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C O U R T O F C O M M O N P L E A S
LACKAWANNA COUNTY

PHILIP GODLEWSKI,	X	
	X	
Plaintiff,	X	
	X	
-vs-	X	No. 21 CV 2195
	X	
CHRIS KELLY, ET.AL,	X	
	X	
Defendant.	X	
	X	

TRANSCRIPT OF PROCEEDINGS

BEFORE: HONORABLE TERRENCE NEALON

DATE: AUGUST 19, 2024

PLACE: LACKAWANNA COUNTY COURTHOUSE
SCRANTON, PENNSYLVANIA 18503

A P P E A R A N C E S

FOR THE PLAINTIFF: TIMOTHY BOWERS, ESQUIRE
KYMBERLEY BEST, esquire

FOR THE DEFENDANT: TIM HINTON, ESQUIRE

CATHENE S. NARDOZZI, RPR
OFFICIAL COURT REPORTER

1 THE COURT: We are here in the
2 matter of Philip Godlewski, am I pronouncing
3 that correctly?

4 MR. BOWERS: I believe it's
5 Godlewski, Judge.

6 THE COURT: Godlewski, okay,
7 Godlewski vs Chris Kelly, et. al. It's
8 docketed to No. 21 CV 2195. What has been
9 assigned to me is defendant's motion for
10 summary judgment which the parties have
11 briefed and submitted all of their exhibits
12 and the Court administrator assigned this
13 matter to me for oral argument and
14 consideration. It originally was scheduled
15 for oral argument in early September and we
16 rescheduled it for today.

17 I should probably make a record as
18 to why I did that, and just so counsel
19 understands the way that assignments are
20 handled from September until June, which is
21 when we have trial terms, the first three
22 weeks of the months are jury trial weeks and
23 then the fourth week is when we have our
24 nonjury trials and also our pretrial
25 conferences for the cases that have been

1 assigned to us for trial in the following
2 months, and I'm familiar with those cases,
3 you know, by name and who the parties are
4 and who the lawyers are because they are
5 assigned to me for a scheduling conference
6 at 8:30 in the morning. I meet with the
7 lawyers, we go through calendars, we pick
8 mutually convenient trial dates and pretrial
9 conferences and deadlines and the like. I
10 just had one this morning in a malpractice
11 case.

12 Then at 9:00 every day, except for
13 those weeks when I have been assigned motion
14 court, I'll have some type of an oral
15 argument, motion for summary judgment,
16 preliminary objections, zoning appeal, you
17 name it. That is handled through our Court
18 Administrator's Office. And for good cause
19 so that you don't have judges choosing their
20 cases nor do you have lawyers or litigants
21 trying to judge shop and so it's done
22 anonymously by them and whoever is up next
23 on the wheel gets the assignment. That's
24 how it is the calendars are from September
25 through June for those of us who sit on jury

1 trials. July we only have a one-week trial
2 term and in August -- jury trial term, and
3 in August we don't have any jury trials so
4 what happens in August is we actually end up
5 getting more oral arguments and things of
6 that nature scheduled because we have more
7 time available during the course of the day.

8 So when something is assigned to me
9 by the Court Administrator's Office for oral
10 argument the notice is sent to the lawyers
11 and it's also technically addressed to me,
12 it goes to my secretary, she puts it on our
13 electronic calendar, which is called Trumba,
14 and it's on our calendar moving forward.

15 Because of the fact that even during a jury
16 trial week, and with the exception of those
17 times when I would be assigned motion court
18 I'm getting like five arguments a week.

19 It's a bit of a triage system, so my clerks
20 might look a week or two out further just
21 for purposes of their own planning and
22 scheduling, but I really don't get a chance
23 to focus on what's scheduled, for example,
24 on an ensuing week until the latter part of
25 the prior week when the memos start coming

1 in from the clerks and we might be
2 discussing things.

3 I give you that background and
4 explanation as to why you understand that it
5 was a letter from counsel that first back in
6 -- when did it come, late June or early July
7 when you wrote to me and thereabouts, to
8 indicate that counsel for the defendants is
9 Timothy Hinton, and his partner is a lawyer
10 by the name of the Michael Cosgrove.
11 Michael Cosgrove's daughter Sara is going to
12 start as my law clerk after Labor Day, so
13 even though these clerks would have done the
14 research and done the memo and done a lot of
15 the background information for an argument
16 that was, you know, a day or two after Labor
17 Day they would have done it, in an abundance
18 of caution to make sure that she had no
19 involvement with this case at all I moved
20 the date of the oral argument up to today
21 eventually so that this would be submitted
22 for consideration before she even started as
23 a law clerk.

24 I would say just for completeness of
25 the record the policy has always been here,

1 and I'm almost positive it's the result of
2 an ethics opinion that somebody had gotten
3 some time somewhere along the lines, but
4 that if we have a law clerk who has a
5 relative who is a member of a law firm that
6 is appearing before us the benefit of having
7 two law clerks is the law clerk who has a
8 relationship is not to have any involvement
9 whatsoever with the matter that's being
10 submitted for my consideration and it's the
11 other law clerk who would do all of the
12 background research and the like on that
13 particular matter.

14 As I look at my law clerks now, my
15 one law clerk her brother is a lawyer with
16 Cipriani and Werner in Harrisburg who had a
17 case before us, the firm did, and he had
18 done some work on it I think, whatever the
19 matter was that was submitted to us so she
20 did not have any involvement with it,
21 instead my other law clerk Michael Alves
22 handled that matter exclusively. So even if
23 I had kept the argument date of September
24 3rd or 4th or whatever it was, you know, she
25 -- Ms. Cosgrove would not have any

1 involvement with this whatsoever.

