

CAUSE NO. _____

KEVIN FICKE

Plaintiff,

v.

TOMMY RATLIFF; HAYS COUNTY
SHERIFF’S DEPARTMENT; HAYS
COUNTY DISTRICT ATTORNEY’S
OFFICE; and SHERRI TIBBE,

Defendants.

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IN THE DISTRICT COURT OF

HAYS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION
JURY DEMAND
AND REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, KEVIN FICKE, Plaintiff, complaining of and about TOMMY RATLIFF (hereinafter referred to as “Defendant Ratliff”); HAYS COUNTY SHERIFF’S DEPARTMENT; HAYS COUNTY DISTRICT ATTORNEY’S OFFICE and SHERRI TIBBE (hereinafter referred to as “Defendant Tibbe”) (hereinafter collectively referred to as “Defendants”), and for cause of action would respectfully show unto this Court the following:

I.

DISCOVERY

Plaintiff intends to conduct discovery under Discovery Control Plan Level 2 of *Texas Rule of Civil Procedure* 190.

II.

PARTIES

Plaintiff, Kevin Ficke, is a resident of Guadalupe County, Texas.

Defendant, Tommy Ratliff, is the incumbent Hays County Sherriff and he may be served at his official office at 1307 Uhland Road, San Marcos, Texas 78666.

Defendant, Hays County Sheriff's Department, may be served by serving the Sheriff with this petition and a citation at 1307 Uhland Road, San Marcos, Texas 78666.

Defendant, Hays County District Attorney's Office, may be served by serving the District Attorney with this petition and a citation at 110 East M.L.K. Drive, San Marcos, Texas 78666.

Defendant, Sherri Tibbe, is the incumbent Hays County District Attorney and she may be served at her official office at 110 East M.L.K. Drive, San Marcos, Texas 78666.

III.

JURISDICTION AND VENUE

Venue is proper in Hays County, Texas because all or a substantial part of the events and/or omissions giving rise to this lawsuit occurred in Hays County, Texas. Jurisdiction is proper as Plaintiff's damages are within the jurisdictional limits of this court.

IV.

FACTS

Prior to 2008, Kevin Ficke (hereinafter referred to as "Plaintiff") was a 15-year veteran of the Guadalupe County Sheriff's Department. In that time, Plaintiff was widely regarded as a model officer and superior leader. Around 2008, Defendant Ratliff was elected Hays County Sheriff. Defendant Ratliff sought the service of Plaintiff to lead the Investigations Unit for Hays County. After an extensive interview process, Plaintiff was named Director of Investigations.

Prior to accepting the position of Director of Investigations, Plaintiff informed Defendant Ratliff of two prior criminal charges, both nearly 20-years prior. (Defendant Ratliff was

previously aware of these charges before he called upon Plaintiff to consider employment with Hays County.) Also, at this meeting, Plaintiff informed Defendant Ratliff that one of the charges was expunged from his record and the other was under a nondisclosure order due to dismissal for deferred adjudication. There was never a conviction for anything. These facts Defendant Ratliff had previously known. Also, present at the meeting was an attorney for Plaintiff who observed all of these communications. Effectively, Plaintiff informed Defendant Ratliff, in the interest of full disclosure, of his past criminal record even though he technically does not have a criminal record.

Shortly after taking office as Hays County Sheriff, Defendant Ratliff, and the Hays County District Attorney, Defendant Tibbe, began a nasty public political battle. For reasons only Defendant Tibbe can explain, Defendant Tibbe decided to go public with Plaintiff's past criminal record – even though there was none – and began a public campaign to fire Plaintiff. The reason(s) given by Defendant Tibbe are inconsistent and mostly likely not the true reasons.

Defendant Tibbe expressed concern that defense attorneys could use Plaintiff's past criminal record – even though there is none – to impeach him during trials, trials that Plaintiff would not be a witness in. This has never been a problem in the better part of the last two decades. Furthermore, Defendant Tibbe's public release of the information in violation of the Court order was the cause of this alleged difficulty, Plaintiff's decorated public service was not the cause. As a result of the public campaign against Defendant Ratliff, and ostensibly Plaintiff, Defendant Ratliff forced Plaintiff to resign from his position as Director of Investigations and from any role in the Hays County Sherriff's office.

V.

CAUSES OF ACTION

A. Breach of Employment Contract/Wrongful Termination

Plaintiff was wrongfully terminated from the Hays County Sheriff's Department and Hays County. Defendant Hays County Sheriff's Department violated Plaintiff's statutorily protected rights by wrongfully terminating him because of a past criminal record; one that was expunged and/or ordered never to be disclosed. Defendant Hays County Sheriff's Department discharged Plaintiff for an unlawful reason, namely for a criminal record that was ordered expunged and was ordered not disclosed. Neither charge had ever resulted in a conviction. Because Defendant Hays County Sheriff's Department discharged Plaintiff for an unlawful reason, the discharge was unlawful and the employment-at-will doctrine does not apply.

