

May 2020

Court Tosses Confederate-Statue Supporter's Claim for Lack of Personal Jurisdiction

By Joe Slaughter

A Louisiana publication will not have to face a defamation lawsuit in Jacksonville, FL brought by a man who donned homemade riot gear to join a New Orleans protest against the takedown of a statue of Robert E. Lee.

On April 3, 2020, Judge Timothy Corrigan of the U.S. District Court for the Middle District of Florida in Jacksonville [dismissed](#) a defamation lawsuit against website NOLA.com, its former parent company Advance Local Media, and a New Orleans photographer and activist, Charles Easterling (professionally known as Abdul Aziz), for lack of personal jurisdiction.

The suit was brought by Nicholas Dean, the former principal of a New Orleans public school. In May of 2017, Dean attended a protest against the removal of a statue of the Confederate general from a prominent public square in New Orleans. At the protest, Dean clad himself in homemade riot gear, including a baseball helmet, ski goggles, and an iron cross ring, and wielded a homemade "Sparta"-style shield.

Dean gave a video interview to Easterling in which Dean explained that he felt compelled to attend the protest because, "[i]f foreigners with like kind of Marxist ideas and Marxist tactics come here, it's my duty to be here."

Easterling posted the video on Facebook and YouTube, with a caption noting that the protests were aligned with several white nationalist organizations, and that Dean himself appeared to be wearing rings with Nazi iconography. Later, on May 25, 2017, Nola.com published an article under the headline "Local New Orleans principal loses job after wearing Nazi-associated rings in video." The article reported on Dean's presence at the protests, described his rings, and noted that he had been photographed next to a Confederate flag. The article also reported that Dean had appeared on an "alt-right" podcast several weeks before the protest and had opined that, while he did not consider himself a racist, others likely would.

The following day, NOLA.com published an op-ed under the headline "Principal in nazi gear is gone—just like the monuments he supported" by well-known local columnist Jarvis DeBerry. The column recounted much of the prior day's article and concluded that the removal of several of New Orleans's Confederate monuments was useful, if for no other reason than because "people who wouldn't have otherwise publicly shared their racist beliefs felt compelled to do so in an attempt to prevent monuments . . . from being taken down."

Around the same time, Dean was fired from his job as principal (notably, more than 90 percent of the students at his school were black), and later moved to Florida. Nearly two years after the protest and Nola.com coverage, Dean filed a six-count complaint in federal court, alleging defamation, tortious interference, intentional infliction of emotional distress, and assault. The complaint was signed by Augustus Sol Invictus (born Austin Gillespie), a well-known alt-right lawyer and personality who had been involved in the planning and execution of the Charlottesville "Unite the Right" rally in August 2017. The complaint challenged numerous statements in the two articles and in Easterling's Facebook post, but focused primarily on the allegedly false insinuation that Dean's rings (or Dean himself) had any affiliations with white nationalism or Nazism. It also claimed that the articles had led to Dean's firing and that because of the articles Dean lived in constant fear of retribution from the Antifa movement.

In deciding the motions to dismiss, Judge Corrigan focused on a glaring hole in Dean's complaint: because there was absolutely no connection between the facts recounted in the complaint and the state of Florida, there was no obvious basis for the court to exercise personal jurisdiction over the defendants. The court went on to discuss personal jurisdiction in online defamation cases under the relatively permissive standard set out by the Florida Supreme Court in *Internet Solutions Co. v. Marshall*, 39 So. 3d 1201, 1208 (Fla. 2010), which held that:

A nonresident defendant commits the tortious act of defamation in Florida for purposes of Florida’s long-arm statute when the nonresident makes allegedly defamatory statements about a Florida resident by posting those statements on a website, provided that the website posts containing the statements are accessible in Florida and accessed in Florida.

In its opinion, the court made two helpful observations: first, even under the lenient Internet Solutions standard, a plaintiff “likely has to be a Florida resident or Florida company” to invoke personal jurisdiction based solely on an internet publication. In this case, Dean did not qualify as he moved to Florida only after the events in question. Second, the court rejected Dean’s attempts to meet the Internet Solutions standard through conclusory and “information and belief” pleading that Florida residents had accessed the challenged articles. Finally, the court noted that, even if Dean’s pleading had satisfied the standard, it would have lacked jurisdiction under the due process clause, largely because the complaint did not (and could not) allege any meaningful ties to the state of Florida.

We’d be remiss if we didn’t mention one unique feature of the case: in the midst of motion to dismiss briefing, Mr. Invictus—whose documented leisure activities include drinking goat’s blood as part of pagan rituals and advocating for civil war—was arrested and held without bail in South Carolina on charges of kidnapping, domestic violence, and possession of a firearm during a crime of violence. Invictus was later released due to Covid-19 concerns, and within three weeks, he had been arrested again in Florida and charged with aggravated stalking of his wife, and with violating the conditions of his bond in South Carolina. He faces up to twenty years in jail.

Chuck Tobin, Joe Slaughter, and Matt Cate of Ballard Spahr LLP represented Nola.com and Advance Local Media. Charles Easterling was represented by Katie Schwartzmann of the ACLU of Louisiana and Andrew Bonderud of The Bonderud Law Firm. Jacksonville, FL.

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