IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

THE SCHOOL BOARD OF BROWARD COUNTY,

Petitioner,

v.

NIKOLAS CRUZ,

Respondent.
_____/

Case No.: 18-014554 (26)
Judge: Henning
Civil Division

STATE OF FLORIDA,

v.

NIKOLAS CRUZ,

Defendant.
_____/

Case No.: 18-1958CF10A
Judge: Scherer
Criminal Division

SUN-SENTINEL COMPANY'S OPPOSITION TO VERIFIED PETITION TO INVOKE CONTEMPT AND MOTION TO DISMISS UNDER FLORIDA'S ANTI-SLAPP LAW

Sun-Sentinel Company, LLC, and its reporters Paula McMahon and Brittany Wallman (collectively, the "Sun Sentinel"), file this opposition to the School Board of Broward County's (the "School Board" or "School District") August 6, 2018 Verified Petition to Invoke Contempt Proceedings Against Sun-Sentinel Company LLP [sic] and Reporters, Paula McMahon and Brittany Wallman (the "Petition"), along with their companion motion to dismiss/tax attorneys' fees and costs against the School Board pursuant to § 768.295, Florida Statutes (Florida's Anti-SLAPP law).

In a rush to deflect from its own negligence in publicly disclosing the CEN report at issue in a wholly unsecured format, the School Board now seeks to have this Court find the Sun

Sentinel in contempt for exercising their First Amendment rights to truthfully report on a matter of the highest public concern: the exact nature of the special educational services the School District provided (or notably failed to provide) to Marjory Stoneman Douglas High School ("MSD") shooter Nikolas Cruz—who now stands charged with multiple counts of capital murder. On their face, neither the civil court's operative July 26, 2018 order (the "Civil Order")—requiring the School District to disclose a redacted version of the CEN report—nor the criminal court's August 3, 2018 order (the "Criminal Order") in any way limited the Sun Sentinel's ability to publish the report's contents. Indeed, to have done so would have constituted an unconstitutional prior restraint.

By posting an improperly redacted version of the CEN report to its website for public download, the School District itself may have failed to comply with the court's orders. In any event, there is *no dispute* that the Sun Sentinel lawfully obtained the report from the School District's website and the information sought to be shielded by the redactions. Under such circumstances the law is clear: a First Amendment right to publish firmly attaches and no contempt proceeding may lie.

For these reasons, as well as those specifically set forth below, the Petition must be denied. Moreover, this Court should also find the School Board in violation of Florida's Anti-SLAPP law, and award the Sun Sentinel all legal fees and costs incurred in responding to the Petition. Each point is discussed below.

PROCEDURAL BACKGROUND

1. Sun-Sentinel Company, LLC publishes the *South Florida Sun Sentinel*. It has covered, and continues to cover and report on all facets of the February 14, 2018 mass shooting

at MSD and its aftermath. Paula McMahon and Brittany Wallman are full-time journalists employed by Sun-Sentinel Company, LLC.

2. On May 30, 2018, and on behalf of Sun-Sentinel Company, LLC and other media outlets, undersigned counsel made a public records request to the School District for copies of "any and all draft summaries or reports submitted to Haliczer Pettis & Schwamm for review from Collaborative Education Network, Inc. per the scope of work outlined in its consulting services agreement dated March 21, 2018." (that is, the CEN report that is the subject of the Petition). On June 4, 2018, that request was denied.

3. Counsel for the parties then exchanged multiple correspondence as to the validity of the legal bases the School District asserted in support of the denial. Ultimately, the School Board filed the underlying declaratory judgment action against Nikolas Cruz. In this action, the School Board sought an order concerning the scope of its disclosure duties and obligations under the Florida Public Records Act (Chapter 119) and related statutory provisions. A few days later, Sun-Sentinel Company, LLC (along with the Miami Herald Media Company) moved to intervene in that action.

4. On July 11th, Judge Patti Englander Henning held an initial hearing, at which counsel for the news media, the School Board, and defense counsel for Mr. Cruz (in his criminal matter) appeared.