2 And to finally close the book on
3 that long introduction, as my clerks can
4 tell you, and I'm suggesting it's a good
5 habit, I'm letting you know it's a bad
6 habit, although they do background research,
7 look and everything, do very nice memos for
8 me and even at my request will provide me
9 with recommendations as to how they think
10 the matter should be decided I write all my
11 own opinions from caption to the "By the
12 Court" at the end. Sometimes I agree with
13 them, sometimes I don't agree with them and
14 when I don't agree with them I try to
15 explain to them why I didn't accept their
16 recommendation.

17 But with that probably too long
18 explanation, but just to make sure that the
19 record is clear on it, we are ready to hear
20 whatever argument counsel wishes to present.
21 It would be an understatement to say that
22 you submitted a sufficient record, I don't
23 know if there is much more room in our
24 office for anymore paper that came in on it,
25 but we have had the opportunity to review

1 your submissions and are ready to hear
2 whatever oral argument you wish to present.

3 So, Mr. Hinton, it's your motion so
4 what don't you go first.

5 MR. HINTON: Thank you, your Honor.
6 May it please the Court, I'm here
7 representing the defendants and I'll try to
8 be concise in terms of my arguments. I
9 realize my briefing is pretty extensive and
10 there is some complex issues and there is
11 more than a few issues here in this case.

12 Your Honor, would it be okay for me
13 to sit while I make my argument?

14 THE COURT: Yes, that's fine for
15 both counsel.

16 MR. HINTON: Your Honor, I'm going
17 to zone in on a few issues, the first one
18 I'd like to talk about is the issue of
19 actual malice, and this is clear from the
20 case law --

21 THE COURT: Why don't we go the
22 reverse way because really falsity is the
23 first issue at least logically in my head.

24 MR. HINTON: Very good.

25 THE COURT: And then you get into

1 malice, and as I understand, and I don't
2 want to speak for the plaintiff, but as I
3 understand they claim that there were in the
4 article three instances of defamatory
5 comment, one was that the plaintiff had a
6 sexual relationship with the minor, the
7 second had to do with his fitness to
8 function as a realtor, and the third had to
9 do with tying him in the January 6, 2021,
10 activities at the capital. I don't want to
11 misrepresent.

12 MR. HINTON: Exactly.

13 THE COURT: Is that correct?

14 MR. BOWERS: Yes, your Honor.

15 MR. HINTON: Yes, your Honor.

16 THE COURT: So why don't we start
17 with those.

18 MR. HINTON: So in terms of Count 2,
19 again, I'm not going backwards as to what
20 you just laid out, but as to the realtor
21 claim that the article states or implies
22 Mr. Godlewski was an unfit realtor first I
23 would direct the Court's attention to our
24 brief pages 45 through 51, and our reply
25 brief pages one through three, which discuss

1 the realtor issue, but I would point out a
2 couple of the things here. There are
3 protections in the law for parody,
4 hyperbole, clearly the cartoon unreal is a
5 play on the fact that he is a local
6 prominent realtor at the time, had taken out
7 billboards for years pushing his business
8 and the genesis of the Mr. Kelly's opinion
9 column was that this guy is unreal. This
10 guy traffics in lies about QAnon and, your
11 Honor, those are laid out in detail what
12 Mr. Kelly's believes are his trafficking in
13 lies throughout.

14 So I would point to the evidentiary
15 record that even plaintiff's wife Dory, who
16 has testified in this case after her divorce
17 which she was married to Philip Godlewski at
18 the time of the article, she testified that
19 before the article came out she asked Phil
20 to stop doing social media videos. That she
21 thought they were crazy and he is lying to
22 people. I point to Exhibit 20 in the record
23 for Ms. Godlewski's deposition, pages 49
24 through 50. She believed QAnon people are
25 scary. She even agreed with the label of

1 Phil being a QAnon realtor. Dory testified
2 that Sunita Aurora had asked Phil to stop
3 doing these QAnon videos and that was the
4 reason she let him go as a realtor connected
5 there.

6 So even if, and again, I won't get
7 into the actual malice of that at this
8 point, in terms of a lot of the statements
9 in the article are opinions, I briefed that,
10 I think your Honor will be able to spot the
11 opinions from the factual statements.

12 Another arrow in plaintiff's quiver
13 is that the article states Phil was involved
14 in the January 6 insurrection. That's Count
15 3 of the complaint. I would refer to the
16 Court to defendant's reply brief, pages
17 eight through nine, for assertions on that,
18 and defendant's initial brief pages 44
19 through 51. The portion of the article that
20 focuses on this area starts in paragraph
21 five, and I have numbered the paragraphs.
22 Your Honor, I actually have the, if it
23 helps, your Honor, the actual newspaper from
24 that day if your Honor would like to see it.

25 THE COURT: I think it was attached

1 as an exhibit to --

2 MR. HINTON: It's Exhibit 1 in the
3 motion.

4 THE COURT: Yeah.

5 MR. HINTON: But if you would like
6 it I have it here, if you want to refer to
7 Exhibit 1 that's fine, too.

8 THE COURT: I have it here.

9 MR. HINTON: So paragraph five of
10 the article, I quote, the -- it talks about
11 seeing a video in paragraph five, the new
12 video of the seditious mayhem that resulted
13 in five deaths and an airtight case made out
14 by the house managers, this is in the time
15 period of the impeachment, convinced me we
16 can't afford to ignore citizens of a
17 separate reality who act, organize and seek
18 to undermine and upend objective reality.

19 Paragraph six says, "The capital
20 riot is empirical evidence that we ignore at
21 our peril despite the demolition of all the
22 so-called prophesies, the "Q" movement
23 marches on. Godlewski happily calls out the
24 cadence," clearly referring to the "Q"
25 movements not the insurrection on January 6.

