that any purportedly defamatory comments attributed to her regarding the plaintiff's mistreatment of her goats are true. According to Carmody, any statements she allegedly uttered

against the plaintiff are, at the very least, substantially true, and as a result, they are not actionable. Carmody argues that the truthfulness of her comments regarding the plaintiff's mistreatment of the goats is established by Judge Cobb's decision, which the plaintiff contends is entitled to collateral estoppel effect.[5] The plaintiff responds by arguing that Carmody made comments in at least two publications that were outright false and hence defamatory.[6] Moreover, the plaintiff asserts that Carmody cannot rely on the defense of collateral estoppel because: (1) the issues in this case were not fully and fairly litigated and actually decided in the prior action before Judge Cobb; (2) the issues addressed are not identical; (3) the proceedings before Judge Cobb "fell short of an actual judicial fact-finding proceeding" and were "unfairly abbreviated";

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[5] Carmody also raises the alternative argument that because the plaintiff is a public figure, the "actual malice" standard for bringing a defamation claim set forth in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964) applies to this case. The plaintiff disagrees that she qualifies as a public figure. As stated by the United States Supreme Court: "Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life. It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 352, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974). Consequently, as a general rule, "[w]here the parties have presented conflicting evidence as to the nature and extent of the plaintiff's participation in the controversy giving rise to the defamation . . . the plaintiff's public figure status is an issue of fact for the jury." *Wilkinson* v. *Schoenhorn*, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X03-CV-96-0499266-S (April 10, 2001, *Aurigemma, J.*). Given this fact intensive standard, based on the current state of the record, the court cannot conclude, as a matter of law, that the plaintiff is a public figure and hence Carmody could only be found liable for defamation if she acted with actual malice.

[6] In her summary judgment opposition, the plaintiff also asserts that Carmody made defamatory statements to former state senator Will Haskell that were repeated in a letter dated January 28, 2021, from Haskell to the Commissioner of the state Department of Agriculture, Bryan Hurlburt. There are no such allegations in count one of the complaint or any of the paragraphs incorporated by reference into count one. "[T]he principle that a plaintiff may rely only upon what he has alleged is basic. . . . It is fundamental in our law that the right of a plaintiff to recover is limited to the allegations of his complaint." (Emphasis omitted; internal quotation marks omitted.) *Monetary Funding Group, Inc.* v. *Pluchino*, 87 Conn. App. 401, 414, 867 A.2d 841 (2005). Accordingly, the court will not consider this argument when adjudicating the motion for summary judgment.

(4) Judge Cobb's decision is currently on appeal; and (5) Carmody was not a party to the prior proceeding before Judge Cobb and she is not in privity with the other party in that case, the state Department of Agriculture.[7]

"At common law, [t]o establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement. . . . A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him . . . . But it is not enough that the statement inflicts reputational harm. To be actionable, the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion." (Citation omitted; internal quotation marks omitted.) *NetScout Systems, Inc.* v. *Gartner, Inc.*, 334 Conn. 396, 410, 223 A.3d 37 (2020).

"[F]or a claim of defamation to be actionable, the statement [at issue] must be false . . . . In other words, a defendant cannot be held liable for defamation if the statement at issue is substantially true." (Citation omitted; internal quotation marks omitted.) *Gerrish* v. *Hammick*, 198 Conn. App. 816, 830, 234 A.3d 1095 (2020). "Moreover, [c]ontrary to the [common-law] rule that required the defendant to establish the literal truth of the precise statement made, the modern rule is that only substantial proof need be shown to constitute the justification. . . . [Thus] [i]t is not necessary for the defendant to prove the truth of every word of the libel. If he succeeds in proving that the main charge, or gist, of the libel is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by

[7] The plaintiff also asserts that Carmody cannot rely on the defense of collateral estoppel because it was not specially pleaded. This statement is incorrect, however, because Carmody does allege the special defense of collateral estoppel in her answer.

itself actionable. . . . Importantly, if a defendant moves for summary judgment on a defamation count and there exists no genuine issue of material of fact as to whether the alleged defamatory statement is substantially true, then it is appropriate for the trial court to enter summary judgment in favor of the defendant." (Citation omitted; internal quotation marks omitted.) Id., 830-31.

In her complaint and summary judgment opposition, the plaintiff points to two publications as the potential sources of defamatory comments made by Carmody. Sequentially, the first is an article published by Winters on July 22, 2020, in a local newsletter named "Hello Redding." This article titled "Goats: An Ongoing Issue" highlights the plaintiff's purported mistreatment of her goats and the attendant problems the plaintiff's actions have caused in the neighborhood. Notably, there are virtually no statements directly attributed to Carmody in this article.[8] Rather, the bulk of the publication is Winters offering her observations on the health of the goats and the effect they are having on Carmody's property and surrounding neighborhood.

The second publication cited by the plaintiff is a letter to the editor authored by Carmody dated September 27, 2020, that also purportedly appeared in "Hello Redding." In this editorial, Carmody does complain that the plaintiff has been manipulating the legal system to thwart the town of Redding's effort to enforce a cease-and-desist order to limit the plaintiff to having nine goats on her property. Carmody also states that "[t]he conditions these goats live under is appalling. They lack shelter, many appear to be dehydrated, and have severe, painful deformities. They forage to supplement their inadequate feeding and hydration. As it is unlikely they have any veterinary care, they most likely carry infectious diseases." Carmody further notes the deleterious consequences the plaintiff's goats are inflicting on her property, and she then

[8] The allegation found in paragraph forty-five of the complaint that Carmody has falsely accused the plaintiff of "using the law to break the law" is a statement actually made by the author Winters, not Carmody, in this article.

encourages members of the community to become involved and comment on a Facebook page so that their opinions can be forwarded to certain public officials.

