

NOTIFIED JUN 24 2024

MAURI B. KELLY

PHILLIP GODLEWSKI LACKAWANNA COUNTY :

Plaintiff/Counterclaim Defendant :

2024 JUN 21 P 2:32 :

CLERK OF JUDICIAL RECORDS CIVIL DIVISION :

v. :

In the Court of Common Pleas of Lackawanna County

Civil Action - Law

BRIENNA DuBORGEL :

Defendant/Counterclaim Plaintiff. :

No. 2023-CV-1354

**MEMORANDUM**

GIBBONS, J.

**I. Introduction**

The instant action contains allegations of defamation, and a counterclaim containing allegations of defamation and child sexual abuse. Presently before us is the Motion for Partial Judgment on the Pleadings filed by Plaintiff Philip Godlewski (“Godlewski”), seeking partial judgment in his favor against Defendant Brienna DuBorgel (“DuBorgel”).

**II. Factual and Procedural Background**

Godlewski’s complaint alleges the following facts. On October 31, 2022, DuBorgel signed an affidavit (the “Affidavit”) prepared by J. Timothy Hinton Jr., Esquire,<sup>1</sup> in which DuBorgel alleged that she was a child sexual abuse victim of Godlewski. Complaint at ¶¶ 6-9 (*citing* Godlewski’s Exhibit “1” at ¶¶ 3-6 & 8). In the Affidavit, DuBorgel alleged that “Godlewski was charged with crimes related to our sexual relationship in July of 2010.” *Id* at ¶10 (*citing* Godlewski’s Exhibit “1” at ¶9). The Affidavit further attested that Godlewski and DuBorgel resumed a sexual relationship from 2014-2016. *Id* at ¶11 (*citing* Godlewski’s Exhibit

<sup>1</sup>The Affidavit was prepared in the context of an action for defamation filed by Godlewski against the Times-Tribune newspaper. See *Godlewski v. Kelly et. al.*, 2021-CV-2195 (Lacka. Co.).

“1” at ¶13). Godlewski contends that he did not have a sexual relationship with DuBorgel while she was a minor.<sup>2</sup> *Id.* at ¶¶12-13. In support of this, Godlewski avers that he was not charged with nor convicted of any sex crime with respect to DuBorgel. *Id.* at ¶14. However, Godlewski entered a guilty plea to a single count of Corruption of Minors, pursuant to 18 Pa.C.S.A. § 6301(a)(1). *Id.* at ¶¶15-17.

In her counterclaim, DuBorgel provides stark contrast to these facts. Specifically, DuBorgel’s counterclaim alleges the following. Beginning in approximately October of 2008, Godlewski pursued a sexual relationship with DuBorgel, while she was a ninth (9<sup>th</sup>) grade student at Riverside High School in Lackawanna County, Pennsylvania. Counterclaim at ¶1. Notably, at this time Godlewski was employed by the Riverside School District as a baseball coach and DuBorgel was only fifteen (15) years old. *Id.* at ¶8. Moreover, the counterclaim avers that Godlewski pursued this relationship after taking on the role of DuBorgel’s grief counselor following her boyfriend’s suicide. *Id.* at ¶84. In or around March of 2010, DuBorgel came forward and informed the authorities of Godlewski’s conduct. *Id.* at ¶2. As stated above, Godlewski was convicted of a single count of corruption of minors, however the parties dispute as to whether this conviction was related to his relationship with DuBorgel. *See* Complaint at ¶¶ 6-9; *See also* Counterclaim at ¶5 (which refutes Godlewski’s averment that his conviction was not related to DuBorgel).

In addition to the aforementioned sexual relationship, DuBorgel alleges that she suffered abuse from Godlewski via a series of text messages he sent to her during the time period in which she claims he was sexually abusing her. Counterclaim at ¶¶10-11. Specifically, in these text messages Godlewski made threats of violence and used degrading language towards

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<sup>2</sup>In the complaint, Godlewski does not further define a “minor.”