1 In paragraph seven the article
2 states that Godlewski told me, Chris Kelly,
3 the columnist, he wasn't at the capital on
4 January 6 but did show up in USA Today
5 coverage, Mr. Godlewski made a Facebook post
6 which he has admitted is true that Mike
7 Pence had been arrested at the capital on
8 January 6. He admits this is true.

9 THE COURT: I note that you had made
10 reference, it's on page 23 of your brief to
11 the USA Today article dealing with is it the
12 plaintiff's attendance there on January 6 or
13 what's --

14 MR. HINTON: No, he made a post --

15 THE COURT: I didn't see that
16 article in the record.

17 MR. HINTON: I don't have it, your
18 Honor.

19 THE COURT: The USA Today one.

20 MR. HINTON: He admitted he made a
21 Facebook post, and in his Facebook post
22 using him as a reference in USA Today Phil
23 Godlewski has posted on Facebook that Mike
24 Pence has been arrested at the capital. He
25 has admitted that as true in his deposition.

1 So there is no assertion, nowhere in this
2 article, Exhibit 1, that Phil Godlewski was
3 at the capital, that he had gone inside of
4 the capital, that he was a speaker leading
5 people to charge into the capital, there is
6 none of that in this article. So the
7 implications that plaintiff's counsel
8 believes is there that he somehow caused an
9 insurrection, which is criminal conduct and
10 is defamatory we don't believe is justified
11 by a plain reading of the article.

12 Now, as to the claim based on the
13 article stating that Phil Godlewski had a
14 sexual relationship with a 15-year-old minor
15 and admitted it as part of his guilty plea,
16 those are factual assertions, they are not
17 opinion assertions and we believe they are
18 the most serious of the accusations made in
19 this case. The focus here is on paragraphs
20 21, 22 and 26 of the article, that are
21 numbered, and I would point out that
22 plaintiff because he is a public figure by
23 his own stipulation and by a prior Court
24 order is a public figure for his claims
25 here. He has the burden of proving falsity

1 under Hepps and under Lewis, a Pennsylvania
2 state case, both of which are cited in my
3 brief. His testimony that he started having
4 sex with the victim after his probation
5 ended in 2013, plead guilty in July of 2011,
6 is a story that came out in a sanctions
7 hearing in front of Judge Minora, and then
8 talked about again in his discovery
9 deposition, was that he started having sex
10 with the victim that he said ruined his
11 life, that he has called her a lunatic for
12 as long as he has known her since 2008,
13 never changing in his opinion that she is a
14 lunatic, but that he just had sex with her
15 as an adult because it was good sex. He
16 says that he started with her in front of
17 Carmen Minora, it was Judge Minora, it was
18 2013, then later he stretched that to 2015
19 then to 2017, of course the victim says I've
20 had sex with Phil Godlewski all along.

21 THE COURT: How old would she have
22 been in 2013, 2015, 2017?

23 MR. HINTON: She was an adult. She
24 was born in September 8 of 19 -- give me a
25 second, your Honor, I don't want to get this

1 wrong.

2 THE COURT: That's all right. I
3 believe the criminal file reflects that she
4 was 15 and a freshman at Riverside.

5 MR. HINTON: So she was 15 in 2008,
6 15 in 2008, 16 for the school year of 2009
7 where the sexual relationship continued as
8 evidenced by the text messages over a
9 seven-day period captured then, so she is 16
10 from the junior year, she is 17, so that's
11 2010 into '11. 2012 into -- or 2011 into
12 2012 she is 17 and so on.

13 THE COURT: Okay. And for the
14 record, only because we obviously normally
15 under usual circumstances would not be
16 identifying by name the sexual assault
17 victim, alleged sexual assault victim, but
18 it appears as though she has waived her
19 anonymity by voluntarily submitting
20 affidavits in this case and I know there is
21 a companion case where the plaintiff has
22 filed a separate action against her that
23 obviously names her as a party by name, so I
24 assume that the using initials or anonymity,
25 I mean, you have all mentioned her by name

1 in your submissions as well.

2 MR. HINTON: We started doing that
3 in the beginning of the case, initials "BD"
4 in reference to her, but then she signed an
5 affidavit which was submitted to the Court
6 and --

7 THE COURT: She also filed a
8 counterclaim, too.

9 MR. HINTON: She also filed a
10 counterclaim.

11 THE COURT: Okay.

12 MR. HINTON: And her counsel in the
13 counterclaim has identified her by name in
14 those pleadings as well. So in terms of
15 falsity of the sexual statements in our
16 briefs, or in the article, the only piece of
17 evidence that plaintiff has put forward in
18 this case that the sexual statements in the
19 article were false are his own testimony.
20 Nothing else. Nothing to corroborate that
21 assertion at all. Plaintiff has not deposed
22 the victim in this case, he has not deposed
23 any of her friends or family members in this
24 case, he has made no effort to prove his
25 claim that he didn't have sex with her when

1 she with a minor.

2 THE COURT: How do you respond to
3 the plaintiff's argument, and what you just
4 mentioned would be a lead in to it, but that
5 the Nanty-Glo Rule would foreclose you from
6 securing summary judgment because, you know,
7 it generally states that a party or -- a
8 party cannot obtain summary judgment based
9 on that parties own testimony or the
10 testimony of that parties witnesses because
11 credibility is for the jury and the jury is
12 free to disregard even if it's one witness
13 versus 100, they are free to disregard the
14 hundred and believe the one if they so
15 choose.

16 MR. HINTON: I understand that, your
17 Honor, but I think we have an abundance of
18 other evidence in this case that stacks up
19 against Mr. Godlewski.