A review of the two articles referenced by the plaintiff reveals that the statements made therein are either nonactionable opinions or at the very least substantially, if not literally, true. As previously noted, Judge Cobb has already found that the plaintiff mistreated her goats to such an extent that it warranted their removal from the plaintiff's care to the custody of the state. Indeed, Judge Cobb's decision explicitly supports most of Carmody's comments on the health of the plaintiff's goats in that Judge Cobb found that: (1) the plaintiff "did not provide the goats with proper or adequate shelter"; (2) "[w]hen state investigators conducted a surveillance of the property over a two-day period, one noted she did not see the [plaintiff] provide any food or water at any time;" and (3) the plaintiff "allowed at least one goat to die on the property without proper care or treatment nor did she provide the goat with a proper or humane death."

Moreover, Judge Cobb's decision is entitled to collateral estoppel effect. "Collateral estoppel . . . is that aspect of res judicata which prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim. . . . Collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be relitigated between the same parties in any future lawsuit. . . . Issue preclusion arises when an issue is actually litigated and determined by a valid and final judgment, and that determination is essential to the judgment. . . . Collateral estoppel may be invoked against a party to a prior adverse proceeding or against those in privity with that party." (Internal quotation marks omitted.) *Wells Fargo Bank, N.A.* v. *Doreus*, 218 Conn. App. 77, 84, 290 A.3d 921, cert. denied, 347 Conn. 904, 297 A.3d 198 (2023). "Before collateral estoppel applies [however] there must be an identity of issues between the prior and subsequent proceedings. To invoke collateral

estoppel the issues sought to be litigated in the new proceeding must be identical to those considered in the prior proceeding. . . . In other words, [i]n order for collateral estoppel to apply . . . there must be an identity of the issues, that is, the prior litigation must have resolved the same legal or factual issue that is present in the second litigation." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Corcoran* v. *Dept. of Social Services*, 271 Conn. 679, 689-90, 859 A.2d 533 (2004). At least one Superior Court judge in this state has previously utilized collateral estoppel to bar a plaintiff's claims when the truth of the statements at issue had already been determined in a prior proceeding. *Vaneck* v. *Countrywide Home Loans Corp.*, Superior Court, judicial district of Middlesex, Docket No. CV-04-4001571-S (January 11, 2006, *McWeeny, J.*) (stating that "[t]he plaintiff's CUTPA claim arises out of the alleged defamatory reports made by [the defendant] to credit reporting agencies. Collateral estoppel has established the truth of such assertions and thus they are not defamatory and cannot be the basis of a CUTPA claim.").

The application of the collateral estoppel doctrine is appropriate here because the issue presented in the case before Judge Cobb was whether the animals at issue were "neglected or cruelly treated . . . ." General Statutes § 22-329a (g) (1). Judge Cobb's determination that the plaintiff's goats had indeed been neglected by her establishes that any allegedly defamatory statements made by Carmody were, in fact, substantially true. Moreover, all the other arguments raised by the plaintiff in an attempt to avoid the application of collateral estoppel are unavailing. In this state, "a prior judgment in another case maintains its preclusive effect even pending appeal of that judgment . . . [therefore] the Superior Court . . . ordinarily [is] required to apply the principles of collateral estoppel . . . notwithstanding . . . pending appeals . . . ." (Footnote omitted.) *Barash* v. *Lembo*, 348 Conn. 264, 277-78, 303 A.3d 577 (2023). For that reason, it is

of no moment that Judge Cobb's decision is currently on appeal,[9] and the court also will not entertain the plaintiff's repeated arguments that the proceedings before Judge Cobb were unfair because it is well established that "[f]inal judgments are . . . presumptively valid . . . and collateral attacks on their validity are disfavored."[10] (Internal quotation marks omitted.) *Gibson* v. *Jefferson Woods Community, Inc.*, 206 Conn. App. 303, 308, 260 A.3d 1244, cert. denied, 339 Conn. 911, 261 A.3d 747 (2021). Furthermore, it does not matter that that Carmody was not a party to the proceedings before Judge Cobb because "[u]nder Connecticut law, mutuality of parties is not a prerequisite to the invocation of collateral estoppel. . . . [Defensive collateral estoppel] occurs when a defendant in a second action seeks to prevent a plaintiff from relitigating an issue that the plaintiff had previously litigated in another action against the same defendant or a different party. . . . It is well established that privity is not required in the context of the defensive use of collateral estoppel . . . ." (Citations omitted; internal quotation marks omitted.) *Doyle* v. *Universal Underwriters Ins. Co.*, 179 Conn. App. 9, 15, 178 A.3d 445 (2017). Accordingly, for all of these reasons, the court concludes that collateral estoppel applies here.

As there is no genuine issue of material fact that any purportedly defamatory statements made by Carmody were substantially true, and "the rule in Connecticut is that the truth of the allegedly defamatory statement of fact provides an absolute defense"; *Crismale* v. *Walston*, 184 Conn. App. 1, 18, 194 A.3d 301 (2018); Carmody is entitled to judgment as a matter of law on the defamation cause of action alleged against her. Therefore, the court grants Carmody's motion for summary judgment.

BY THE COURT,

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[9] According to the Judicial Branch website, the appeal in *State* v. *Sixty-Five Goats* was argued on March 5, 2024, and a decision is pending. (AC 45710.)

[10] Although Judge Cobb's April 9, 2021 order was only temporary in nature, this court subsequently issued a final judgment in favor of the state on June 22, 2022.

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Bellis, J.