5. At that hearing, undersigned counsel made clear that while the news media recognized that certain exemptions to the public records law forbid disclosure *by government agencies* of information on student and medical privacy grounds, the law also required that any such exemptions be narrowly construed. Therefore, they expressly rejected the argument that any and all mentions of education or medical information potentially discussed in the CEN report

qualified as confidential information that must be redacted. See Petition, Exhibit B at pp. 10-11, 27-28.

6. With that important qualification, the news media intervenors agreed that the Court should review *in camera* the School District's proposed redactions to the CEN report.

7. On July 26th, Judge Henning issued the resulting Civil Order in which it stated that "[t]he report as redacted by Broward County School Board is hereby approved to be released with the following exceptions…"[1] See Petition, Exhibit C at p. 2. It also then stayed the Civil Order for five days to allow Mr. Cruz to seek additional relief.

8. Significantly, the Civil Order *did not* in any way limit the manner in which the Sun Sentinel could report on the contents of the CEN report, nor did it restrict what information could be published by the news media. The only party subject to any duties and restrictions under the Civil Order was the School District, which was directed to disclose the CEN report in the prescribed redacted form.

9. On July 30th, Mr. Cruz sought additional relief before Judge Scherer in the pending capital murder criminal matter, seeking a protective order shielding the entire CEN report from public disclosure based upon his asserted fair trial rights.

10. On August 3rd, Judge Scherer issued the Criminal Order denying Mr. Cruz that relief. See Petition, Exhibit F. Like the Civil Order, the Criminal Order did not limit the manner in which the Sun Sentinel could report on the contents of the CEN report, nor did it restrict what information could be published by the news media.

[1] The Court disagreed with the scope of four of the proposed redactions and ordered those portions of the CEN report to also be disclosed.

11. Significantly, at no time (in any hearing or otherwise) did Sun Sentinel agree or stipulate *not to publish* information.

12. Later that day, the School District uploaded a copy of the redacted CEN report in .pdf format on the publicly accessible www.browardschools.com website. The School District admits it uploaded the CEN report to its website. See Petition, ¶ 18.

13. The Sun Sentinel then accessed the CEN report from the website link provided by the School District and, on August 3rd, downloaded a copy of the same.

14. That same day, it was soon brought to the attention of the Sun Sentinel by a member of the public—who also accessed the CEN report—that the School District did not properly electronically redact the CEN report posted on its website, and that the entire report was easily viewable by anyone. At that point, the public was in possession of a completely unredacted version of the CEN report.

15. The School District therefore failed to properly redact the CEN report via the electronic redaction method it elected to use, and released that version of the report to the public.

16. The Sun Sentinel reviewed the full CEN report and published highly newsworthy facts and observations. This included truthful reporting on portions of the CEN report that the School District did not properly redact. Among other things, those portions concluded that on at least two occasions the School District failed to provide Mr. Cruz with certain education services legally required be made available to students with disabilities. This included: (1) failing to advise Mr. Cruz of certain special education options when he was facing removal from MSD; and (2) not following through on Mr. Cruz's request to return to a more therapeutic educational environment designed for students with special needs at Cross Creek High School. See Petition, Exhibit H, p. 2 (the "Article").

17. The School Board does not assert in its Petition that the Sun Sentinel unlawfully obtained a copy of the CEN report; nor does it deny that it was the source of the report obtained by the Sun Sentinel. Because it cannot do so, the School Board instead simply claims that "regardless of how they obtained the unredacted version of the Report" the Sun Sentinel was on notice of the Civil Order and the Criminal Order. Petition, ¶ 20.

18. Contemporaneous with making the CEN report available on its website, the School District issued a lengthy press release, which it also posted to the website. See attached **Exhibit A**. Among other things, the release stated: "CEN's findings show that the District provided significant and appropriate services to Nikolas Cruz in compliance with the federal laws entitling all students to 'a free appropriate public education' designed to meet their unique needs. The District utilized a multi-disciplinary approach, including ESE programming, school counseling/guidance and other related services in an effort to meet the ongoing and evolving needs of this student."

19. On August 6th, counsel for the School District sent an email to the Sun Sentinel and its reporters demanding removal of the Article from Sun Sentinel's website, which it contended violated the courts' orders. The School District further requested that Sun Sentinel "refrain from any further reporting" concerning publicly available portions of the CEN report. See attached **Exhibit B**. Approximately one hour later, the School Board filed the Petition.