B. Public Disclosure of Private Facts

Defendants publicized information about the Plaintiff's prior criminal record and this publicity was highly offensive to a reasonable person. The matter of a prior criminal record that was expunged or ordered never to be disclosed was not a matter of public concern. Defendant Tibbe and her office have attempted to cloak this matter as a "Brady issue" knowing it was nothing more than political retribution, by Defendants Tibbe to Ratliff. Plaintiff suffered a loss of his job as well as a loss his ability to obtain gainful employment as a result of Defendants' disclosures.

C. Promissory Estoppel

Plaintiff discussed with Defendant Ratliff the earlier criminal charges prior to accepting employment with Hays County. Defendant Ratliff promised these criminal charges would not be

an issue to Plaintiff's employment and that Plaintiff would never be discharged for the past. Plaintiff relied upon Defendant Ratliff's promise by leaving his long time employment as a Guadalupe County Sherriff Department Supervisor. Defendant Ratliff knew or reasonably should have known Plaintiff would rely upon this promise. In fact, Plaintiff specifically told Defendant Ratliff that he was relying upon this promise in order to leave his employment at Guadalupe County. Only if Defendant Ratliff's promise is enforced can injustice to Plaintiff be avoided. Plaintiff's reliance on this promise proximately caused him damages.

D. Intentional Tortious Interference with Terminable-At-Will Contract

Plaintiff and Defendant Hays County Sheriff's Department had a valid terminable-at-will employment contract. Defendant Tibbe, and her subordinates, willfully and intentionally interfered with that contract. Defendant Tibbe publicly broadcasted confidential information about Plaintiff that proximately caused Plaintiff to be terminated. Defendant Tibbe continued her interference with Plaintiff's contract even after she became aware of the unlawfulness of her actions. Furthermore, Defendant Tibbe has a pattern and practice of interfering in the business of the Sheriff's department when it suits her political motives. Defendant Tibbe has refused to allow another police officer to testify in criminal cases when her efforts to have the police officer discharged were unsuccessful. Defendant Tibbe's pattern and practice in this regard proves she intentionally interfered with Plaintiff's employment contract. As a result of this interference, Plaintiff suffered actual damages. Further, upon information and belief, employees of the Defendant Hays County District Attorney's Office have contacted other law enforcement officials and prosecutors and relayed false facts about Plaintiff.

E. Declaratory Judgment

Furthermore, because of the wrongful public claims made by Defendants concerning these criminal charges, Plaintiff is having a difficult time finding employment elsewhere. As a result, Defendants will owe additional damages as explained below. Plaintiff also seeks declaratory judgment against Defendants clarifying the nature of these criminal charges as dismissed and/or expunged and that they have no effect on the employment of Plaintiff. Plaintiff seeks declaratory judgment that his discharge was for no valid or lawful reason.

VI.

DAMAGES

Plaintiff seeks damages for the harm he suffered as a result of Defendants' actions. These damages include actual damages, expectancy damages, reliance damages, loss of value, punitive and exemplary damages. Additionally, Plaintiff is entitled to pre and post judgment interest on the damages claimed.

Pursuant to §§ 37.009 and 38.001 of the *Texas Civil Practice & Remedies Code*, the Plaintiff seeks the recovery of reasonable and necessary attorney's fees and expenses incurred in the prosecution of this action.

VII.

TRIAL BY JURY

Pursuant to *Texas Rule of Civil Procedure* 216, Plaintiff hereby requests a trial by jury. Payment of the appropriate jury fee is filed contemporaneously with Plaintiff's Original Petition.

VIII.

REQUEST FOR DISCLOSURE

Under the authority of *Texas Rule of Civil Procedure* 194, Plaintiff requests the Defendants within fifty (50) days of the service of this Original Petition and Request, produce the information or material described in the relevant rules.

IX.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff KEVIN FICKE prays that Defendants TOMMY RATLIFF, HAYS COUNTY SHERIFF'S DEPARTMENT, HAYS COUNTY DISTRICT ATTORNEY'S OFFICE, AND SHERRI TIBBE be cited to answer and appear to this Original Petition, and that Plaintiff be granted damages for Defendants' actions as well as necessary attorney's fees, court costs, interest, and other and further relief to which he may show himself justly entitled.

Date this the 27th day of August, 2010.

Respectfully Submitted,

BRAZIL & DUNN

/s/ Chad W. Dunn

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ATTORNEYS FOR PLAINTIFF