DuBorgel. Id at ¶72 (*citing* DuBorgel’s Exhibit “A”). Additionally, Godlewski told DuBorgel that she was going to make him kill himself, this occurred even after her boyfriend had recently committed suicide. Id at ¶74.

DuBorgel has also averred that she has been defamed by Godlewski on numerous live stream video platforms. Further, DuBorgel avers that from November of 2021 to April of 2023, Godlewski had “continuously[,] deliberately and/or recklessly published and spoken defamatory falsehoods concerning [DuBorgel].” Counterclaim at ¶13. Specifically, DuBorgel has averred that Godlewski on at least three live stream platforms stated that she lied about their relationship on numerous occasions, even going so far as to accuse her of making a false police report and committing perjury. Id at ¶¶14, 19 & 23.

On March 27, 2023, Godlewski filed his complaint. The complaint alleges the following three counts against DuBorgel: Count I – Defamation; Count II – False Light; and Count III – Invasion of Privacy. DuBorgel responded by filing her Answer to the complaint, along with a New Matter, and a counterclaim. The counterclaim alleges the following six counts against Godlewski: Count I – Defamation; Count II – False Light; Count III – Assault; Count IV – Battery; Count V - Intentional Infliction of Emotional Distress (“IIED”); and Count VI - Negligent Infliction of Emotional Distress (“NIED”). Thereafter, Godlewski filed the instant Motion for Partial Judgment on the Pleadings, along with a supporting Brief. Subsequently, DuBorgel responded with her Answer to Godlewski’s motion, along with a Brief in Opposition. On May 23, 2024, we convened to hear oral argument. This matter is therefore ripe for decision.

Godlewski’s motion requests partial judgment on the following: (1) that multiple allegations in the complaint be deemed admitted because a legally sufficient response was not provided; (2) DuBorgel’s claims for assault, battery, IIED, and NIED in the counterclaim are

barred by the applicable statute of limitations; and (3) DuBorgel's counts for assault, battery, IIED, and NIED fail to state a claim upon which relief can be granted. For the reasons set forth below, all of these motions will be **DENIED**.

### **III. Standard of Review**

"A motion for judgment on the pleadings is a 'party's request that the court rule in its favor based on the pleadings on file, without accepting evidence, as when the outcome of the case rests on the court's interpretation of the law.'" Comstock v. Barlow, 2019-CV-5317 at p. 2, (Lacka. Co., March 3, 2023) (citing Black's Law Dictionary 1038 (10th. ed. 2014)). Pennsylvania Rule of Civil Procedure 1034 governs motions for judgment on the pleadings and provides, in relevant part, as follows:

- (a) After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.
- (b) The court shall enter such judgment or order as shall be proper on the pleadings.

Pa.R.Civ.P. 1034. "A motion for judgment on the pleadings is similar to a demurrer" such that it "may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law." Rourke v. Pa. Nat. Mus. Cas. Ins. Co., 116 A.3d 87, 91 (Pa. Super. 2015) (quoting Sw. Energy Prod. Co. v. Forest Res., LLC, 83 A.3d 177, 185 (Pa. Super. 2013) (citation omitted), *appeal denied*, 96 A.2d 1029 (Pa. 2014)). In ruling on such a motion, we must confine our consideration "to the pleadings and relevant documents." Id. We must also "accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts which were specifically admitted." Id. A motion for judgment on the pleadings will only be granted

when “the moving party's right to succeed is certain and the case is so free from doubt that the trial would clearly be a fruitless exercise.” Id.

#### **IV. Discussion**

##### **A. Legally Sufficient Responses**

Here, Godlewski argues that multiple paragraphs in DuBorgel’s Answer must be deemed admitted because the phrase “Denied as stated” is not legally sufficient. Godlewski Brief in Support at p. 6. We disagree.

