

PHILIP GODLEWSKI, LACKAWANNA COUNTY
Plaintiff

MAURI B. KELLY

2023 MAR -6 P 1:28

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

v.

CHRIS KELLY, et al
Defendants.

RECORDS CIVIL DIVISION

CIVIL DIVISION

JURY TRIAL DEMANDED

No.: 2021-CV-2195

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT
DISCOVERY RELATING TO PUNITIVE DAMAGES**

Defendants, Chris Kelly, The Scranton Times, L.P. and Larry Holeva ("Defendants"), by and through their attorneys, Haggerty Hinton & Cosgrove LLP, file the following Response to Plaintiff's Motion for Leave to Conduct Discovery Relating to Punitive Damages.

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. By virtue of him being a patriot reporter and social media influencer with over 75,000 social media followers, Plaintiff stated 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 the morals 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 of confinement. Plaintiff now claims in this lawsuit he never had sex with the fifteen-year-old girl and Defendants defamed him by stating such. The parties have entered into a Stipulation agreeing that Plaintiff be deemed to be a "public figure" under the law applicable to defamation claims. This Stipulation was approved and made into an Order of

Court dated January 18, 2023. (A true and correct copy of the Stipulation and Order of Court is attached hereto as **Exhibit "A"**.)

II. DISCOVERY

Written discovery commenced on July 9, 2021 and continues to this day. The victim in Plaintiff's criminal case for sex crimes in 2010-2011 has executed an Affidavit affirming she had a sexual relationship with Philip Godlewski when she was fifteen (15) years old and he was ten years older than her. (See Affidavit attached hereto and marked as **Exhibit "B"**.) At a February 6, 2023 Court hearing in this case, Plaintiff admitted he pled guilty to corrupting Brienna DuBorgel's morals in 2009-2010 and he was sentenced to serve 3 months of confinement and 2 years of probation.

On February 13, 2023 Plaintiff filed a motion to conduct punitive damage discovery in the form of 50 comprehensive interrogatories with subparts to each defendant. Defense counsel recorded two (2) depositions on March 1, 2023 and two (2) depositions on March 3, 2023. Plaintiff's counsel has not recorded any depositions. None of the Defendants have been deposed. The Court had previously entered an Order of Court permitting Defendants to obtain text messages secured by the Lackawanna District Attorney's office ("LCDAO") from the minor victim's cell phone. On March 2, 2023, the LCDAO provided defense counsel with materials including the content of about 2,000 text messages between Phil Godlewski and Brienna DuBorgel obtained by the Taylor Borough Police Department and the Pennsylvania State Police on March 13, 2010. These text messages provide clear proof Philip Godlewski was involved in a sexual relationship with the minor victim.

III. ISSUE

Has Plaintiff established a prima facie basis for the recovery of punitive damages against any Defendant?

Suggested Answer: No. Plaintiff has not produced any evidence of outrageous conduct by any Defendant or that any Defendant entertained serious doubts as to truth of the publication at issue.

IV. LAW AND ARGUMENT

a. **Punitive Damage Discovery**

“Punitive damages are appropriate when an individual’s actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct.” *Dubose v. Quinlan*, 125 A.3d 1231, 1240 (Pa. Super. 2015); *Rockwell v. Knott*, 32 Pa. D. & C. 5th 157, 167 (Lacka. Co. 2013). Wanton or reckless conduct “means that the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow.” *Lomas v. Kravitz*, 130 A.3d 107, 128-129 (Pa. Super. 2015) (en banc); *Dean v. Community Medical Center*, 46 Pa. D. & C. 4th 334, 345 (Lacka. Co. 2000). However, “a showing of mere negligence, or even gross negligence, will not suffice to establish that punitive damages should be imposed.” *Hall v. Episcopal Long Term Care*, 54 A.3d 381, 395 (Pa. Super. 2012), app. denied, 620 Pa. 715, 69 A.3d 243 (2013). “Thus, in Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that *(1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) [s]he acted, or failed to act as the case may be, in conscious disregard of that risk.*” [Emphasis added.]