DISCUSSION

A. The Sun Sentinel is not in contempt.

As the case law cited in paragraph 26 of the Petition acknowledges "[f]or a person to be held in contempt of a court order, the language of the order must be clear and precise, *and* the behavior of the person must clearly violate the order." Haas v. State, 196 So. 3d 515, 523 (Fla.

2d DCA 2016) (citation omitted). "A trial court cannot make a finding of contempt for violation of a court order based upon its intent in issuing the order when the court's 'intent was not plainly expressed in the written order'…In other words, a finding of contempt for violating a court order cannot be based on something the order does not say." Id. (citations omitted).

Florida courts uniformly adhere to this principle. See, e.g., Wilcoxon v. Moller, 132 So. 3d 281, 286 (Fla. 4th DCA 2014) (a court "'cannot base contempt upon noncompliance with something an order does not say'"); Tsokos v. Sunset Cove Invs., Inc., 936 So. 2d 667, 669 (Fla. 2d DCA 2006) ("It is well-established that '[o]ne may not be held in contempt of court for violation of an order or a provision of a judgment which is not clear and definite so as to make the party aware of its command and direction'… 'implied or inherent provisions…cannot serve as a basis for an order of contempt.'" (citations omitted)); Paul v. Johnson, 604 So. 2d 883, 884 (Fla. 5th DCA 1992) ("For a person to be held in contempt of a court order, the language of the order must be clear and precise, and the behavior of the person must clearly violate the order.").

The Paul case is particularly instructive because the order at issue there provided that Paul's monthly visitation with her children at the office of an HRS counselor would "continue as ordered until Mike Reed (the counselor) recommends change based on the mother's progress in therapy." Id. In reversing the trial court's contempt finding, the appellate court noted that the language of the order did not specifically forbid Paul from trying to contact or communicate with her children outside of the monthly visitations (which she apparently did on at least two occasions). Id. Because the order did not specifically forbid that activity those actions could never be construed as an intent to violate the order. Id.

The School Board asserts that the Sun Sentinel's publishing activities were a "clear violation of Court orders, and constitutes contempt of court." Petition, ¶ 23. These allegations

are without merit, both factually and legally. In fact, neither the Civil Order nor the Criminal Order in any manner restricted what the Sun Sentinel could publish about the CEN report.

The Civil Order only commanded the School District to disclose a redacted version of the CEN report, and stayed that ruling for five days to allow Mr. Cruz time to seek additional relief. Similarly, the Criminal Order simply denied Mr. Cruz's request for a protective order seeking to withhold the CEN report in full. In short, there was nothing contained in either order directed to Sun Sentinel, or any other person or entity *except* for the School District.

It is, therefore, without dispute that Sun Sentinel did not violate either order. Much like the Paul case, a contempt order cannot lie when the very actions complained of were not specifically addressed or prohibited. The School Board's attempt to fashion an argument that, in effect, the Sun Sentinel violated the "spirit" of the two orders[2] fails as a matter of law and must be rejected. See Tsokos, 936 So. 2d at 669.

For this reason alone, the Petition must be denied/dismissed as a matter of law.

B. The Sun Sentinel has a First Amendment right to publish the information.

It is a fundamental and longstanding tenet of First Amendment jurisprudence that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." Florida Star v. BJF, 491 U.S. 524, 533 (1989) (quoting

[2] Despite the School Board's erroneous assertion, the record is clear that the Sun Sentinel never agreed or stipulated to any restraint on publication of the CEN report. In this regard, the School Board's reliance on Mayer v. State, 523 So. 2d 1171 (Fla. 2d DCA 1988) (see Petition, ¶ 30) is therefore entirely misplaced. In Mayer, the trial court issued a direct order to a journalist in the courtroom not to publish certain information related to a child custody hearing pending a later determination by the court whether information discussed at the hearing was confidential. As a condition to being allowed to remain present at the hearing, the journalist expressly agreed to that restriction (and ultimately failed to abide by it). Nothing of the sort occurred here.

