

Georgia Trial Court Limits the Protection of Georgia's Anti-SLAPP Statute

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A recent opinion from the DeKalb County State Court, currently certified for appeal with the Supreme Court of Georgia, included a reminder that the protections afforded by Georgia's anti-SLAPP statute have limits. Georgia's anti-SLAPP statute, O.C.G.A. § 9-11-11.1, provides judicial protection to, among other things, media stories related to government investigations, as well as to all speech related to petitioning a government entity for redress. But earlier this month, the DeKalb court clarified that a media story unrelated to a current governmental investigation does not fall under the ambit of anti-SLAPP protection even if that story is the basis of a later investigation. In the same vein, a news story aimed at generating ratings, readership, etc., likely cannot double as a petition to the government for redress, and again is not afforded protection under O.C.G.A. § 9-11-11.1. Stemming from an incident in Texas in 2012, Fox 5 Atlanta ran numerous investigative pieces related to the allegation that a veteran, Shane Ladner, lied about receiving a Purple Heart. At the time, Ladner was not under investigation by any government entity, though Fox 5's stories led to subsequent governmental inquiries. Ladner sued Fox 5 for defamation, and the company sought the protection of Georgia's anti-SLAPP statute. Fox 5 argued that the pieces qualified under the statute for two reasons. First, it argued that the pieces could be construed as petitions to the government for redress, as they questioned whether government action should be taken. Second, it argued that because law enforcement eventually did investigate the matter—the pieces related to that investigation. But the trial court rejected those arguments and concluded that O.C.G.A. § 9-11-11.1 did not apply. The key factor appeared to be the timing: no government investigation into Ladner's Purple Heart existed at the time Fox 5's investigative pieces first ran. So, even though the pieces spawned a later investigation, they were not related to any existing investigation when they aired. And, the court concluded, since Fox 5 aired the pieces because "it was a sensational story" and not "to prompt official action," they could not be construed as direct petitions to the government for redress. The case is certified for appeal with the Georgia Supreme Court. Whether the State's

highest court takes the case remains to be seen. But, for now, it serves as a reminder that not all publications implicating the government are afforded anti-SLAPP protection.

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