“[A] party may obtain information concerning the wealth of a defendant in a claim for

punitive damages only upon order of court setting forth appropriate restrictions as to the time of the discovery, the scope of the discovery, and the dissemination of the material discovered.” Pa.R.C.P. 4003.7. To secure financial wealth discovery under Rule 4003.7, the plaintiff must identify facts that establish a *prima facie* basis for the recovery of punitive damages under Pennsylvania law. See *Ogazaly v. American Honda Motor Co., Inc.*, 104 Lacka. Jur. 354, 360, 2003 WL 26131652, at *5 (Lacka. Co. 2003). The maintenance of the *prima facie* standard protects the privacy rights of the defendant by ensuring that there is some factual basis for the plaintiff’s punitive damages claim before the defendant will be compelled to divulge confidential and proprietary financial information to an adversary in litigation. *Id.*

Punitive damages are recoverable if the defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed, but nonetheless acted, or failed to act, in conscious disregard of that risk. *Valentino v. Philadelphia Triathlon, LLC*, 150 A.3d 483, 488 (Pa. Super. 2016) (en banc); *Millan v. Pennsylvania American Water Company*, 25 Pa. D. & C. 5th 181, 186 (Lacka. Co. 2012). Plaintiff has no *prima facie* evidence of outrageous conduct by any defendant or evidence of a subjective appreciation by a defendant of risk of harm to Plaintiff.

b. Plaintiff’s Heavy Burdon of Proof for his Claims

In libel actions against a media defendant for publications on matters of “public concern,” the First Amendment requires the plaintiff to bear the burden of proving that the publications are false. *Hepps*, 475 U.S. at 770; see also *Lewis v. Philadelphia Newspapers, Inc.*, 833 A.2d 185, 191 (Pa. Super. 2003). “Whether speech addresses a matter of public concern must be determined by its content, form and context, as evidenced by the entire record.” *American Future Sys. v. Better Bus. Bureau*, 872 A.2d 1202, 1211 (Pa. Super. 2005) (citing *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 761 (1984)); see also *Matus v. Triangle Publ.*, 286 A.2d 357 (Pa. 1971)

(matters of public concern are those which contribute “to robust debate on public issues.”).

The majority of federal and state courts have concluded that falsity must be established by clear and convincing evidence. *See Dibella v. Hopkins*, 403 F.3d 102 (2d Cir. 2005) (“We also observe that many jurisdictions outside of New York that have considered this issue have found that clear and convincing proof of falsity is required for public figures and sometimes even private figures”); *see also World Wide Assoc. of Specialty Prods. v. Pure, Inc.*, 450 F.3d 1132 (10th Cir. 2006). The heightened clear and convincing standard is particularly appropriate where a public figure sues a media defendant over a matter of public concern *Dibella*, 403 F.3d at 114 (quoting *Robertson v. McCloskey*, 666 F. Supp. 241, 248 (D.D.C. 1987)).

“If plaintiff is a public official or public figure ... and the statement relates to a matter of public concern, then to satisfy First Amendment strictures the plaintiff must establish that the defendant made a false and defamatory statement with actual malice.” *American Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 84 (Pa. 2007); *N.Y. Times v. Sullivan*, 376 U.S. 254, 279-80 (1964). A public official or public figure must prove actual malice—which is defined as knowledge that the publications were false or a reckless disregard of whether they were true or false—by clear and convincing evidence. *See New York Times*, 376 U.S. at 279-80; *See also Tucker v. Philadelphia Daily News*, 848 A.2d 113, 127-128 (Pa. 2004).

“The burden of proof imposed is substantial, as the actual malice standard goes so far as to forbid imposition of liability even in those instances where the defendant negligently publishes false, defamatory statements about a public figure or public official.” *Blackwell v. Eskin*, 916 A.2d 1123, 1125 (Pa. Super. 2007) (quoting in part *Norton v. Glenn*, 860 A.2d 48, 56 (Pa. 2004)). Indeed, “the actual malice standard is a rigorous, if not impossible, burden to meet in most circumstances.” *Bartlett v. Bradford Publ’g Inc.*, 885 A.2d 562, 566 (Pa. Super. 2005) (quotations omitted). The

“failure to check sources, or negligence alone, is simply insufficient to maintain a cause of action for defamation ... Recklessness generally and in the context of actual malice is not easily shown.” *Id.* (quotations omitted). Rather, to establish that a defendant acted with reckless disregard for the truth, “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.” *Norton*, 860 A.2d at 55. “Moreover, establishment of a defamation claim requires clear and convincing evidence, the highest level of proof for civil claims.” *Blackwell*, 916 A.2d at 1125. This standard requires evidence “so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy of the truth of the precise facts in issue.” *Bartlett*, 885 A.2d at 566. If the plaintiff in a defamation case fails to put forth evidence sufficient to support a finding of actual malice, the trial court may grant summary judgment in favor of the defendant. *Weaver*, 875 A.2d at 1102. “The requirement that the plaintiff be able to show actual malice by clear and convincing evidence is initially a matter of law.” *Tucker*, 848 A.2d at 128 (citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 17 (1990)).