Smith v. Daily Mail Publ'g Co., 443 U.S. 97, 103 (1979)). That guiding principle has been repeatedly applied to preclude civil or criminal liability being imposed on the media for the publication of various sorts of sensitive information related to a matter of public concern, including, for example: (1) the name of a rape victim (see Florida Star; Cox Broad. Corp. v. Cohn, 420 U.S. 469, 496 (1975)); (2) the name of a juvenile suspect (Smith); (3) a telephone conversation illegally intercepted and recorded by third party (Bartnicki v. Vopper, 532 U.S. 514, 527-35 (2001)); and (5) confidential child welfare records (Cape Publ'ns, Inc. v. Hitchner, 549 So. 2d 1374, 1377-78 (Fla. 1989)).

This rule of law holds even in situations where a source was legally constrained from disclosing the information, the source of the material violated the law in obtaining it, or (as was recently addressed by the Fourth DCA) the media obtained the information via the government's violation of an individual's alleged privacy right. See Florida Star, 491 U.S. at 536, 538 ("But the fact that state officials are not required to disclose such reports does not make it unlawful for a newspaper to receive them when furnished by the government. Nor does the fact that the Department apparently failed to fulfill its obligation under [statute] not to 'cause or allow to be published' the name of a sexual offense victim make the newspaper's ensuing receipt of this information unlawful"); Landmark Commc'ns, Inc. v. Virginia, 435 U.S. 829, 842 (1978) (First Amendment protects news media's right to report on judicial disciplinary proceedings that source was not legally permitted to disclose).

Indeed, the Fourth DCA recently reaffirmed these bedrock principles in Palm Beach Newspapers, LLC v. State, 183 So. 3d 480, 484 (Fla. 4th DCA 2016) (newspaper had First Amendment right to publish transcripts of inmate conversations, because, even if newspaper "got the information through the Government's violation of [inmate's] right to privacy" it did not

acquire them unlawfully). In Palm Beach Newspapers, Frederick Cobia—a jail inmate who was set to testify against another inmate and who had been accused of receiving special treatment for being a "snitch"—filed an emergency motion to keep *The Palm Beach Post* from imminently publishing a story about telephone conversations with various individuals, including prosecutors, where he apparently discussed the special treatment. Id. at 482. He based his claim on his purported right to privacy in those conversations. Id. at 483. In quashing a trial court's order restraining publication the Fourth DCA noted that while there may have been a basis for the government to withhold release of such information under the public records law, that question is very different than finding a right of privacy prevents a newspaper from publishing about that same information once it lawfully received that information from a government source. Id. Thus, the First Amendment protected the newspaper's right to publish.

Further, it is of no consequence that a government entity later claims that the sensitive information at issue was inadvertently disclosed. See Florida Star, 491 U.S. at 538 ("B.J.F.'s identity would never have come to light were it not for the erroneous, if inadvertent, inclusion by the Department of her full name in an incident report made available in a pressroom open to the public…[but] [o]nce the government has placed such information in the public domain 'reliance must rest upon the judgment of those who decide what to publish or broadcast.'") (quoting Cox). Accord Miami Herald Publ'g Co. v. Tornillo, 418 U.S. 241, 258 (1971) ("The choice of material to go into a newspaper…and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time").

Indeed, when the government is charged with protecting an individual's privacy interests—rather than punishing the publication of truthful information about a matter of public concern—the government "must respond by means which avoid public documentation or other exposure of private information." Cox, 420 U.S. at 496. In such cases, "[o]nce truthful information is disclosed…the press cannot be sanctioned for publishing it." Id. See also Florida Star, 491 U.S. at 538 (where "government has failed to police itself in disseminating information" liability for subsequent publication is impermissible).

Here, the School Board does not (and indeed cannot) dispute that the Sun Sentinel lawfully obtained the information it published from the School District. It is additionally beyond dispute that the School District failed to properly redact the information it was required to safeguard, and that it placed an unsecure version of the CEN report into the public domain enabling anyone to view the entire report with a few clicks of a mouse.[3]

Moreover, the published information relates to a matter of great public significance. As the United States Supreme Court has held, issues related to pending criminal matters are unquestionably of public concern. See Florida Star, 491 U.S. at 536-37. See also Palm Beach Newspapers, 183 So. 3d at 483 (holding same and noting that the "First Amendment's protection of truthful reporting regarding criminal proceedings is especially strong"). In determining whether a matter is of public significance courts consider whether the subject matter "of the article generally" is of public concern, not whether a specific fact, such as a rape victim's identity, would, standing alone, be newsworthy. See Florida Star, 491 U.S. at 536-37.

