PHILIP GODLEWSKI, *Plaintiff* v. BRIENNA DuBORGEL *Defendant*	: : : : : : :	In the Court of Common Pleas of Lackawanna County Civil Action - Law No. 2023-CV-1354

GIBBONS, J.

MEMORANDUM

I. INTRODUCTION

The instant matter arises from allegations of defamation, publicity to private life invasion of privacy, and false light invasion of privacy relating to an affidavit signed by Brienna L. DuBorgel ("DuBorgel" or "Defendant") for an underlying case, Godlewski v. Kelly, et al., Lackawanna County Court of Common Pleas Docket No. 2021-CV-2195. Philip Godlewski ("Godlewski" or "Plaintiff") filed his Complaint against DuBorgel, and DuBorgel filed an Answer with New Matter and Counterclaim alleging defamation, false light invasion of privacy, assault, battery, intentional infliction of emotional distress ("IIED"), and negligent infliction of emotional distress ("NIED"). Both parties filed Motions for Partial Summary Judgment, along with supporting briefs and responses; therefore, these matters are ripe for disposition.

II. FACTUAL BACKGROUND

Godlewski's Complaint makes the following allegations. On October 31, 2022, DuBorgel signed an affidavit prepared by, or at the direction of, Attorney J. Timothy Hinton Jr. See Compl. at ¶ 6. In the affidavit, DuBorgel alleges that she commenced a sexual relationship with Godlewski in late 2008 or early 2009 while DuBorgel was 15 years old. Id. at ¶ 7, Ex. 1 at ¶¶ 3-4, 6. DuBorgel asserts that she had sex multiple times with Godlewski, who was ten years older

than she, while she was in the ninth and tenth grades at Riverside High School. Id. at ¶¶ 8-9. DuBorgel asserts in the affidavit that Godlewski was charged with crimes relating to their sexual relationship in July 2010. Id. at ¶10. DuBorgel also asserts that she resumed a sexual relationship with Godlewski in 2014-2016. Id. at ¶11.

Godlewski was charged with one count of corruption of minors, 18 Pa. C. S. A. §6301(a)(1), by an Information filed on November 16, 2010 at Lackawanna County Docket No. 2010-CR-2613. Id. at ¶ 15. The Information alleged Godlewski "did repeatedly have inappropriate text messages and contact with a minor." Id. at ¶ 15. Godlewski entered a plea of guilty[1] at Lackawanna County Docket No. 2010-CR-2613 to one count of corruption of minors. Id. at ¶ 17, Ex. 3.

Godlewski alleges that the affidavit signed by DuBorgel is defamatory, invades Godlewski's privacy by casting Godlewski in a false light to the public, and invades Godlewski's privacy by giving publicity to Godlewski's private life. Id. at ¶¶ 19-24, 26-32, 41, 48. Additionally, Godlewski alleges he has suffered special harm in the form of damage to his reputation and character. Id. at ¶ 25. Godlewski seeks compensatory, nominal, and punitive damages, along with equitable relief "sufficient to prevent similar future conduct by the Defendant" and counsel fees. Id. at ¶ 48.

III. STANDARD OF REVIEW

A motion for summary judgment is "[a] request that the court enter judgment without a trial because there is no genuine issue of material fact to be decided by a fact-finder—that is, because the evidence is legally insufficient to support a verdict in the nonmovant's favor." U.S.

[1] The Complaint states "Godlewski entered a plea of quilts," however, we paraphrase for clarity.

Bank Trust v. Carcione, No. 2020 CV 3135 at p. 2, Gibbons, J. (Lacka. Co. March 1, 2023) (citing Black's Law Dictionary 1038 (8th ed. 2004)). In essence, "[s]ummary judgment may be granted when there is no issue of material fact and the moving party is entitled to relief as a matter of law." Minick v. MTD Prods. Inc., 75 Pa. D. & C.4th 225, 232, Minora, J. (Lacka. Co. October 26, 2005). Pennsylvania Rule of Civil Procedure 1035.2 governs motions for summary judgment and provides, in relevant part, as follows:

> After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law:
> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
> (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.
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> Pa. R. Civ. P. 1035.2.
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> The Superior Court has stated that when analyzing a motion for summary judgment,
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> [w]e view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered. All doubts as to the existence of a genuine issue of a material fact must be resolved against the moving party.
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> Criswell v. Atl. Richfield Co., 115 A.3d 906, 908-09 (Pa. Super. 2015) (quoting Petrina v. Allied Glove Corp., 46 A.2d 795, 798 (Pa. Super. 2012) (citations omitted)).