“The rules shall be liberally applied to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantive rights of the parties.” Pa.R.Civ.P. 126(a). “[T]he rights of litigants should not be made to depend on the skill of the pleaders but rather on the justice of their claims.” Avondale Cut Rate, Inc. v. Associated Excess Underwriters, Inc., 178 A.2d 758, 762 (Pa. 1962). Further, 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 plaintiff’s] entire pleading to see if [the defendant] specifically denied [the plaintiff’s] factual assertions at any time.” Cercone, 386 A.2d 1 at 6.

The subject paragraphs at issue state the following:

- “Denied as stated. The Affidavit attached to Plaintiff’s [c]omplaint is a writing the terms of which speak for itself.” DuBorgel Answer at ¶¶6-11.

- “Denied as stated. The Affidavit attached to Plaintiff’s [c]omplaint is a writing the terms of which speak for themselves. 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 one of these paragraphs when read in conjunction with the entire Answer (as we must, pursuant to Cercone) does not in any way state that DuBorgel admits to Godlewski’s allegations. Further, Godlewski does not cite to a single legal authority where the phrase “denied as stated” has been held to be a legally insufficient response. Finally, and as noted above, a motion for judgment on the pleadings “will only be granted when ‘the moving party’s right to succeed is certain and the case is so free from doubt that the trial would clearly be a fruitless exercise[.]’” See Rourke v. Pa. Nat. Mus. Cas. Ins. Co., 116 A.3d 87, 91 (Pa. Super. 2015). This case is not there.

Accordingly, Godlewski’s Motion for Partial Judgment on the Pleadings regarding this issue will be **DENIED**.

**B. Statute of Limitations**

**1. Assault and Battery**

Godlewski contends that DuBorgel's claims for assault and battery are barred by the applicable statute of limitations, because there was no "forcible compulsion." Godlewski Brief in Support at pp. 7-8. 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. eighteen (18) years old) plus twelve (12) years to the age of majority plus thirty-seven (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, false imprisonment, false arrest, malicious prosecution or abuse of process.

(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.

(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:

(A) sexual intercourse, which includes penetration, however slight, of any body part or object into the sex organ of another;

- (B) deviate sexual intercourse, which includes sexual intercourse per os or per anus; and
- (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.

(iii) For purposes of this paragraph, “forcible compulsion” shall have the meaning given to it in 18 Pa.C.S. § 3101 (relating to definitions).<sup>3</sup>

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 eighteen (18) years of age plus thirty-seven (37) years set forth in § 5533. Godlewski Brief in Support at p. 7. 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 one (1), two (2), four (4), eight (8), eleven (11), fifty-five (55), fifty-seven (57) and sixty-nine (69) in the counterclaim make multiple averments of sexual intercourse between Godlewski and DuBorgel. *See* 18 Pa.C.S.A. § 3122.1, *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 and 63. Moreover, as stated above, we must “accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed[.]” *See Rourke*, 116 A.3d 87 at 91.

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<sup>3</sup>18 Pa.C.S. § 3101 defines “forcible compulsion” as follows. Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person’s death, whether the death occurred before, during or after sexual intercourse.



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

**2. IIED and NIED**

Godlewski contends that DuBorgel's counts for IIED and NIED are solely based upon text messages and not child sexual abuse, and thus 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 sixty-seven (67) and eighty-one (81), 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 Judgment on the Pleadings regarding this issue will be **DENIED**.

**C. Failure to State a Claim Upon Which Relief Can Be Granted**

**1. Assault and Battery**

Godlewski contends that DuBorgel cannot recover under these counts because the alleged sexual conduct was consensual. Godlewski Brief in Support at p. 15. 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:

- (1) four years older but less than eight years older than the complainant;  
or
- (2) eight years older but less than 11 years older than the complainant.

(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.

18 Pa.C.S.A. § 3122.1

[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.

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.A. § 3122.1(b), supra.

While this relationship continued through DuBorgel’s sixteenth (16<sup>th</sup>) birthday, she was a student at Riverside High School where Godlewski was employed. Counterclaim at ¶¶ 1-2, 55, 62. As a result, DuBorgel could not consent, as it is well settled law in the Commonwealth of Pennsylvania that consent can be rendered impossible due to a power imbalance (such as a school employee-student relationship). *See* 18 Pa.C.S. § 3124.2(a.2)(1), supra; *See also* 18 Pa.C.S. § 3124.2(a.5)(1), supra.