[3] Indeed, as evidenced by the fact that the Sun Sentinel became aware of the School District's failure to properly redact the subject information from a member of the public, it was clear at the time the Sun Sentinel published the Article, the very information at issue in the Petition was already publicly known.

The Article reported on a formal evaluation of special education services provided to Mr. Cruz while he was a student, and how School District special education services could be improved. This, of course, was done, as Superintendent Runcie has publicly stated, to better understand the circumstances that may have led to the MSD shooting. Additionally, the information published about the School District's failures to fully address Mr. Cruz's educational needs (information that was to be kept from the public through redaction) directly contradicted the School District's position as set forth in its August 3rd press release that it handled Mr. Cruz's needs appropriately. The public undoubtedly also had an interest in knowing this information.

In sum, controlling law and the undisputed facts establish that the Sun Sentinel has a First Amendment right to publish all portions of the CEN report. And as more thoroughly discussed below, this Court therefore should reject the School District's attempt effectively to impose a prior restraint through a contempt sanction.

C. Any prohibition on publication would have been unconstitutional prior restraint.

By seeking sanctions against the Sun Sentinel for publishing the Article, the School Board implies that the law would have permitted an order explicitly forbidding the Sun Sentinel from taking such action. However, were this Court to have in some manner restricted the Sun Sentinel's right to publish information found in the report—which, again, it did not—such a command would have been an unconstitutional prior restraint.

Prior restraints on publication are presumptively unconstitutional, and are "the most serious and least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976) see also Multimedia Holdings Corp. v. Circuit Court of Florida, St. Johns Cty., 544 U.S. 1301 (2005) (order threatening prosecution for publication

of grand jury transcripts likely an unconstitutional prior restraint). In Nebraska Press, the United States Supreme Court considered the constitutionality of a trial court order restricting news coverage of various aspects of the criminal prosecution of a defendant charged with sexual assault and the murders of six members of a family. The order barred reporting of, among other things, evidence proffered at a preliminary hearing open to the public. Id. at 542. In ruling that the order was unconstitutional, the Court stated:

> We reaffirm that the guarantees of freedom of expression are not an absolute prohibition under all circumstances, but the barriers to prior restraint remain high and the presumption against its use continues intact. We hold that, with respect to the order entered in this case prohibiting reporting or commentary on judicial proceedings held in public, the barriers have not been overcome; to the extent that this order restrained publication of such material, it is clearly invalid.

Id. at 570.

The United States Supreme Court has held similarly in other cases where court orders precluded publication on matters deemed confidential or protected by law. See, e.g., Oklahoma Publ'g Co. v. Dist. Court, 430 U.S. 308 (1977) (trial court order enjoining news media from publishing juvenile murder defendant's name and image, which had been publicly revealed, was unconstitutional prior restraint); New York Times Co. v. United States, 403 U.S. 713 (1971) (prior restraint order precluding media from publishing classified military information, that is, the "Pentagon Papers," was unconstitutional).

The Florida Supreme Court has likewise held that prior restraints are presumptively unconstitutional and seeking to impose such measures carries "a heavy burden of showing justification." Miami Herald Publ'g Co. v. McIntosh, 340 So. 2d 904, 908 (Fla. 1976). Accordingly, Florida courts have consistently and overwhelmingly rejected such attempts, even in the face of privacy concerns. See, e.g., Sarasota-Herald Tribune v. State, 916 So. 2d 904, 910 (Fla. 2d DCA 2005) (trial court order restricting publication of juror information unconstitutional