IV. DISCUSSION

A. Godlewski's Motion for Partial Summary Judgment

a. Deemed Admission of Godlewski's Allegations

Courts are required to "examine the pleadings as a whole in determining whether

a defendant has admitted the material factual allegations of a complaint." Cercone v. Cercone, 386 A.2d 1, 6 (Pa. Super. 1978) (citing Kappe Associates, Inc. v. Aetna Cas. & Sur. Co., 341 A.2d 516, 519 (Pa. Super. 1975)). Accordingly, courts are also required to "examine the pleadings as a whole in determining whether a defendant has admitted the material factual allegations of a complaint." Cercone, 386 A.2d 1 at 6.

Godlewski raises a near-exact replica of his argument from his Motion for Judgment on the Pleadings, which we denied in our June 21, 2024 Memorandum and Order on Plaintiff's Motion for Judgment on the Pleadings. Our findings remain the same. See Order Jun 21, 2024 at pp. 5-6. The subject paragraphs at issue state the following:

- "Denied as stated. The Affidavit attached to Godlewski's [c]omplaint is a writing the terms of which speak for itself." See DF Answer at ¶¶ 6-11.
- "Denied. Strict proof of this allegation is demanded at the time of trial." Id. at ¶ 12.
- "Denied as stated. The Affidavit attached to Plaintiff's [c]omplaint is a writing the terms of which speak for itself. It is denied that the Affidavit contains any false statements." Id. at ¶ 13.
- "Denied as stated. The conviction speaks for itself." Id. at ¶ 14.
- "Denied as stated. The 'Information' attached to Plaintiff's [c]omplaint is a writing the terms of which speak for itself." Id. at ¶¶ 15-16.
- "Denied as stated. The Guilty Plea Colloquy attached to Plaintiff's [c]omplaint is a writing the terms of which speak for itself." Id. at ¶¶ 17-18.
- "Denied as stated. The Affidavit attached to Plaintiff's [c]omplaint is a writing the terms of which speak for itself." Id. at ¶¶ 19, 22.

- "Denied as stated. The Affidavit attached to Plaintiff's [c]omplaint is a writing the terms of which speak for itself. By way of further response the Affidavit speaks the truth." Id. at ¶¶ 44-45.

Each of these paragraphs, when read in conjunction with the entire Answer and the referenced exhibits (as we must, pursuant to Cercone) does not in any way state that DuBorgel admits to Godlewski's allegations. Godlewski argues the phrase "denied as averred" and responses asserting that a document "speaks for itself" are unsupported, general denials. However, Godlewski does not cite to a single legal authority where the phrase "denied as stated" or "denied as averred" has been held to be a legally insufficient response. Further, each of the cases Godlewski relies on, which supposedly found that a response asserting a document "speaks for itself" was an unsupported, general denial, are distinguishable. In each of the cases Godlewski relies on, the document asserted to speak for itself failed to specifically deny or contest the relevant factual allegations. See DrPhoneFix USA, LLC v. Mitchel Enterpriser, LLC, 272 A.3d 510, *3-4 (Pa. Super. 2022); Sea-Z, LLC v. Filipone, 2020 WL 974409 at *2 (Pa. Super. 2020); Gerber v. Piergrossi, 142 A.3d 854, 861 (Pa. Super. 2016).[2] In contrast, in the instant matter, each of the documents DuBorgel asserts "speaks for itself" does specifically deny or contest the factual allegations contained in Godlewski's complaint. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered, and because we find DuBorgel's denials sufficient, genuine issues of material fact exist.

[2] One case which Godlewski relies on does not even address the phrase "the document speaks for itself," but rather holds only that the phrase "denied and strict proof demanded" constituted a general denial pursuant to Pa. R. Civ. P. 1029(b). See Stevens & Lee, P.C. v. Cresswell, 2016 WL 6441304, *2 (Pa. Super. 2016).

Accordingly, Godlewski's Motion for Partial Summary Judgment regarding this issue will be **DENIED**.

b. Statute of Limitations for Assault, Battery, IIED, and NIED

> The law of the case doctrine refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter.