V. CONCLUSION

Here, Plaintiff has presented a legally deficient Motion (2 pages in length) that does not even attempt to show the Court a *prima facie* basis for the imposition of punitive damages against Defendants. This is a public figure, actual malice defamation case which requires Plaintiff to prove by clear and convincing evidence the newspaper printed falsehoods about him and the reporter knew the statements were false when published or the reporter entertained serious doubts as the truth of the statements. Here, Plaintiff's claims are completely devoid of merit and lacking in evidence. The victim has already come forward to testify in open court on February 6, 2023 that she had a sexual relationship with Philip Godlewski when she was 15 years old and he was 25 years old. Plaintiff denied this in Court and claimed the sexual

relationship started after his probation period for corrupting her expired. Further, the LCDAO has produced about 2,000 text messages from early 2010 that prove Plaintiff's sexual relationship with the minor victim.

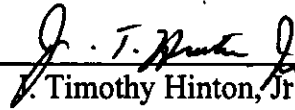
If the Court does not deny Plaintiff's motion outright, which it should, Defendants request that a hearing be scheduled requiring Plaintiff to present his *prima facie* evidence in support of punitive damages and allow Defendants to present counter-evidence, if necessary.

RESPECTFULLY SUBMITTED,

HAGGERTY HINTON & COSGROVE LLP

Date: March 6, 2023

By: _____



J. Timothy Hinton, Jr., Esq.
1401 Monroe Ave., Suite 2
Dunmore, PA 18509
(570) 344-9845

timhinton@haggertylaw.net

Attorneys for Defendants,

Chris Kelly *The Scranton Times*, L.P. 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

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

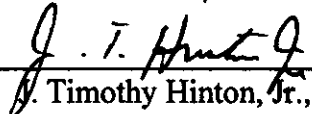
.....
CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March 2023, I caused to be served by electronic mail, a true and correct copy of the foregoing Defendants' Response of Plaintiff's Motion for Leave to Conduct Discovery relating to Punitive Damages upon the following:

Timothy M. Kolman, Esq.
414 Hulmeville Ave.
Pennel, PA 19047
TKolman@kolmanlaw.com
Attorney for Plaintiff

RESPECTFULLY SUBMITTED,

HAGGERTY HINTON & COSGROVE LLP

By: 
J. Timothy Hinton, Jr., Esq.
1401 Monroe Ave., Suite 2
Dunmore, PA 18509
(570) 344-9845
timhinton@haggertylaw.net
Attorneys for Defendants,
*Chris Kelly, The Scranton Times, L.P. and
Larry Holeva*

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

ORDER

AND NOW, this 19th day of January 2023 the attached Stipulation is made an Order of this Court. It is further ORDERED that for purposes of this litigation Plaintiff Philip Godlewski shall be deemed a public figure.

BY THE COURT:



CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

2023 JAN 18 P 2:54

MAURI B. KELLY
LACKAWANNA COUNTY

33
2023
1-18-23
FILED



PHILIP GODLEWSKI,
Plaintiff

FILED IN THE COURT OF COMMON PLEAS
LACKAWANNA COUNTY OF LACKAWANNA COUNTY

v.

2023 JAN 18 3:13 CIVIL DIVISION

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

CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

No.: 2021-CV-2195

STIPULATION

It is here by STIPULATED and AGREED, by and between all parties in this lawsuit, as follows:

1. Plaintiff, Philip Godlewski, filed a Complaint in this case on May 24, 2021 which averred in paragraph 2 as follows: "For the purposes of this complaint, by virtue of his large following, Mr. Godlewski is a public figure."
2. Defendants, Chris Kelly, Times Shamrock Communications, The Scranton Times-Tribune and Larry Holeva, filed an Answer and New Matter to the Complaint on July 6, 2021 and averred in response to paragraph 2 of the Complaint as follows: "It is admitted Plaintiff is a public figure with respect to this lawsuit."
3. Plaintiff, Philip Godlewski, shall be deemed to be a public figure for purposes of this lawsuit.
4. Plaintiffs and Defendants hereby agree to have the Court rule and declare Plaintiff to be a public figure for purposes of his claims filed in this lawsuit.
5. The parties hereby request that the Court execute the attached Order.