prior restraint); Times Publ'g Co. v. State, 632 So. 2d 1072 (Fla. 4th DCA 1994) (holding same); see also Post-Newsweek Stations Orlando, Inc. v. Guetzloe, 968 So. 2d 608 (Fla. 5th DCA 2007) (trial court order prohibiting broadcast of information found in records unconstitutional prior restraint); Jacksonville Television, Inc., v. Fla. Dep't of Health and Rehab. Servs., 659 So. 2d 316 (Fla 1st DCA 1994) (order prohibiting broadcast of interview with mother of dependent children whose names had been inadvertently released was unconstitutional); Clear Channel Commc'ns, Inc. v. Murray, 636 So. 2d 818 (Fla. 1st DCA 1994) (order prohibiting broadcast of "non-news" segments on "America's Most Wanted concerning criminal defendant, such as interviews with the alleged victim's family members, was unconstitutional); Florida Publ'g Co. v. Brooke, 576 So. 2d 842 (Fla. 1st DCA 1991) (order prohibiting publication of HRS letter concerning child associated with confidential dependency proceedings unconstitutional); WFTV, Inc. v. Roe, 706 So. 2d 132, 133 (Fla 4th DCA 1998) (order prohibiting publication of "names, pictures or other identifying information" concerning a child, "his biological family, his foster parent and other children in the foster home" quashed).

Here, the School Board seeks to have this Court sanction the Sun Sentinel for exercising First Amendment rights, which time and time again have been affirmed by courts at all levels, even where the subject matter is highly sensitive. This Court should follow suit and reject the School Board's implicit argument that it would have been constitutionally permissible to enter an order constraining the Sun Sentinel's right to publish information contained in the CEN report. This, of course, necessarily also means that contempt proceedings are similarly improper.

D. The School Board's Petition violates Florida's Anti-SLAPP statute.

The School Board's actions in filing the Petition constitute a classic "SLAPP" case. SLAPP stands for "Strategic Lawsuits Against Public Participation." A SLAPP proceeding is

one in which a party seeks to silence and punish another for exercising their First Amendment rights by initiating a meritless legal claim, forcing them to expend time and money defending that right (and potentially dissuading them from exercising it in the future). To prevent such pernicious tactics, states nationwide have enacted "Anti-SLAPP" laws.[4]

Florida's "Anti-SLAPP" law is found at § 768.295, Florida Statutes. The rationale supporting it is plain: "It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues[5] . . . as protected by the First Amendment to the United States Constitution . . . ." § 768.295(1), Fla. Stat. (2018). Therefore, "[i]t is the public policy of this state that a person ***or governmental entity*** not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights" and "prohibiting such lawsuits . . . will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state." Id. (emphasis added).

Accordingly, Florida's Anti-SLAPP law mandates that "A person ***or governmental entity*** in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in

[4] To date, approximately thirty (30) states provide some form of statutory or common law Anti-SLAPP protection. See Thomas R. Burke, Anti-SLAPP Litigation, at § 8.1-8.33 (The Rutter Group 2017) (collecting statutes).

[5] "Free speech in connection with public issues" is defined as "any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, *news report*, or other similar work." § 768.295(2)(a), Fla. Stat. (2018) (emphasis added).

connection with a public issue . . . as protected by the First Amendment to the United States Constitution…." Id. at § 768.295(3) (emphasis added).

Here, the Article and reporting by Sun Sentinel undoubtedly constitutes "free speech in connection with public issues" under the Anti-SLAPP statute because "news reports" are specifically included within this defined term. Id. at § 768.295(2)(a). Additionally, for the reasons cited in the previous section opposing the Petition, the Article is "protected under applicable law." Id. And finally, it is beyond debate that the School Board filed the Petition in direct response to the Sun Sentinel exercising its First Amendment right to publish the Article.

For these reasons, the School Board's Petition violates Florida's Anti-SLAPP statute, and the Sun Sentinel accordingly requests entry of an award of attorneys' fees and costs incurred to defend the petition.

CONCLUSION

For the foregoing reasons, Sun-Sentinel Company, LLC, Paula McMahon, and Brittany Wallman respectfully request this Court refuse to issue any order to show cause in response to the Petition, dismiss the Petition outright, and grant their Anti-SLAPP motion, along with ordering any additional and further relief deemed necessary and proper.