Neidert v. Charlie, 2016 Pa. Super. 138, 143 A.3d 384, 390–91 (2016). However, "[w]here the motions differ in kind, as preliminary objections differ from motions for judgment on the pleadings, which differ from motions for summary judgment, a judge ruling on a later motion is not precluded from granting relief although another judge has denied an earlier motion." Id. at 391 (quoting Parker v. Freilich, 803 A.2d 738, 745 (Pa. Super. 2002) (citation omitted), appeal denied, 573 Pa. 659, 820 A.2d 162 (2003)). DuBorgel argues we are bound by the previous decision of this court on Godlewski's Motion for Judgment on the Pleadings. See DF Brief in Opposition at pp. 18-19. Because a motion for partial summary judgment differs in kind from a motion for judgment on the pleadings, we are not bound by the conclusions contained in the previous decision of this court on Godlewski's Motion for Judgment on the Pleadings. Nevertheless, Godlewski's arguments remains virtually the same as those used at the preliminary objections stage.

Godlewski contends that DuBorgel's claims for assault, battery, IIED, and NIED are barred by the appropriate statute of limitations, because there was no "forcible compulsion." See Plaintiff Brief in Support at pp. 12-13. Notably, on November 26, 2019, the Pennsylvania legislature amended the statute of limitations for victims of child sexual abuse, extending the statute of limitations from the age of majority (i.e. 18 years old) plus 12 years to the age of

majority plus 37 years. See SEX OFFENSES—CRIME VICTIMS—CIVIL ACTIONS, 2019 Pa. Legis. Serv. Act. 2019-87 (H.B. 962) (PURDON'S).

The following actions and proceedings must be commenced within two years:

> (1) An action for assault, battery...or abuse of process. [...]
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> (7) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another limitation specified in this subchapter.

42 Pa. C.S.A. §5524.

> (b)(2)(i) If an individual entitled to bring a civil action arising from sexual abuse is under 18 years of age at the time the cause of action accrues, the individual shall have a period of 37 years after attaining 18 years of age in which to commence an action for damages regardless of whether the individual files a criminal complaint regarding the sexual abuse.
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> (ii) For the purposes of this paragraph, the term "sexual abuse" shall include, but not be limited to, the following sexual activities between an individual who is 23 years of age or younger and an adult, provided that the individual bringing the civil action engaged in such activities as a result of forcible compulsion or by threat of forcible compulsion which would prevent resistance by a person of reasonable resolution:
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> > (A) sexual intercourse, which includes penetration, however slight, of any body part or object into the sex organ of another;
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> > (B) deviate sexual intercourse, which includes sexual intercourse per os or per anus; and
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> > (C) indecent contact, which includes any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire in either person.
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> (iii) For purposes of this paragraph, "forcible compulsion" shall have the meaning given to it in 18 Pa.C.S. § 3101 (relating to definitions).

42 Pa. C.S.A. §5533.

Godlewski argues that DuBorgel's counterclaim fails to sufficiently plead "forcible compulsion" and thus the applicable statute of limitations is the two-year time period set forth in §5524 and not the 18 years of age plus 37 years set forth in §5533. See Plaintiff Brief in Support at p. 12. This argument lacks merit. As noted in §5533, "sexual intercourse" and "indecent contact" qualify as forcible compulsion. While only one of these two are needed for forcible compulsion to be present, DuBorgel's counterclaim sufficiently pleads both. Specifically, paragraphs 1, 2, 4, 8, 11, 55, 57, and 69 in the counterclaim make multiple averments of sexual intercourse between Godlewski and DuBorgel. See 18 Pa. C.S.A. §3124(a.2)(1), infra (stating that a child under the age of sixteen (16) cannot consent); see also 18 Pa. C.S. §3124.2(a.2)(1), infra (stating that consent is impossible when there is a power imbalance, such as a school employee-student relationship). Further, the counterclaim avers that there were acts of indecent contact between Godlewski and DuBorgel. Counterclaim at ¶¶ 57-59, 63.

Godlewski also contends that DuBorgel's claims for IIED and NIED are solely based upon text messages and communications and not child sexual abuse, and thus that the claims are barred by the applicable statute of limitations in §5524. This argument lacks merit. Specifically, the allegations of child sexual abuse are incorporated into the counts for IIED and NIED via paragraphs 67 and 81 of the Counterclaim, respectively. Therefore, DuBorgel has pleaded that her counts for IIED and NIED are the result of child sexual abuse, and thus §5533 is the controlling law.

