

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
05 CVS 4005

2007 APR 16 P 4:01

KEVIN A. MONCE,

Plaintiff,

vs.

NANCY G. DEAS and EDNA E. DEAS,

Defendants.

WAKE COUNTY, CSC

**PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56, North Carolina Rules of Civil Procedure, plaintiff Kevin A. Monce moves for partial summary judgment that the content of the defendants' website of which he complains is not a matter of public concern. In support of this motion plaintiff shows:

1. This is an action for libel. At issue is the content of a web site created and maintained by defendants. The website contains statements concerning plaintiff's practice as a veterinarian.
2. The parties agree that there are certain threshold legal issues which are appropriate for summary judgment and must be determined before a trial may be had on this matter.
3. A threshold legal issue is whether the content of the defendants' website addresses a matter of public concern. The answer to that question will determine the nature of plaintiff's burden of proof and whether certain defenses are applicable.

APR 16 2007

EVERETT C. HANCOCK & STEVENS LLP

4. The material facts concerning this issue are not in dispute; it is a matter of law.

5. By an Order entered on January 3, 2007, by the Honorable Donald W. Stephens, this Court recognized that certain threshold issues had not been decided or addressed in the order entered by the Honorable Carl R. Fox on December 15, 2006, and that these issues could be properly resolved by motions for partial summary judgment.

6. Plaintiff is entitled to partial summary judgment that the content of the defendants' website about which he complains is not a matter of public concern.

7. All evidentiary materials relevant to this motion have previously been submitted to the Court.

RESPECTFULLY SUBMITTED, this 16<sup>th</sup> day of April 2007.

THARRINGTON SMITH, L.L.P.

*Michael Crowell*

---

Michael Crowell  
209 Fayetteville Street  
Post Office Box 1151  
Raleigh, North Carolina 27602-1151  
Telephone: 919-821-4711  
Facsimile: 919-829-1583  
mcrowell@tharringtonsmith.com

*Attorneys for the plaintiff*

**CALENDAR REQUEST**

Kevin A. Monce,  
Plaintiff,

FILE NO. 05 CVS 4005

JURY \_\_\_\_\_ NON-JURY X

vs.

TERM BEGINNING:

Nancy G. Deas and Edna E. Deas,  
Defendants.

June 4, 2007

TRIAL	PRE-TRIAL	DEFAULT	DIVORCE	SMALL CLAIM APPEAL	MOTION
					X

If motion, specify type: Plaintiff's Motion for Partial Summary Judgment

NATURE OF CASE

CONTRACT	NEGLIGENCE	LAND	WILL	DOMESTIC	ADM. APPEAL	OTHER (Specify)
						Libel

- In my opinion, this motion will take 45 minutes to try.
- Special Request:
- If opposing counsel cannot be ready during the term specified, notice must be given to the undersigned and to the Trial Court Administrator 24 hours prior to date for setting calendar, to-wit:

CERTIFICATE OF READINESS: I HEREBY CERTIFY, *hearing of this motion*  
a. I know of no procedural matters which would delay the trial of the case when called for trial;  
b. I know of no parties or witnesses desired that will not be available on the trial date;  
c. I know of no current reason that would cause me to move for continuance;  
d. I am ready for motion;  
e. I have not attended a pre-trial conference.

Michael Crowell  
Attorneys for Plaintiffs

This the 16<sup>th</sup> day of April 2007.

Michael Crowell  
Michael Crowell, Attorney for Plaintiffs

MAIL CALENDAR REQUEST TO: Trial Court Administrator, P. O. Box 1916, Raleigh, N. C. 27602

AND MAIL A COPY TO: (Give address if out-of-town attorney or no attorney)

Hugh Stevens, Attorney for Defendants