THOMAS & LOCICERO PL

/s/ Dana J. McElroy

Dana J. McElroy
Florida Bar No. 0845906
Daniela Abratt
Florida Bar No. 0118053
915 Middle River Drive, Ste. 309
Fort Lauderdale, FL 33304
(954) 703-3416 (phone)
(954) 400-5415 (fax)
dmcelroy@tlolawfirm.com
dabratt@tlolawfirm.com

-and-

Mark R. Caramanica
Florida Bar No. 110581
601 South Boulevard
Tampa, FL 33606
(813) 984-3060 (phone)
(813) 984-3070 (fax)
mcaramanica@tlolawfirm.com

Attorneys for Sun-Sentinel Company, LLC, Paula McMahon, and Brittany Wallman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **August 10, 2018**, I hereby electronically filed the foregoing document with the Clerk of the Court via the E-portal. I also certify that the foregoing has been furnished via the E-Portal and/or by e-mail to all counsel of record on this date.

/s/ Dana J. McElroy
Attorney

EXHIBIT A

Established 1915
BROWARD
County Public Schools

Return to Headlines

District Statement Regarding Court Ruling to Release the Collaborate Educational Network's Report regarding Nikolas Cruz

Today, August, 3, 2018, the Broward Circuit Court approved the release of the Collaborative Educational Network's report regarding Nikolas Cruz.

The Collaborative Educational Network (CEN) was retained to take an objective look at the educational and behavioral services provided to Nikolas Cruz throughout his years as a student within the Broward County public school system. CEN provides consulting services for school districts, charter schools, and non-profit and government agencies involved in education.

CEN's findings show that the District provided significant and appropriate services to Nikolas Cruz in compliance with the federal laws entitling all students to "a free appropriate public education" designed to meet their unique needs. The District utilized a multi-disciplinary approach, including ESE programming, school counseling/guidance and other related services in an effort to meet the ongoing and evolving needs of this student.

"The District looks forward to the release of the full report as soon as it is legally appropriate, "said Superintendent Robert W. Runcie. "We accept the recommendations regarding procedural improvements, and are pleased with the overall review, recommendations and findings. We are actively reviewing our policies and procedures, training protocols and data systems in an effort to implement the recommendations in a timely and effective way."

While the report has been heavily redacted by court order, what is available is a summary of process, a review of Florida statutes and recommendations, which we intend to follow.

- Broward County Public Schools is required to provide an education for all students, no matter their circumstances. That is the law.
- The District worked consistently, and with Cruz's family, to provide an education and ongoing, changing behavioral care for Cruz throughout his time in the Broward school system.
- This evaluation was conducted by a third-party, independent consultant that specializes in these kinds of assessments and the District accepts their findings as well as their recommendations.
- While this report verifies that the District's systems are appropriate and are in place, it is clear that we must review and amplify training in order to ensure consistent implementation of delivery of services.
- We proactively conducted this internal review and are now waiting for the Marjory Stoneman Douglas High School Public Safety Commission to move into its next phase. We anticipate their investigative report and findings to be released in the days ahead and our intent is to review those and then make our determinations.

Court Approved Collaborative Educational Network (CEN) Report Regarding N. Cruz at BCPS

Visit Us

600 SE Third Avenue
Fort Lauderdale, FL 33301

GET DIRECTIONS »

Contact Us

Phone 754-321-0000

ALL CONTACT INFO »

SITE MAP »

ADMIN

Website Accessibility Statement

Non-Discrimination Statement

Website Privacy Policy

Website Terms of Use

EXHIBIT B

From: Barbara J. Myrick <barbara.myrick@browardschools.com>
Sent: Monday, August 6, 2018 3:35 PM
To: PMcMahon@sun-sentinel.com; BWallman@sun-sentinel.com; hsaltz@sun-sentinel.com
Cc: Dana J. McElroy; Joanne C. Fritz
Subject: Educational Report

This communication is intended to put you on notice that your use of information that was ordered to be protected by Florida and federal law is a willful and intentional violation of the orders of both Judge Henning and Judge Scherer. The Sun Sentinel was represented at both hearings and we believe that your actions constitute contempt of court. Please refrain from any further reporting on the information that you conceded, through counsel, was legally protected from public disclosure and **remove any and all links or articles referencing that information.**

Barbara J. Myrick, Esq.
General Counsel
Office of the General Counsel
600 S.E. Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301
P: 754-321-2050 F: 754-321-2705
barbara.myrick@browardschools.com
browardschools.com