

Exhibit

12.8



**40TH JUDICIAL DISTRICT COURT
ELLIS COUNTY, TEXAS**



**DONNA TAY, CCM
COURT COORDINATOR
(972) 825-5060
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**BOB CARROLL
DISTRICT JUDGE**

**ELLIS COUNTY COURTS BUILDING
109 SOUTH JACKSON ST.
WAXAHACHIE, TX 75165**

**MICHELE McMANUS, CSR
OFFICIAL COURT REPORTER
(972) 825-5064**

November 28, 2014

Mr. William M. Windsor
Inmate, Ellis County Detention Facility
Waxahachie, Texas 75165

Hand Delivered by Courier
Pro Se Plaintiff

Ms. Barbara L. Hachenburg
Attorney at Law
Three Allen Center
333 Clay Street, Suite 4950
Houston, Texas 77002

Sent by Email to hachenburg@germer.com
Counsel for Defendant, Sean D. Fleming

Re: Cause No. 88611; William M. Windsor vs. joeyisalittlekid.blogspot.com, et al

Dear Mr. Windsor and Ms. Hachenburg:

This correspondence shall constitute the trial court's *memorandum ruling* in connection with Defendant Sean D. Fleming's Motion to Dismiss ("Motion to Dismiss") which was filed pursuant to Chapter 27 of the Civil Practice & Remedies Code ("CPRC"). This correspondence will also serve as the *notice of hearing* for legal matters addressed on page 2 herein.

The above referenced cause was taken up in open court for hearing on Thursday, November 20th. Since then, the trial court has reviewed over 500 pages of documents on file in connection with the Motion to Dismiss, including without limitation various pleadings, affidavits, exhibits, and appellate court cases, along with the results of certain limited discovery¹ which was authorized under CPRC Sections 27.006(b) and 27.004(c).

In accordance with CPRC Section 27.005(b), the trial court finds that the Defendant and Movant herein, Sean D. Fleming ("Fleming"), has shown by a preponderance of evidence that the legal action brought by the Plaintiff, William M. Windsor ("Windsor"), is based on, relates to, and is in response to Fleming's exercise of his right of free speech.

Further, as required by CPRC Section 27.005(c), Windsor has failed to establish by clear and specific evidence a prima facie case for each essential element of his defamation claim against Fleming which is in question.

¹ Briefly referenced during the November 20th hearing.

Moreover, notwithstanding the provisions of CPRC Section 27.005(c), Fleming has established by a preponderance of evidence a valid defense to Windsor's claim.

Therefore, the trial court hereby *grants* the Motion to Dismiss.

Since Fleming is the prevailing party, the trial court requests Ms. Hachenburg to draft the form and substance of the dismissal order, consistent with the trial court's ruling, which she is prepared to defend on appeal.

Finally, consistent with CPRC Section 27.009, the trial court is required to award Fleming the following: court costs, reasonable attorney's fees, and other expenses in defending the action as justice and equity may require, along with sanctions against Windsor as the court determines sufficient to deter the filing of similar actions.²

Accordingly, *notice of hearing* is hereby provided to all attorneys and pro se parties of record that the trial court will conduct a hearing at 1:30 p.m., Monday, December 8, 2014, for the trial court (i) to enter the dismissal order; and (ii) to review all evidence on file in support of the CPRC Section 27.009 relief described in the preceding paragraph, along with all related legal analysis and arguments from both sides.

The pleading schedule for the upcoming hearing is as follows:

- Fleming – all supplemental pleadings and evidence must be filed and served on or before Wednesday, December 3, 2014;
- Windsor – any regular or supplemental written response must be filed and served on or before Thursday, December 4, 2014;
- Fleming – any final written reply must be filed and served on or before December 5, 2014.

In the event Ms. Hachenburg determines that for statutory reasons the hearing must be held sooner than December 8th, then she will be permitted to move for an expedited hearing date.

Finally, in closing, we would kindly ask that counsel for the prevailing party circulate this *memorandum ruling* and *notice of hearing* via email to all attorneys and pro se parties of record who are not identified herein.

Thank you for your attention to the preceding matters.

Sincerely,



Bob Carroll

² Ms. Hachenburg expressed amounts or numbers in open court during the last hearing which substantially exceeded \$50,000.00.