20 THE COURT: But isn't that a weight
21 of the evidence rather than the sufficiency
22 of the evidence argument?

23 MR. HINTON: Your Honor, in this
24 case with the text messages showing the
25 sexual conduct from 2010 coupled with the

1 text messages from 2021, coupled with the
2 guilty plea colloquy where he agrees he is
3 pleading guilty to what he was charged with
4 we have -- we have the testimony of the
5 victim's friends Sierra O'Malley that she
6 and her friends used to follow Mr. Godlewski
7 and the victim to houses that were for sale
8 that he had access to as a realtor. She saw
9 Phil and the victim together at least 20
10 times during the 9th grade and 10th grade
11 school years. Brianna's mother still has
12 the diamond earrings that Mr. Godlewski paid
13 \$2,859 for.

14 In this case it's a unique case in
15 that Mr. Godlewski has lied and verified
16 written discovery and repeatedly about gifts
17 to the minor where he -- in the beginning of
18 the case says there were no gifts then later
19 he changes his tune and he is buying her
20 tanning packages, he is buying her Ed Hardy
21 hats. He is buying her hoagies. He is --
22 you know, the change in his testimony
23 throughout this case is very telling. I
24 think it stacks up to a mountain against his
25 own verbal assertion, his oral testimony

1 that he didn't have sex with her as a minor
2 he waited until after he got off probation
3 to have sex with her. When he was the
4 burden of proof here I think puts a pretty
5 compelling argument that, you know, the jury
6 could discredit all of this testimony and go
7 with that.

8 And then lastly, and most
9 importantly, it is as clear as day that
10 Mr. Godlewski attempted to bribe the victim
11 in text messages that he admitted are his
12 text messages and then came up with a
13 baloney story that he wanted her to get
14 involved in an IRA 401K gold coin business
15 and help him sell those to seniors, which he
16 has been doing, never been in business with
17 her before and if you read his wording, and
18 I won't go through it verbatim here it is
19 beyond the pale that this is credible at
20 all. This whole bribery story where he
21 wants to stick up our middle fingers right
22 up their you know what. He outright lied to
23 the Court, Judge Minora, about his
24 explanation about the bribe text messages
25 that he admitted were his.

1 So when you stack up about ten
2 levels of evidence we are not relying upon
3 the victim's affidavit that heavily here.
4 There is lot here I think that shows falsity
5 and, you know, whether you grant summary
6 judgment on the falsity issue, which he has
7 the burden which could be by either
8 standard, the preponderance of the evidence
9 standard or the clear and convincing
10 evidence standard, the Courts have not come
11 down in Pennsylvania on that, other Courts
12 have, said it doesn't make sense to apply
13 that very heavy standard clear and
14 convincing evidence for the actual malice
15 when the same jury is going to hear, you
16 know, the falsity issue. Under either
17 standard I think we win.

18 But then we have the actual malice
19 defense here, which is a killer in most of
20 these cases with public officials and public
21 figures, and if your Honor would like me to
22 get into that I would or if you have
23 questions on the falsity.

24 THE COURT: No, no, go to the
25 malice.

1 MR. HINTON: So, your Honor, under
2 the Tucker and Hardy parts, the United
3 States Supreme Court case, it is up to the
4 judge not the jury to independently decide
5 whether the evidence and the record is
6 sufficient to cross the constitutional
7 threshold that bars the entry of any
8 judgment not supported by clear and
9 convincing proof of the actual malice. The
10 clear and convincing burden of proof
11 requires evidence so clear, direct, weighty
12 and convincing as to enable the trier of
13 fact to come to a clear conviction without
14 hesitancy of the true and the precise facts
15 at issue. The issue here is whether the
16 plaintiff has met that very high threshold
17 of proof as to whether defendants published
18 these statements about plaintiff that the
19 defendants knew were false, which they
20 presented no evidence of at all in this
21 case. None. Zero. Or secondly, that the
22 defendants acted with reckless disregard.
23 That's what we are dealing with in this
24 case. Here to establish reckless disregard
25 they must prove -- plaintiff must prove that

1 they published these statements with a high
2 degree of subjective awareness of probable
3 falsity such that defendants must have
4 entertained serious doubts as to the truth
5 of the statements. This is a subjective
6 evaluation, and that's important to note
7 that in this case given the admissions by
8 plaintiff in this case that he has no idea
9 what Chris Kelly was thinking, what his
10 subjective thoughts were when he published
11 these statements about Phil Godlewski.

12 So focusing on the sexual
13 statements, as I indicated, plaintiff has
14 been less than diligent in terms of
15 discovery in this case that has now been
16 pending for over three years. Discovery has
17 been over as of December 31st of 2023.
18 There are no transcripts from any of the
19 Court hearings in 2010 and 2011 where he
20 plead guilty and where he was sentenced in
21 July of 2011 by Judge Geroulo. Those
22 statements may or may not have shown why
23 Mr. Godlewski was pleading guilty to the
24 corruption charge. We do have the criminal
25 complaint that has details in it that avers

1 that he was having a sexual relationship.

2 THE COURT: And for purposes of the
3 record and, of course, I have reviewed the
4 2010 criminal record, originally there was a
5 plea of nolo contendere by Mr. Godlewski and
6 then Judge Geroulo rejected the agreed upon
7 sentence so he was allowed then to withdraw
8 his nolo contendere plea, but then
9 thereafter entered the plea of guilty to
10 corruption of minors.