By: J. Timothy Hinton, Jr.
J. Timothy Hinton, Jr., Esq.
Haggerty Hinton & Cosgrove LLP
1401 Monroe Ave., Suite 2
Dunmore, PA 18509
Attorneys for Defendants,
Chris Kelly, Times Shamrock
Communications, The Scranton Times-
Tribune, The Scranton Times, L.P.,
and Larry Holeva

By: Timothy M. Kolman
Timothy M. Kolman, Esq.
Kolman Law, P.C.
414 Hulmeville Ave.
Pennel, PA 19047
Attorneys for Plaintiff,
Philip Godlewski

January 16, 2023

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

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, et al.
Defendants.

: IN THE COURT OF COMMON PLEAS
: OF LACKAWANNA COUNTY
:
: CIVIL DIVISION
:
: JURY TRIAL DEMANDED
:
: No.: 2021-CV-2195

.....
CERTIFICATE OF SERVICE

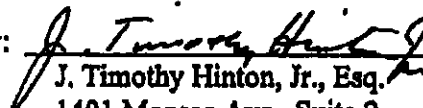
I hereby certify that on this 18th day of January 2023, I caused to be served by electronic mail, a true and correct copy of the foregoing Stipulation upon all parties:

Timothy M. Kolman, Esq.
414 Hulmeville Ave.
Pennel, PA 19047
TKolman@kolmanlaw.com
Attorney for Plaintiff

RESPECTFULLY SUBMITTED,

HAGGERTY HINTON & COSGROVE LLP

By:



J. Timothy Hinton, Jr., Esq.
1401 Monroe Ave., Suite 2
Dunmore, PA 18509
(570) 344-9845
timhinton@haggertylaw.net
Attorneys for Defendants,
*Chris Kelly, Times Shamrock
Communications, The Scranton Times-
Tribune, The Scranton Times, L.P.,
and Larry Holeva*

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

.....
AFFIDAVIT

STATE OF PENNSYLVANIA

:

: ss.

COUNTY OF LACKAWANA

:

I, [REDACTED], an adult individual who resides at [REDACTED]

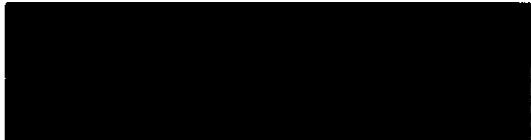
[REDACTED], being duly sworn according to law hereby swears and affirms as follows:

1. My date of birth is [REDACTED]. A copy of my driver's license is attached to this Affidavit.
2. I was the minor victim in the criminal case brought against Philip Godlewski in July 2010.
3. In September of 2008 I began ninth (9th) grade at Riverside High School at the age of 15 years old.
4. On November 10, 2008, my boyfriend, Joseph Strok, III, committed suicide. I was very upset by his death.
5. Shortly before Joseph Strok's death I met Philip Godlewski. I began communicating with him after Joseph's death. Philip Godlewski was 10 years older than me.
6. Within a couple of months after Joseph Strok's death I began having a sexual relationship with Philip Godlewski. I was fifteen (15) years old when we started our sexual relationship.
7. Philip Godlewski bought me gifts including jewelry, a hat and other items during the first few months of our relationship.

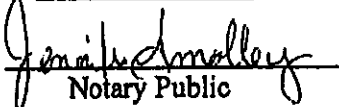


8. Philip Godlewski and I had sex multiple times while I was a ninth (9th) grade and tenth (10th) grade student at Riverside High School.
9. Philip Godlewski was charged with crimes relating to our sexual relationship in July of 2010.
10. Philip Godlewski and I continued to communicate with each other while the criminal case was pending against him.
11. After Philip Godlewski was arrested, he pleaded with me not to testify against him and said he would commit suicide if I testified against him.
12. In response to Philip Godlewski's pleas and just wanting the situation to end, I stopped cooperating with the District Attorney's office during the criminal case against him and I refused to testify against Philip Godlewski at the preliminary hearing in the criminal case.
13. Philip Godlewski and I continued our sexual relationship in the 2014-16 time period after his criminal case was over.

I, [REDACTED] do hereby swear and affirm that the statements made in this affidavit are true and correct to the best of my personal knowledge, information, and/or belief. I am of sound mind and I make this Affidavit of my own free will. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



Sworn to and Subscribed

before me this 31st day
of October, 2022.

Notary Public