Accordingly, Godlewski’s Motion for Partial Judgment on the Pleadings regarding this issue will be **DENIED**.

## **2. 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 University, 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))).

Godlewski first cites to Reeves, and contends that DuBorgel has failed to plead that she suffered physical harm as a result of his conduct. Godlewski’s Brief in Support at p. 18. We disagree. Specifically, the counterclaim avers that Godlewski’s conduct “caused offensive and/or harmful bodily contact” to DuBorgel. Counterclaim at ¶¶57-59 & 63.<sup>4</sup>

Godlewski next cites to Piazza, and argues that DuBorgel cannot show that Godlewski engaged in conduct with the knowledge that severe emotional distress was likely to result. Godlewski Brief in Support at p. 18. We again disagree. Specifically, throughout the counterclaim DuBorgel has alleged that Godlewski engaged in acts of child sexual abuse against her. It is quite difficult, if not impossible for us to see how anyone (especially a public school employee) would believe that this conduct was not likely to result in severe emotional distress.

Moreover, it is also worth noting that although Godlewski does not specifically make the argument that the claim for IIED fails under Jordan, DuBorgel has sufficiently pleaded the criteria required under Jordan, to recover for IIED. Specifically, throughout the counterclaim DuBorgel avers that Godlewski intentionally committed acts of child sexual abuse against her (i.e. extreme and outrageous conduct) and that she suffered severe emotional distress as a result of such.

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<sup>4</sup>Notably, paragraphs fifty-seven (57), fifty-eight (58), fifty-nine (59) and sixty-three (63) were incorporated into DuBorgel’s count for IIED. See Id at ¶67.

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

### **3. 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).

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." Godlewski Brief in Support at p. 24. 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 seventy-nine (79) and eighty (80) 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.")<sup>5</sup>

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<sup>5</sup>In Euceda, Judge Nealon cited to the following in support of his holding: Toney v. Chester Cnty. Hosp., 961 A.2d 192, 200 (Pa. Super. 2008), *aff'd*, 36 A.3d 83 (2011); Armstrong v. Paoli Memorial Hospital, 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).

*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 “accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed[.]” *See Rourke*, 116 A.3d 87 at 91.

Accordingly, Godlewski’s Motion for Partial Judgment on the Pleadings regarding this issue will be **DENIED**.

#### **V. Conclusion**

For the reasons set forth above, Godlewski’s Motion for Partial Judgment on the Pleadings will be **DENIED**. An appropriate Order follows.

	MAURIE B. KELLY	
PHILLIP GODLEWSKI	ACKAWANNA COUNTY	
<i>Plaintiff/Counterclaim Defendant,</i>		In the Court of Common Pleas
	2024 JUN 01 P 2:32	of Lackawanna County
	CLERK OF JUDICIAL	
v.	RECORDS CIVIL DIVISION	
		Civil Action - Law
BRIENNA DuBORGEL		
<i>Defendant/Counterclaim Plaintiff.</i>		No. 2023-CV-1354

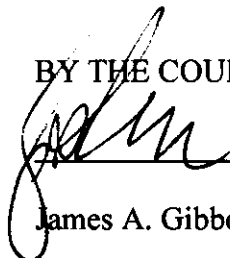
**ORDER**

GIBBONS, J.

NOW, this 21<sup>st</sup> day of June, 2024, upon consideration of the Plaintiff's Motion for Partial Judgment on the Pleadings, responses, briefs submitted by both parties, and oral argument, it is hereby **ORDERED** that:

1. Plaintiff's Motion for Partial Judgment on the Pleadings is **DENIED**.

BY THE COURT:

  
 \_\_\_\_\_  
 James A. Gibbons

cc: *Written notice of the entry of the foregoing Order has been provided to each party by mailing time-stamped copies to:*

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