11 MR. HINTON: Your Honor, in this
12 case if you look at the docket he was
13 arrested in July, bail is set, he posts
14 bail. The preliminary hearing for the
15 aggravated indecent assault charge is waived
16 real soon after he was arrested, that's
17 waived on July 19. On August 17 a
18 preliminary hearing on the indecent assault
19 is waived. The preliminary hearing is then
20 scheduled for September 27 and waived on the
21 statutory sexual assault and corruption of
22 minor charges and then there is a waiver of
23 arraignment on November 5, and obviously
24 Attorney Lafferty and Attorney D'Andrea then
25 discussed a plea bargain. There were eight

1 charges I believe in the criminal complaint
2 initially. All of them, except for the
3 communication related charges, are for
4 sexual intercourse with a minor. That's all
5 the predicate act and certainly the
6 predicate act on the corruption charge, and
7 in order to get this in front of Judge
8 Geroulo the parties hopefully have him
9 accept the plea bargain, which would have
10 been a house arrest plea bargain. There is
11 an information --

12 THE COURT: I'm sorry, when you say
13 about the information, the predicate act
14 identified for the corruption of minors
15 under Section 6301 (a) (1), which is the
16 misdemeanor offense not the felony offense,
17 is that he did repeatedly have inappropriate
18 text messages and contact with the minor.

19 MR. HINTON: The sexual conduct at
20 the time that Mr. Godlewski was charged and
21 at the time of his plea bargain was the old
22 corruption of minors statute, which (a) (1)
23 subsumed sexual acts in it. It wasn't
24 changed until December of 2010 where it was
25 broken out as its own sexual subsection of

1 the statute. I point that out in my brief.
2 So Mr. Godlewski went on social media saying
3 look, look here, look at the statute, I
4 didn't plead under the sexual statute,
5 subsection of the statute, I plead under the
6 nonsexual subject -- or section of the
7 statute. That's full of baloney. He was
8 charged with under the old statute, he plead
9 guilty initially under the old statute, he
10 is not subject to the new statute when his
11 acts for his criminal conduct occurred in
12 2008 and nine and ten.

13 So, in any event, the plea deal was
14 withdrawn. All of the charges came back on
15 and then all of the other charges were nolle
16 prossed in July of 2011 when he plead guilty
17 to the corruption charge a second time using
18 the old guilty plea colloquy as well. No
19 new guilty plea colloquy was part of the
20 record.

21 So in this case, in examining the
22 plaintiff's burden to prove actual malice I
23 thought it was telling when I deposed
24 plaintiff himself where he admitted in his
25 testimony I can't prove that something

1 didn't happen, that's in his deposition in
2 two places, pages 2012, 2013, and 251 and
3 252. Plaintiff said, "I can't prove a
4 negative," on page 252. And then he chimed
5 in with, "I don't have to prove anything,"
6 on page 252. He obviously doesn't under his
7 standards of proof, his burdens of proof in
8 this case. Godlewski only has his testimony
9 to say the assertions in the article that he
10 had sex with a 15 year old and that he
11 admitted to having sex with a 15 year old as
12 part of his guilty plea on the corruption of
13 minors child. It's only his word, that's
14 it.

15 So what evidence do the defendants
16 have that these statements are true? Well,
17 we have the victim's testimony, which your
18 Honor has pointed out. You're dealing with
19 a Nanty-Glo issue on that issue. I guess
20 that would nullify both of them then, the
21 plaintiff and defendant's oral testimony at
22 this juncture.

23 THE COURT: No, there is case law a
24 plaintiff can create an issue of fact based
25 on their own testimony.

1 MR. HINTON: Well, okay, so he is
2 saying I didn't have sex and the victim says
3 they did have sex. But we also have the
4 text messages from 2010 and again in 2021.
5 We have Phil's guilty plea where Phil
6 testified that he admitted he did the things
7 he was charged with, that's in his
8 deposition on pages 235 through 241. It's
9 specifically on page 240. He was clearly
10 charged with corruption of a minor for
11 having sexual intercourse with the minor
12 victim. That's the only charging document
13 that has any details in it about what he
14 specifically did and the guilty plea
15 colloquy doesn't have any details in it.
16 And then the information sheet which they
17 were using to get before Judge Geroulo the
18 first time in November of 2010 just says
19 inappropriate text messages and contact with
20 the minor victim.

21 Judge Geroulo advised the parties
22 the negotiated sentencing was too light and
23 Godlewski would be getting off too easy for
24 the magnitude of his crime. That's out of
25 plaintiff's own lips saying that. So if you

1 believe Mr. Godlewski's fantastical version
2 of why he was pleading guilty to a
3 corruption charge that could land him in
4 jail for five years, that he has was a coach
5 for the JV baseball team and he shouldn't
6 have been talking to this minor in any
7 regard who was grieving the loss of her
8 boyfriend to suicide, he corrupted her just
9 by asking her how she was doing. It's just
10 incredible, but that's what he would have
11 this Court believe.

12 So in terms of --

13 THE COURT: But when he withdrew the
14 nolo because Judge Geroulo indicated he
15 couldn't go along with the sentence of house
16 arrest of three months to whatever, followed
17 by probation, he then does ultimately in
18 July plead to the defense, not nolo, but
19 pleads guilty. Isn't that the sentence he
20 got from Judge Geroulo?

21 MR. HINTON: He did. He did.

22 THE COURT: Okay.

23 MR. HINTON: So the victim put it
24 out here on the record now. Mr. Godlewski
25 wore the victim down, just totally hounded

1 her to stop cooperating with the D.A.'s
2 Office, changed the story, the text messages
3 aren't real, they are fake. He just
4 absolutely hounded her, very similarly to
5 how he has done in this case in terms of
6 hounding the victim directly through text
7 messages, to recant the affidavit that she
8 gave me that he is going into the Trump
9 administration as an intelligence figure.
10 Deny, deny, deny. This is who you are
11 dealing with in this case.