Accordingly, Godlewski's Motion for Partial Summary Judgment regarding these issues will be **DENIED**.

c. Assault and Battery

Godlewski contends that DuBorgel has failed to create genuine issues of material fact with respect to her tort claims for assault and battery, because the alleged sexual conduct was consensual. See Plaintiff Brief in Support at pp. 18-19. We completely disagree.

> (a) Felony of the second degree. –Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years and that person is either:
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> (1) four years older but less than eight years older than the complainant; or
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> (2) eight years older but less than 11 years older than the complainant.
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> (b) Felony of the first degree. – A person commits a felony of the first degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is 11 or more years older than the complainant and the complainant and the person are not married to each other.
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> 18 Pa. C.S.A. §3122.1.
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> [A] person who is a volunteer or an employee of a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.
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> 18 Pa. C. S. §3124.2(a.2)(1). "Consent is not a defense to a violation of subsection (a.2)."

18 Pa. C.S. §3124.2(a.5)(1).

The counterclaim avers that Godlewski began a sexual relationship with DuBorgel when she was fifteen (15) years of age. Counterclaim at ¶ 8. It is well-settled law in the Commonwealth of Pennsylvania that the age of consent for sexual relations between an adult and a minor is sixteen (16) years of age. See 18 Pa. C.S. §3124.2(a.2)(1), supra; *see also* 18 Pa.C.S. §3124.2(a.5)(1), supra. We find that genuine issues of material fact exist with respect to DuBorgel's tort claims for assault and battery.

Accordingly, Godlewski's Motion for Partial Summary Judgment regarding this issue will be **DENIED**.

d. IIED

In order to state a cause of action for IIED, one must show the following four elements: "(1) extreme and outrageous conduct on the part of the inflictor; (2) intentional or reckless conduct by the inflictor; (3) emotional distress endured by the victim; (4) and the victim's distress must be severe." Jordan v. Pennsylvania State Univ., 276 A.3d 751, 775 (Pa. Super. 2022) (citation omitted). Further, in order to recover for IIED, "a plaintiff must suffer some type of resulting physical harm due to the defendant's [] conduct." Reeves v. Middletown Athletic Ass'n., 866 A.2d 1115, 1122-23 (Pa. Super. 2004). Moreover, "[t]o state a claim for [IIED] under Pennsylvania law, a plaintiff must allege that the defendant undertook the complained-of conduct 'with knowledge...that severe emotional distress was substantially certain to result." Piazza v. Young, 403 F. Supp. 3d 421, 442 (M.D. Pa. 2019) (citing L.H. v. Pittston Area School Dist., 130 F. Supp. 3d 918, 927 (M.D. Pa. 2015) (quoting Forster v. Manchester, 189 A.2d 147, 151 (Pa. 1963)). Our Superior Court has noted, "[t]he conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Hoy v. Angelone, 554 Pa. 134, 151, 720 A.2d 745, 754 (1998) (quoting Buczek v. First National Bank of Mifflintown, 366 Pa.Super. 551, 558, 531 A.2d 1122, 1125 (1987)).

Godlewski first argues that, when considering text messages between DuBorgel as an adult and Godlewski on October 10, 2021, DuBorgel "did not regard sexual contact with [Godlewski] as outrageous or extreme." See Plaintiff Brief in Support at p. 20. Godlewski repeats this argument, additionally positing that DuBorgel must not have viewed Godlewski's alleged suicide threat or numerous other miscellaneous text messages as extreme or outrageous,

due to later cited text messages from DuBorgel as an adult. Id. at pp. 22-23, 27. Godlewski here misstates the legal standard for "extreme and outrageous conduct," which is not a subjective standard defined by the victim's alleged perspective, but rather an objective standard of whether a reasonable person would find the conduct extreme and outrageous. Jordan, 276 A.3d at 775 (citing Chuy v. Philadelphia Eagles Football Club, 595 F.2d 1265, 1273 (3d Cir. 1979)). Repeatedly citing text messages containing the alleged opinions of DuBorgel as an adult does not alter this court's duty to find as a matter of law whether sexual contact between Godlewski, a 27 year old at the time, and DuBorgel, a 15 year old at the time, would be considered extreme and outrageous. Additionally, the same set of text messages which Godlewski cites, along with DuBorgel's counterclaim which contains allegations that Godlewski engaged in acts of child sexual, mental, and emotional abuse against her, produce a genuine issue of material fact as to whether Godlewski engaged in extreme and outrageous conduct. See Counterclaim at ¶¶ 67-77.

