

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, TIMES SHAMROCK
COMMUNICATIONS, THE SCRANTON
TIMES-TRIBUNE, LARRY HOLEVA
Defendants.

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMANDED

No.: 2021-CV-2195

CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

APR 22 P 2:20

MAURIN B. KELLY
LACKAWANNA COUNTY

BRIEF IN SUPPORT OF DEFENDANTS' SECOND MOTION FOR SANCTIONS

Defendants, Chris Kelly, Times Shamrock Communications, The Scranton Times-Tribune and Larry Holeva ("Defendants"), by and through their attorneys, Haggerty Hinton & Cosgrove LLP, file the following Brief in Support of Defendants' Second Motion for Sanctions:

I. BACKGROUND

Plaintiff, Phillip Godlewski, filed this defamation case on May 24, 2021. He alleges Defendants defamed him in an article published on February 14, 2021 and he seeks \$5 Million in damages. By virtue of him being a patriot reporter and social media influencer with over 75,000 followers, Plaintiff claims in the Complaint he is a public figure.

The article in question discusses Plaintiff's criminal history and states "Lackawanna County detectives said Godlewski had sex with the [minor] girl in cars and homes he had access to as a real estate agent." Further, the article noted he pled guilty to corruption of a minor and admitted to having a sexual relationship with a 15-year-old girl. "Godlewski, 28 at the time, was sentenced to three to 23 months, with the first three months to be served under house arrest and the balance as probation." Plaintiff now claims in this lawsuit he never had sex with the fifteen-year-old girl and Defendants defamed him by stating such. A substantial amount of the written discovery so far in this case has focused on Plaintiff's relationship with the 15-year-old female

victim from the 2010 criminal charges against Plaintiff.

II. ISSUES

- (1) Should Defendants' Second Motion for Sanctions be granted?

Suggested Answer: Yes.

III. ARGUMENT

The purpose of the Pennsylvania "discovery rules is to prevent surprise and unfairness and to allow a fair trial on the merits." Dominick v. Hanson, 2000 PA Super 158, 753 A.2d 824, 826 (Pa.Super. 2000). To that end, Pa.R.C.P. 4003.1 provides that "as a general rule, discovery is liberally allowed with respect to any matter, not privileged, which is relevant to the cause being tried." George v. Schirra, 2002 PA Super 395, 814 A.2d 202, 204 (Pa.Super. 2002). Berg v. Nationwide Mutual Insurance Company, Inc., 2012 PA Super 88, 44 A.3d 1164, 1178 n. 8 (Pa. Super. 2012).

42 Pa. C.S.A. §2503(7) permits a party to request a reasonable counsel fee against another party for "dilatory, obdurate or vexatious conduct during the pendency of a matter." Pa. R.C.P. 4019 permits the Court, upon motion, to make an appropriate order for sanctions if a party fails to serve answers to interrogatories or fails to produce documents requested under Rule 4009 or fails to "obey an order of court respecting discovery."

With respect to spoliation issues, the Superior Court has explained:

"Spoliation of evidence" is the non-preservation or significant alteration of evidence for pending or future litigation. When a party to a suit has been charged with spoliating evidence in that suit (sometimes called "first-party spoliation"), we have allowed trial courts to exercise their discretion to impose a range of sanctions against the spoliator.

PTSI, Inc. v. Haley, 71 A.3d 304, 315 (Pa.Super. 2013) (quoting Pyeritz v. Commonwealth,

32 A.3d 687, 692 (Pa. 2011) (internal citations and footnotes omitted)). The trial court must weigh three factors to determine the appropriate sanction for spoliation:

(1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.

Id. (quoting Creazzo v. Medtronic, Inc., 903 A.2d 24, 29 (Pa.Super. 2006)). In assessing the “degree of fault of the party who altered or destroyed the evidence,” the trial court must consider (1) “the extent of the offending party’s duty or responsibility to preserve the relevant evidence, and [(2)] the presence or absence of bad faith.” Id. (quoting Creazzo, 903 A.2d at 29). “Where fault and prejudice are not severe, dismissal is inappropriate.” Mt. Olivet, 781 A.2d at 1273. Although an order granting summary judgment against the offending party remains an option in some cases, its severity makes it an inappropriate remedy for all but the most egregious conduct. *See* Tenaglia v. Proctor & Gamble, Inc., 737 A.2d 306, 308 (Pa Super. 1999). The facts of Plaintiff’s misconduct in discovery and his failure to preserve and/or produce evidence is set forth in Defendants’ motion. It is clear in this case that Plaintiff’s conduct was intentional, fraudulent and egregious. The severe sanctions being sought by Defendants are warranted.

IV. CONCLUSION

WHEREFORE, Defendants respectfully request the following relief:

- (a) Plaintiff’s case be dismissed with prejudice; and
- (b) Defendants be awarded \$35,000 from Plaintiff as reasonable counsel fees and another \$35,000 for Plaintiff’s bad faith conduct due to Plaintiff filing of this lawsuit, failing to preserve evidence, providing false discovery responses and for suborning perjury from a material witness.

RESPECTFULLY SUBMITTED,

HAGGERTY HINTON & COSGROVE LLP

Date: 11-22-2022

By: J. T. Hinton Jr.

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Attorneys for Defendants,

Chris Kelly, Times Shamrock

Communications, The Scranton Times-

Tribune and Larry Holeva

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ J. Timothy Hinton, Jr., Esq.

**J. TIMOTHY HINTON, JR., ESQUIRE
PA I.D. 61981**

MAURI B. KELLY
LACKAWANNA COUNTY
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CERTIFICATE OF SERVICE

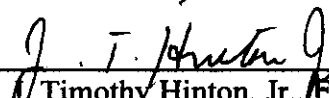
I hereby certify that on this 22nd day of November 2022, I caused to be served by electronic mail and First-Class mail, a true and correct copy of the foregoing Defendants' Brief in Support of Motion for Sanctions upon the following:

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Attorney for Plaintiff

MAURIE B. KELLY
 CLERK OF JUDICIAL
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RESPECTFULLY SUBMITTED,

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