12 So in this case --

13 THE COURT: You were talking about
14 malice.

15 MR. HINTON: Yeah, malice. So there
16 isn't much there in terms of what plaintiff
17 has come forward to try and use its heavy
18 burden, and interestingly in looking at
19 plaintiff's response to the motion for
20 summary judgment there is about 50 or 60
21 numbered paragraphs, in number 38 of the
22 plaintiff's response to my motion for
23 summary judgment they state, "Kelly's
24 beliefs do not tend to proof or disprove any
25 element of any claim or offense --" should

1 have been defense, but offense they say, end
2 of quote. I guess plaintiff's counsel
3 doesn't understand the subjective evaluation
4 that is required in this actual malice
5 issue. It's what Mr. Kelly subjectively
6 believed as he was putting this story to
7 print and to publish and that response to
8 number 38, the motion for summary judgment
9 gives me pause. The St. Amant case, which
10 is United States Supreme Court 390 US 727,
11 says that the defendant must have
12 subjectively -- had subject awareness of
13 probably falsity. There has been no
14 discovery, no evidence aimed at that. Their
15 sum total of their brief, three pages, 24,
16 25, 26, 27 so four pages in their brief are
17 devoted to this actual malice issue which I
18 think is the most important issue in this
19 case. And the sole focus of their defense
20 on this point is that defendant's deviated
21 from acceptable journalism standards
22 constituting reckless conduct.

23 In breaking it down they say,
24 "Opinions need to be based in fact. "B.
25 You must obtain info from multiple sources,

1 interviews and from documents. C. Every
2 reporter should examine the criminal
3 complaint, information and guilty plea
4 colloquy. D. Plaintiff's attorney claims
5 Kelly didn't review the criminal
6 information.

7 He says that right in their brief.
8 That's Exhibit 18 in our documents, the
9 information sheet. In fact, Kelly testified
10 he didn't recall whether or not he read the
11 information or not. That's in his
12 deposition pages 50 to 51. The case law is
13 clear on this point even extreme departures
14 from professional standards without more
15 will not support a finding of actual malice.
16 That's the Tucker case from the Third
17 Circuit, 237 F.3d 275 at 276. If the Court
18 wants defendants in response to this
19 assertion that they met their actual malice
20 burden or proof. We know from Chris Kelly's
21 testimony that he reviewed the archived
22 article from 2011, Exhibit 8. Exhibit 3,
23 I'm sorry, under the headline --

24 THE COURT: The Dennis O'Malley
25 article.

1 MR. HINTON: Yes, the ex-baseball
2 coach sentenced for sex with girl 15. Chris
3 Kelly has testified he spoke with anonymous
4 sources in law enforcement. Chris Kelly
5 reviewed the court documents, including his
6 guilty plea to what he was charged with.

7 Number four, Chris Kelly reviewed
8 the criminal complaint and affidavit of
9 probable cause which charged Mr. Godlewski
10 with having a sexual relationship with the
11 victim. Plaintiff has even admitted that
12 Chris Kelly reviewed the 2011 article, it's
13 number 40 of plaintiff's response to motion
14 for summary judgment. They admitted that.
15 They might claim it's a mistake, I don't
16 know, they have admitted that. And what I
17 would argue to the Court is that if all Chris
18 Kelly did in making this assertion of sex in
19 the article that Mr. Godlewski had sex with
20 a 15 year old and he admitted guilt to it as
21 part of his plea bargain, if all he did was
22 review the 2011 article with that headline
23 the criminal complaint that has details of a
24 sexual relationship with this minor in the
25 guilty plea colloquy, or in paragraph 11 he

1 admits to doing the things he is charged
2 with, if that's all he did, even if he is
3 wrong, even if he is mistaken and that's all
4 did and you can throw journalism standards
5 at him and saying you should have done more,
6 you should have done more, that still
7 doesn't breach the threshold of actual
8 malice. Subjective awareness of probable
9 falsity.

10 The type of evidence they would need
11 to breach that threshold here would be like
12 e-mails between Mr. Kelly and his editor
13 saying, "Hey, let's get Godlewski. We know
14 this stuff isn't true but let's go with it
15 anyways, we are out to get him. We don't
16 like him."

17 Proof that -- if they had proof that
18 Chris Kelly had a Court document showing the
19 transcript, for instance, in front of Judge
20 Geroulo that Phil gave his rationale as to
21 why he was pleading guilty to the corruption
22 charge totally unrelated to the sex and
23 Judge Geroulo accepts it and moves on that
24 would be the type of evidence they would
25 have to have for actual malice. They have

1 none of it. They have put forth a negligent
2 case, a journalism standards case which is
3 insufficient and the case law cited in my
4 brief.

5 So, your Honor, I don't think I have
6 anything else on actual malice unless --

7 THE COURT: No, that's fine. I
8 understand your arguments.

9 MR. HINTON: So in terms of -

10 THE COURT: Fair reporter privilege.

11 MR. HINTON: Well, I'd like to talk
12 about sticking with the three defamation
13 counts at first. The law is clear that if a
14 plaintiff fails to come forward with any
15 evidence in response to a motion for summary
16 judgment on a key element of their case it
17 should be thrown out. I cite to the Vivian
18 vs. Blank Rome case from the Superior Court
19 2024, I can give the Lexis number cite, 2204
20 Pa. Super Lexis 232, but in that case which
21 handled a defamation case, it's clear that
22 if they fail to produce evidence sufficient
23 to prove all of the elements of his cause of
24 action that it is subject to summary
25 judgment. And in this case following the

1 Pennsylvania Supreme Court that I know very
2 well Thomas Joseph vs. The Scranton Times
3 from 2015, one of the essential elements of
4 the defamation case is coming forward with
5 proof -- with evidence to prove harm to his
6 reputation. And it's not your own self
7 estimation that I feel my reputation now
8 stinks, you've got to come forward with
9 witnesses, and if you read my 60-page brief
10 accurately I peppered the plaintiff with
11 written discovery in this case. I want the
12 names of your witnesses, who have been
13 deterred from dealing with you in business
14 or in personal life who read the article and
15 think less of you. You need that type of
16 evidence, not your own estimation of how
17 hurt your reputation is. They totally
18 missed the boat on that regard.