Godlewski next argues that DuBorgel has failed to produce evidence of date, time, or method of an alleged suicide threat, pursuant to the requirement in Pilchesky v. Gatelli, 12 A.3d 430, 444 (Pa. Super. 2011) that a plaintiff present actual evidence in addition to pleadings to satisfy or survive the standard for summary judgment. See Plaintiff Brief in Support at p. 22. However, the alleged suicide threat is just one of a multitude of allegations, and DuBorgel's lack of supporting evidence is moot in the face of the vast well of text messages supporting her other claims for IIED.

Godlewski then repeats an argument from his Motion for Judgment on the Pleadings, the argument that an allegation of intent to influence a criminal proceeding, which DuBorgel alleges was the intent behind Godlewski's suicide threat, negates a finding of IIED. Id. (citing Piazza v. Young, 403 F. Supp. 3d 421, 422 (M.D. Pa. 2019) (internal citations omitted)). Additionally,

Godlewski claims that DuBorgel failed to sufficiently plead intent on Godlewski's part, citing only a single text from DuBorgel as an adult in support. Id. at p. 27. We disagree. Specifically, throughout the Counterclaim, DuBorgel has alleged that Godlewski engaged in acts of child sexual, mental, and emotional abuse against her. It is quite difficult, if not impossible for us to conclude how anyone (especially a public school employee) would believe that this conduct was not likely to result in severe emotional distress.

Godlewski also argues that DuBorgel's own statements have "absolved" Godlewski of any potential liability for IIED. Godlewski does not cite to a single case wherein opinion statements about the supposed "mental and emotional durability" as a 15 or 16 year old child made by that child later on would negate the entirety of a claim for IIED.

Godlewski further argues that DuBorgel lacks an expert opinion to substantiate the alleged severe emotional distress she suffered. The Superior Court has noted,

> our Supreme Court clearly articulated in Kazatsky that, to the extent the tort of IIED is recognized in this Commonwealth, recovery is limited to those cases in which competent medical evidence of emotional distress is presented by the claimant. *See also* Cassell v. Lancaster Mennonite Conference, 834 A.2d 1185, 1189 n. 3 (Pa.Super.2003) ("Expert medical testimony is necessary to establish that a plaintiff actually suffered the claimed emotional distress."); Wecht v. PG Pub. Co., 725 A.2d 788, 791 (Pa.Super.1999) ("The Court [in Kazatsky] held that plaintiffs could not succeed absent medical confirmation that they actually suffered the claimed emotional distress."); Shiner v. Moriarty, 706 A.2d 1228, 1239 (Pa.Super.1998) ("Expert medical testimony is required to establish a claim for intentional infliction of emotional distress."); Britt v. Chestnut Hill College, 429 Pa.Super. 263, 632 A.2d 557, 561 (1993) ("In addition to requiring that a plaintiff establish that the conduct complained of was outrageous, the Pennsylvania Supreme Court has required that the plaintiff present competent medical evidence to support the claim.").
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> Gray v. Huntzinger, 2016 PA Super 194, 147 A.3d 924, 929–30 (2016). It is undisputed by DuBorgel that she missed the deadline to submit expert reports to substantiate her claim of IIED, and indeed DuBorgel does not allege that any such expert opinions or reports exist at all.

In sum, although we find that multiple genuine issues of material fact exist as to whether Godlewski committed IIED against DuBorgel, there is no dispute regarding DuBorgel's lack of expert evidence to support her claim of emotional distress, and DuBorgel would be unable to recover for IIED at a potential trial. Accordingly, Godlewski's Motion for Partial Summary Judgment regarding the IIED count ONLY will be **GRANTED**.

e. NIED

> In order to recover [for NIED], a plaintiff must prove one of four theories: (1) situations where the defendant owed the plaintiff a pre-existing contractual or fiduciary duty (the special relationship rule); (2) the plaintiff suffered a physical impact (the impact rule); (3) the plaintiff was in a "zone of danger" and reasonably experienced a fear of immediate physical injury (the zone of danger rule); or (4) the plaintiff observed a tortious injury to a close relative (the bystander rule).
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> Jordan, 276 A.3d 751 at 774 (Pa. Super. 2022) (citation omitted).

