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Colorado Court Tosses Libel Suit Premised on Newspaper's Reporting on Controversy Surrounding "Furries" in Public Schools

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On July 3, 2025, Colorado's Court of Appeals [ruled](#) that a local advocacy group's libel claims against a newspaper should have been dismissed by the trial judge in ruling on the paper's anti-SLAPP motion. [Datko v. Dunn](#).

The unanimous decision by the three-judge panel found that plaintiffs had not met their burden of showing a reasonable likelihood they could produce clear and convincing evidence of actual malice with respect to the first of three libel claims; that the second claim, for libel by implication, failed because the claimed implication did not reasonably appear in the article; and the third libel claim was premised on statements that were substantially true.

The "Furries Controversy"

During the COVID-19 pandemic, Lindsay Datko, a mother with children in the Jefferson County, Colorado public school district (and another mother) co-founded Jeffco Kids First, an advocacy group that organized rallies protesting the district's policy requiring K-12 students to wear masks to prevent or reduce disease transmission, and the closure of schools in favor of remote learning. After the epidemic subsided, in 2022, Datko and her organization shifted their focus to challenging district policies that recognized gender fluidity and specifically the use of preferred pronouns in schools.

In the summer of 2022, the group's focus changed to promulgating the message that students in Jeffco schools were dressing up as animals ("furries") and were allowed to disrupt the learning environment without discipline or repercussions from teachers and school administration. The controversy over "furries in the schools" was [publicly embraced and endorsed by Heidi Ganahl](#), the Republican candidate for Governor, in the run-up to the election in November 2022.

News media – both local and national – questioned whether there were, in fact, more than isolated (or, even *any*) actual documented instances of school children having dressed up as animals and disrupted classroom instruction. In response, Ms. Datko posted on the Jeffco Kids First Facebook page (a "private" page that included some 6,000+ members), the following text, reproduced here verbatim and in the actual font/style thereof:

The media is really trying to spin this. If any of your kids would be willing to record anonymous audio of their experiences with furies hissing, barking, clawing, chasing, and how it affects their school day, please send to me or let me know ASAP!

Two Publications Give Rise to Plaintiffs' Claims

Shortly after gubernatorial candidate Ganahl made the “furries in the schools” allegation a central focus of her campaign, Rylee Dunn, a reporter at *The Arvada Press*, began to prepare a news report on Datko and Jeffco Kids First (“JKF”), including its origins in challenging the school district’s COVID-19 prevention policies, and its evolution to targeting LGBTQIA+ students, “woke” curriculum, and advancing the “furries” issue in support of candidate Ganahl’s election bid.

During the Summer of 2022, Dunn made repeated efforts to contact Datko, JKF’s co-founder, and candidate Ganahl, via text, phone message and email, saying that she wanted to speak with them about JKF’s activities. None of them replied to Dunn’s requests.

On the afternoon of October 7, 2022, the *Arvada Press* published Dunn’s article, entitled “[Inside Jeffco Kids First, and Ganahl’s Furor Over Kids](#),” on its website. That evening, the newspaper received an email from Datko demanding that the newspaper retract the statement “Datko urged the nearly 6,000 members of Jeffco Kids First to have their kids secretly record their classmates.” Datko’s email stated that she had not asked students to secretly record other students, in school, dressed up and acting like animals; instead, she said, she had only sought first person and anonymous *audio* recordings by students recounting their own first-hand observation of such incidents and how it had interrupted or interfered with their education.

Upon receiving Datko’s retraction demand, Dunn conferred with her editors at CCM and they decided no retraction was appropriate. Instead, they published an Editor’s note that was quickly appended to the article online and also appeared in the print edition of the newspaper published October 13, 2022. It read:

Editor’s note: *Lindsay Datko contacted Colorado Community Media after online publication of this story to seek a retraction, stating that she sought “anonymous verbal statements from children.” Datko disagreed with the article’s sentence, “Datko urged the nearly 6,000 members of Jeffco Kids First to have their kids secretly record their classmates.” Screenshots from the group show she made that request. Datko confirmed to Colorado Community Media that she received pictures of students but indicated to the group that she has not used them.*

On October 12, 2022, the *Littleton Independent*, a newspaper owned by the same publishing company as the *Arvada Press*, published an opinion column by one of its editors that stated Datko had “encourage[ed] people to take pictures of children who behave or dress differently,” and “[k]ids can be mean enough without some parent group encouraging them to take pictures and post them on social media.”