19 The Joseph case says, "Moreover --
20 this is a quote, "Moreover, we now take this
21 opportunity to clarify that as suggested by
22 the Media Defendants in their Amici, for
23 purposes of a Pennsylvania defamation case
24 proof of actual injury to a private
25 plaintiff's reputation is a prerequisite to

1 the recovery of damages for other actual
2 injuries including mental and emotional
3 injuries. It is the cornerstone of a
4 defamation case that you must have first
5 suffered loss of reputation. You can then
6 throw on top of it mental anxiety,
7 depression, all of the other things that can
8 go along with it, but in the cornerstone you
9 need that loss of reputation. They have not
10 come forward with anything in this regard."

11 Plaintiff's opposition to this
12 argument that I have raised is on page 9 of
13 31 of their brief. It's totally deficient.
14 There were a number of cases that stand for
15 the same proposition, the Pilchesky case,
16 the Gertz case, plaintiff's evidence of harm
17 is as follows: His word that the comment
18 section in the Scranton Times. That's his
19 proof of evidence of harm to his reputation.
20 No names, no people we can depose, no people
21 we can ask what they read, hundreds of
22 threats and harassment on social media.

23 Now, when I asked him, "Well, give
24 me that stuff, let me have it."

25 His lawyer said, "Well, we are

1 gathering it."

2 Well, they never gathered it and
3 gave it to me. None of it. They might --
4 of course, oh, you have it. You know who
5 were in the comment sections. Well, what
6 about all of the other social media? And so
7 we are going to go by anonymous fake names
8 and a comment section of the Scranton Times
9 for the defamation case. Then he might say,
10 well, I was terminated from my real estate
11 job. They have no proof of that, no
12 depositions, no affidavits, no papers, no
13 e-mails, no nothing. I asked how is it
14 done. Well, it was an e-mail. I said, "Can
15 you give me the e-mail?"

16 Never produced in this case, and
17 then he says his other evidence of harm is
18 his pain and suffering. Again, you've got
19 to have the reputational loss first. Then
20 he just says blankly, "I got damage to my
21 reputation."

22 And then he wants punitive and
23 damages, and then lo and behold at one point
24 he throws up, well, I know I lost a listing.
25 I lost a listing from Freddy Gray and his

1 wife Emily. This was a joke. They
2 cancelled a closing on me, cancelled a
3 listing on me. Well, you know, I go the
4 Register of Deeds Office, I get their --

5 THE COURT: And the closing in the
6 divorce predated it.

7 MR. HINTON: Yeah, so totally
8 untrue, another lie by Mr. Godlewski. And
9 then he throws in, "I'm suing for what your
10 article has done to my family and to me for
11 years to come."

12 Again, that's not the type of
13 evidence that gets you over the finish line
14 on a motion for summary judgment. They need
15 some evidence here from third parties. I
16 read the article. I stopped doing business
17 with them because I believed what was in the
18 article was true. You got to remember, this
19 guy has had ten plus years of bad stuff
20 written about him from multiple criminal
21 acts, and he did plead guilty to corrupting
22 a 15-year-old girl, which is admittedly
23 true. And he was charged, and there was
24 newspaper coverage and television coverage
25 that detectives said he was taking this girl

1 to have sex with her in houses he had access
2 to as a realtor. Again, having sex with her
3 in cars. Plaintiffs admits in his
4 deposition I was a bad person until I went
5 to jail for 30 days for the bad check to
6 Mariotti Lumber in the Summer of 2021. It
7 was after this article. He was still a bad
8 person at the time of this article and at
9 the time his wife left him, but that's what
10 we are dealing with. So it's very important
11 to have third parties come forward so we
12 could have examined them during discovery to
13 flesh out their thoughts on Mr. Godlewski,
14 but none were identified, no statements were
15 ever given, there is no proof here. So on
16 that point we would ask for summary judgment
17 for missing a key element in their case.

18 And then in terms of their Count 4,
19 they now agreed to dismiss Count 5 and 6
20 because long beforehand they had given up
21 their claim for economic damages from a guy
22 that had \$200 in his bank account in the
23 spring of 2020 to now having \$75 million in
24 the bank, and his testimony, "I'm never
25 going back to real estate."

1 But Count 4 still is around, that's
2 the false light invasion of the privacy, the
3 complaint includes no alleged facts in that
4 count. It would be examined under the law
5 much the same as the defamation counts. He
6 would have to still to prove actual malice.
7 The citations are included in my brief, so
8 we would rest on that. So, your Honor,
9 those are my arguments.

10 THE COURT: Okay. No, I understand
11 the points you are making and both parties
12 made their points well in their briefs as
13 well. Anything further then?

14 MR. HINTON: No, your Honor.

15 THE COURT: Okay. Counsel?

16 MR. BOWERS: Judge, I think I heard
17 that you may want to direct the discussion
18 in ways that make sense for you. I think
19 you were suggesting that maybe starting out
20 with falsity is a good place?

21 THE COURT: Well, I think I had
22 said, I mean, just logically to me in terms
23 of the plaintiff's burden of proof falsity
24 would be first and then malice would be next
25 and then, you know, only after such

1 liability would have been established would
2 you get to actual injury and things of that
3 nature. Whatever way you wish to present it
4 feel free to do so.

5 MR. BOWERS: Well, Judge, I'm
6 talking with you about the issue of falsity,
7 and we accept that we bear the burden of
8 proof with respect to falsity because
9 Mr. Godlewski is admittedly a public figure.
10 We could suggest that burden of proof is
11 preponderance of the evidence. There is no
12 Court in the Commonwealth of Pennsylvania,
13 either state or federal, that has imposed a
14 heightened clear and convincing burden on a
15 plaintiff in a defamation case and we would
16 suggest that this Court should be loathed to
17 be the first.