Godlewski argues that DuBorgel made "no attempt to plead the impact rule, the zone of danger rule, or the bystander rule." See Plaintiff Brief in Support at p. 30. We agree that DuBorgel has not pleaded the bystander rule. However, we disagree with Godlewski's assertion that DuBorgel has not pleaded the zone of danger rule or the impact rule. Regarding the zone of danger rule, DuBorgel has pleaded throughout the Counterclaim that she was the intended victim; thus, it is quite difficult to see how she was not "in the zone of danger." Regarding the impact rule, paragraphs 79 and 80 of the Counterclaim state that DuBorgel suffered "anxiety, depression, stress, embarrassment, humiliation [and] mental discomfort" (i.e. a physical impact) as a result of Godlewski's conduct. See Euceda v. Green, 2015 WL 13780282 at *5, Nealon, J. (Lacka. Co. Oct. 19, 2015) (holding that "persistent depression, nausea, sleep disturbance, nightmares, flashbacks, breathing difficulties, or hysterical attacks have been deemed sufficient

physical manifestation of emotional suffering to support a viable claim for NIED.")[3] Assuming arguendo that DuBorgel has not sufficiently pleaded the zone of danger rule or the impact rule, she has sufficiently pleaded the special relationship rule. Specifically, the Counterclaim avers that Godlewski took on the role of grief counselor for DuBorgel following the suicide of her boyfriend. Counterclaim at ¶ 84. Moreover, as previously stated, we are required to view the record in the light most favorable to the non-moving party, DuBorgel. We find that a genuine issue of material fact exists as to whether Godlewski committed the tort of NIED against DuBorgel pursuant to either the zone of danger, impact, or special relationship rules.

Accordingly, Godlewski's Motion for Partial Summary Judgment regarding DuBorgel's claim of NIED will be **DENIED**.

B. DuBorgel's Motion for Partial Summary Judgment

a. Godlewski is Not Collaterally Estopped

DuBorgel relies on the underlying matter of Godlewski v. Kelly , et al., Lackawanna County Court of Common Pleas Docket No. 2021-CV-2195, specifically Judge Nealon's August 30, 2024 Memorandum and Order, which granted the Motion for Summary Judgment of defendants Kelly and The Scranton Times, dismissing Godlewski's claims of defamation and false light invasion of privacy. In the Memorandum, Judge Nealon stated "Godlewski is collaterally estopped from denying his participation in a sexual relationship with Ms. DuBorgel in 2010." See Godlewski v. Kelly, *supra*, Memorandum Dated Aug 30, 2024 at p. 37. However, as Judge Nealon's later Memorandum and Order clarified, although the August 30, 2024

[3] In Euceda, Judge Nealon relied on the following: Toney v. Chester Cnty. Hosp., 961 A.2d 192, 200 (Pa. Super. 2008), *aff'd* 36 A.3d 83 (2011); Armstrong v. Paoli Memorial Hosp., 633 A.2d 605, 609 (Pa. Super. 1993), *app denied*, 649 A.2d 666 (1994); Love v. Cramer, 606 A.2d 1175, 1179 (Pa. Super. 1992); Crivellaro v. Pennsylvania Power & Light Co., 491 A.2d 207, 210 (Pa. Super. 1985).

Memorandum "used the wording that Godlewski was "collaterally estopped"...the doctrine of collateral estoppel and its five elements were never cited or expressly applied in the process." See Godlewski v. Kelly, Memorandum Dated Sep 30, 2024 at p. 12. Reading the August 30, 2024 Memorandum in full reveals that, in context, the phrasing was part of an explanation that Godlewski could not deny facts contained in the text messages used as evidence to secure an indictment and guilty plea for the crime of corruption of a minor. Godlewski is not collaterally estopped from denying his participation in a sexual relationship with DuBorgel, as the elements of collateral estoppel have not been referenced nor fulfilled. Rather, Godlewski is on record admitting to the existence and validity of the following text messages, which were referenced in the Affidavit of Probable Cause in the criminal case against Godlewski:

- 2/23/2010: *"I just want you to see that I really care about you, and not your body or our sex. Maybe that's the only way I can."*
- 2/28/2010: *"The only way we'd ever be sexually satisfied is if we did it like 4-5 times a day."*
- 3/6/10: *"I hate my penis, idk [I don't know] why the fuck that happens. You looked so good and were giving incredible head then BOOM, gone. Like wtf."*

Godlewski's 2 Page Day Log:

- *"Realized that you're only 15, but quickly stopped caring."*
- *"I just pulled [your] hair from my crotch area. Hahahaha!!!"*
- *"Should we get a Jacuzzi suite? Hmm"*

See Godlewski v. Kelly, Memorandum Dated Aug 30, 2024 at p. 13.