Subsequent to the two publications above, representatives of Colorado Community Media (“CCM,” the corporate owner of both papers) exchanged multiple emails and had a lengthy in-person meeting with Datko and other members of JKF. CCM offered to publish a front-page rebuttal by JKF provided it did not exceed the newspaper’s 400-word limit for letters to the editor. Rather than doing so, Datko and JKF filed suit against CCM and Dunn, asserting three counts of defamation for: (1) falsely stating Datko had urged school children to secretly record their classmates, in school, dressed up as furries, (2) falsely implying that Datko’s Facebook posting, reproduced above, had succeeded in having such recordings made and thereafter posted to TikTok, resulting in comments posted that included the phrase “#killfurries,” and (3) falsely asserting that Datko and JKF had declined to respond to requests for comment on the Facebook posting because they could not defend it.

Trial Court Denies Anti-SLAPP Motions

Two different trial court judges denied the defendant’s two motions to dismiss. The first ruling addressed only the “failure to state a claim” portion of the combined Colorado Rule 12 & anti-SLAPP motion, and is not relevant to the ultimate outcome on appeal. After plaintiffs filed an amended complaint, defendants’ renewed anti-SLAPP

motion was denied by the second judge, in a cursory ruling, in which he found only that the challenged statements were *defamatory* (but did not actually find they were false), and because reporter Dunn had previously posted statements online disparaging JKF’s homophobic and anti-trans positions, that alone was sufficient to create a jury issue on the question of her having published with actual malice. (No such finding was made with respect to the author of the column appearing in the *Littleton Independent*).

As authorized by Colorado’s anti-SLAPP statute (practically a verbatim copy of California’s statute), the defendants filed an appeal, as of right, of the trial court’s ruling.

Court of Appeals Corrects the Trial Court’s Errors

In a thorough and well-reasoned 31-page opinion (though not officially published as a binding precedent in the Pacific Reporter series), the Court of Appeals reversed the trial court’s ruling and remanded with instructions to grant the defendants’ anti-SLAPP motion in full.

As to the first libel claim, that defendants had falsely stated Datko had “urged the nearly 6,000 members of Jeffco Kids First to have their kids secretly record their classmates,” the court did not reach the question whether the statement was substantially true. Instead, assuming its falsity, *arguendo*, the unanimous appellate panel concluded that plaintiffs had failed to meet their burden of establishing “a reasonable likelihood” that they could produce “clear and convincing evidence” that Dunn (or anyone else at CCM) had published that allegation with actual malice.

While Datko’s 45-word Facebook post (reproduced above) was not found to “bristle” with ambiguity, the panel nevertheless recognized that it was ambiguous, as evidenced by the fact “[t]he [defendants’] challenged statements were a rational interpretation of Datko’s September 2022 Facebook post.” And, because “Dunn’s article contained a screenshot of Datko’s actual Facebook post and the editor’s note expressing Datko’s disagreement with the defendant’s interpretation . . . and setting forth Datko’s interpretation,” the article as a whole “counters any inkling of actual malice because it allows readers to come to their own conclusions about the post and the challenged statements.” The court also made clear that evidence of Dunn’s ill-will toward plaintiffs and/or their public positions does not establish a triable issue on actual malice.

With respect to the second libel claim, asserting that the article as whole falsely implied that Datko’s posting had actually caused JKF followers to secretly record and post on TikTok video of classmates dressed as furies in school (which resulted in harassment of furies), the appellate court found it did not state a cognizable claim of libel-by-implication, because the single image of a TikTok posting that accompanied the article made it absolutely clear it had been posted five months *prior* to the date of Datko’s “call to action” posting. Thus, no reader could reasonably infer that Datko’s Facebook post had caused that TikTok post.

Lastly, the appellate court found that the third libel claim – which asserted it was false to state plaintiffs had not responded to requests for comments “because they could not and would not defend their positions” – was also not actionable because Dunn had sought comments from Datko and her JKF co-founder in the Summer of 2022 and they acknowledged, online, that they had consciously decided not to respond. Thus, the published statements were true and could not give rise to a viable claim for libel. (Although the court did not say so, it implicitly found that the implication claimed by plaintiffs – that their refusal to comment evidenced their inability to defend their actions – could not reasonably be drawn from the published truthful statements).

The Court of Appeals directed the trial court, on remand, to enter judgment in defendants’ favor, dismiss the case with prejudice, and award defendants their reasonable attorney’s fees and costs, including those incurred on appeal, as the anti-SLAPP statute mandates.

Steve Zansberg and Michael Beylkin of Zansberg Beylkin LLC in Denver represented Rylee Dunn and Colorado Community Media, PBC. Lindsay Datko and Jeffco Kids First were represented by Scott Gessler and Geoff Blue of Gessler Blue in Greenwood Village, Colorado.