Additionally, DuBorgel has waived the defense of collateral estoppel. Defenses of estoppel and res judicata must be pleaded in a responsive pleading under the heading "New Matter." Pa. R. Civ. P. 1030(a). A party also waives defenses not presented by preliminary

objection, answer, or reply. Pa. R. Civ. P. 1032(a). DuBorgel cannot raise the defense of collateral estoppel at this stage, because she did not raise it in her Answer or New Matter. However, it is equally true that Godlewski cannot deny the existence and validity of the above text messages due to his entered guilty plea, and as the text messages are part of the record in the instant matter, we may consider them when ruling on the cross-motions for partial summary judgment.

b. **Godlewski's Claim for Defamation**

As explained above, the collateral estoppel argument which DuBorgel primarily relies on cannot be used; however, the text messages used as evidence to secure Godlewski's guilty plea to corruption of a minor may be considered admitted by him.

In order to establish a claim for defamation, Godlewski has the burden of proving the following:

(1) The defamatory character of the communication.
(2) Its publication by the defendant.
(3) Its application to the plaintiff.
(4) The understanding by the recipient of its defamatory meaning.
(5) The understanding by the recipient of it as intended to be applied to the plaintiff.
(6) Special harm resulting to the plaintiff from its publication.
(7) Abuse of a conditionally privileged occasion.

42 Pa. C.S.A. §8343(a). Godlewski is also a public figure as, by his own admission and uncontested in his pleadings, he reaches millions of followers with his livestreams. Under Pennsylvania law, an action for defamation against a public figure must also prove "actual malice" in order to prevail. Actual malice requires "at a minimum that the statements were made with a reckless disregard for the truth...there must be sufficient evidence to permit the conclusion that the defendant actually had a high degree of awareness of...probable falsity."

Joseph v. Scranton Times L.P., 634 Pa. 35 (2015) (citing Harte-Hanks Commc'ns v. Connaughton, 491 U.S. 657 (internal citations omitted)). Truth is a complete defense to any defamation claim. See Weaver v. Lancaster Newspapers, Inc., 592 Pa. 458 (2007); Schnabel v. Meredith, 378 Pa. 609 (1954).

We find that no genuine issue of material fact exists as to the truth of DuBorgel's statements in her affidavit. Godlewski in his Complaint claims that he and DuBorgel did not have a sexual relationship while she was a minor. The aforementioned text messages, which Godlewski's own guilty plea admits the validity of, reveal otherwise. Godlewski attempts to split hairs and say he was not convicted of "sex offenses" relating to a sexual relationship with DuBorgel. The precise wording of DuBorgel's affidavit states that Godlewski was charged with crimes "relating to [their] sexual relationship." There can be no dispute that this is true, as the original criminal complaint against Godlewski charged him with Statutory Sexual Assault, 18 Pa. C.S. § 3122.1, Involuntary Deviate Sexual Intercourse, 18 Pa. C.S. § 3123(a)(7), Aggravated Indecent Assault, 18 Pa. C.S. § 3125(a)(8), Indecent Assault, 18 Pa. C.S. § 3126(a)(8), and the offense which Godlewski later pled guilty to, Corruption of Minors, 18 Pa. C.S. § 6301(a)(1). Godlewski also claims DuBorgel "falsely implies that Godlewski was convicted of sex offenses with respect to DuBorgel." Nowhere in the affidavit is the word "conviction" or its variants even used, and statements relating to Godlewski's criminal case such as "[DuBorgel] was the minor victim in the criminal case" and "Godlewski and [DuBorgel] continued to communicate with each other while the criminal case was pending" are true as seen in court filings and evidence of text messages submitted in the instant matter.

As there is no genuine dispute of material fact regarding DuBorgel's complete defense of truth against Godlewski's defamation claim, we will **GRANT** DuBorgel's Motion for Partial Summary Judgment on Godlewski's defamation claim.

c. Godlewski's Claim for Invasion of Privacy False Light

In order to maintain a claim for false light invasion of privacy under Pennsylvania law, a party must show the opposing party "had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." Krajewski v. Gusoff, 53 A.3d 793 (Pa. Super. 2012). As explained above, it is impossible for DuBorgel to have acted in reckless disregard as to the falsity of the matter at hand because we find that the statements in DuBorgel's affidavit are undeniably true.

Since there is no dispute of material fact regarding the invalidity of Godlewski's claim for invasion of privacy false light, we will **GRANT** DuBorgel's Motion for Partial Summary Judgment on Godlewski's claim for invasion of privacy false light.

d. DuBorgel's Claims for Defamation and False Light

In order to establish a claim for defamation, as no conditionally privileged occasion is relevant in the instant case and DuBorgel is not a public figure, DuBorgel has the burden of proving the following:

(1) The defamatory character of the communication.
(2) Its publication by the defendant.
(3) Its application to the plaintiff.
(4) The understanding by the recipient of its defamatory meaning.
(5) The understanding by the recipient of it as intended to be applied to the plaintiff.
(6) Special harm resulting to the plaintiff from its publication.

42 Pa. C.S.A. §8343(a). Truth is a complete defense to any defamation claim. See Weaver v. Lancaster Newspapers, Inc., 592 Pa. 458 (2007) and Schnabel v. Meredith, 378 Pa. 609 (1954). Additionally, in order to maintain a claim for false light invasion of privacy under Pennsylvania law, a party must show the opposing party "had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." Krajewski v. Gusoff, 53 A.3d 793 (Pa. Super. 2012).

Although certain statements which Godlewski made on his live streams are admitted by Godlewski, Godlewski contests the falsity of the alleged defamatory statements, including statements that DuBorgel committed serious sexual misconduct, that DuBorgel is a liar, that the affidavit given was a false statement, and that DuBorgel lied to police. See Def. Mot. for Partial Summ. J. at ¶¶ 41-49, Pl. Brief in Supp. Of Mot. for Partial Summ. J. at pp. 18-19. Therefore, an issue of material fact exists regarding DuBorgel's counterclaims for defamation and invasion of privacy false light. We will therefore **DENY** DuBorgel's Motion for Partial Summary Judgment on her counterclaims for defamation and invasion of privacy false light.

e. **DuBorgel's Claims for Assault and Battery**

Godlewski contends that DuBorgel's claims for assault and battery are barred by the appropriate statute of limitations, because there was no "forcible compulsion." See Plaintiff Brief in Opposition at pp. 11-12. However, as explained *infra*, as noted in §5533, "sexual intercourse" and "indecent contact" qualify as forcible compulsion. While only one of these two are needed for forcible compulsion to be present, DuBorgel's counterclaim sufficiently pleads both. Specifically, paragraphs 1, 2, 4, 8, 11, 55, 57, and 69 in the counterclaim make multiple averments of sexual intercourse between Godlewski and DuBorgel. See 18 Pa. C.S.A.

§3124(a.2)(1), *infra* (stating that a child under the age of sixteen (16) cannot consent); see also 18 Pa. C.S. §3124.2(a.2)(1), *infra* (stating that consent is impossible when there is a power imbalance, such as a school employee-student relationship). Further, the counterclaim avers that there were acts of indecent contact between Godlewski and DuBorgel. Additionally, as explained above, Godlewski himself has admitted to the validity of text messages revealing a sexual relationship and sexual contact between himself and a nonconsenting minor.

Godlewski also contends that DuBorgel has failed to create genuine issues of material fact with respect to her tort claims for assault and battery, because the alleged sexual conduct was consensual. See Plaintiff Brief in Support at pp. 18-19, Plaintiff Brief in Opposition at p. 20. We completely disagree. As explained above, a minor cannot consent to sexual conduct and, alternatively, there can be no consent in a relationship with a power imbalance, such as a student-teacher relationship.

We therefore find that no genuine issue of material fact exists as regards to DuBorgel's counterclaims for assault and battery. We will therefore **GRANT** DuBorgel's Motion for Partial Summary Judgment on her counterclaims for assault and battery.

V. CONCLUSION

For the above reasons, Godlewski's Motion for Partial Summary Judgment will be **GRANTED IN PART** as to DuBorgel's counterclaim for IIED and **DENIED** as to all other counts. Additionally, DuBorgel's Motion for Partial Summary Judgment will be **GRANTED IN PART** regarding Godlewski's claims for defamation and invasion of privacy false light and DuBorgel's counterclaims for assault and battery, and **DENIED** as to her other counts.

An appropriate Order follows.