18 So let's talk about that
19 preponderance of the evidence. Most of the
20 defendant's arguments today on the subject
21 of falsity are really arguments for 12
22 people who are going to sit over here one
23 day or in the same position in some other
24 courtroom well, you can't believe him. Oh,
25 my gosh, he lies about this or is he wrong

1 about that, but that's a credibility call
2 and it's based on oral testimony and that's
3 where Nanty-Glo applies. And the key case I
4 think for deciding this motion, Judge, is
5 Curran vs. Philadelphia Newspapers, 439 A.2d
6 652, Pennsylvania Supreme Court 1981, and
7 incidentally that key cited cleanly, and
8 it's good law up until, well, at least ten
9 minutes before we began the argument, I
10 checked it. So in there they established
11 that Nanty-Glo applies to things like actual
12 malice. It stands for the fact that
13 testimonial affidavits, even if
14 uncontradicted, do not support a motion for
15 summary judgment.

16 So, Judge, what do we have proof of
17 in this case at least to get beyond summary
18 judgment? Well, Mr. Godlewski has to come
19 forward with some evidence that he and
20 Brianna DuBorgel did not have sex when she
21 was a minor. And, Judge, there are
22 precisely two people who know whether or not
23 they did. There is no witness who purports
24 to have witnessed it, so it's the two of
25 them. It's her statement and his statement

1 and that's a credibility issue to the jury.

2 Now, in addition to that, we do have
3 documentary evidence which, in fact,
4 supports Mr. Godlewski's claim of truth that
5 he did not have sex with Ms. DuBorgel when
6 she was a minor. I know, Judge, you have
7 been through the criminal record, and we see
8 that it goes from a complaint with a lot of
9 alleged facts, as complaints usually do and
10 a lot of counts, then we have an information
11 which, Judge, as you yourself noticed
12 removed any reference to sexual activity,
13 and we have a plea that, yes, that's what I
14 did and in the guilty plea colloquy there is
15 no recitation of the facts.

16 THE COURT: Now, let me stop you
17 there because I don't know that I can agree
18 with that last statement about it, you know,
19 does not reference any sexual activity or
20 relationship because the way the criminal
21 process proceeds, the basis and the factual
22 predicate for the criminal information is
23 the affidavit of probable cause that's
24 completed. And, you know, there was an
25 affidavit of probable cause in this case

1 completed by Detective Michelle Mancuso and
2 Detective Justin Leri, Detective Leri is
3 someone who is proficient in computer
4 forensics and has all of this certification
5 and we have him in other criminal case where
6 he can come in and authenticate and identify
7 text messages, computer entries and the
8 like, and in this portion of the affidavit
9 of probable cause where they are setting
10 forth their basis for what they maintain is
11 corruption of minors and inappropriate text
12 messages from Mr. Godlewski to the minor the
13 text messages reference their sexual
14 activity.

15 MR. BOWERS: Certainly, Judge.

16 THE COURT: I'm looking at March 6,
17 2010, "I hate my penis. IDK," for I don't
18 know. "Why the fuck that happens. You look
19 so good and were giving incredible head.
20 Then BOOM," gone. Like, WTF."

21 Then on February 28, 2010, "The only
22 way we would ever be sexually satisfied is
23 if we did it like four-five times a day."

24 Then 11:39 on one date in his log,
25 "I just pulled Brie," that's her name, "hair

1 from my crotch area. Ha, ha, ha, ha, and
2 then three exclamation points.

3 Another one on February 25, "I just
4 want to want you to see that I really care
5 about you, and not just your body or our
6 sex. Maybe that's the only way I can."

7 So this is the affidavit of probable
8 cause that they then use when they do the
9 corruption of minors criminal information
10 where they say, "To wit, the defendant did
11 repeatedly have inappropriate text
12 messages," they misspelled it, but text
13 messages and contact with a minor."

14 When he pleads to that corruption of
15 minors charge, for which the underlying
16 factual predicate is the affidavit of
17 probable cause why hasn't he admitted under
18 oath in his guilty plea to Judge Geroulo
19 that he had a sexual relationship with the
20 minor?

21 MR. BOWERS: Fair question, Judge,
22 and I've done a fair amount of criminal
23 practice so I'm familiar with the concepts
24 that you are asking me about. In this case,
25 I would suggest that the crucial issue is

1 the fact that the information materially
2 changed the factual allegation of the
3 corruption of minors count. The corruption
4 of minors count in the complaint was
5 consistent with the information in the
6 affidavit. The affidavit in the -- or the
7 information, however, says, look, we've got
8 text messages and contact that were bad,
9 okay? So let's assume that the factual
10 predicate are those text messages, that may
11 assume at most, at most that Mr. Godlewski
12 says, "I texted that."

13 It doesn't necessarily mean that he
14 did those things with her. There is some
15 other problems with the text messages and
16 we'll come to those, but we can parse out
17 what those things mean as people learn it in
18 the law and are familiar with the criminal
19 justice process, but what is that the
20 defendant --

21 THE COURT: Well, as part of meeting
22 his burden of proving falsity what is he
23 suggesting that the content of the text
24 messages were that were so extreme as to
25 warrant a corruption of minors charge? I

1 mean, it's not boy, your hair is pretty.

2 MR. BOWERS: That interestingly
3 enough, Judge, is a question that was not
4 put to him in his deposition. Mr. Godlewski
5 was never asked what he contended the
6 content was.

7 THE COURT: For the text message.

8 MR. BOWERS: Yeah.

9 THE COURT: Okay.

10 MR. BOWERS: So he admits that he
11 had inappropriate messages. He does not say
12 what the content was. Let's talk about text
13 messages for a moment.

14 THE COURT: Let me ask you this
15 then, what in proving the falsity, what does
16 he claim to use the words of the criminal
17 complaint the inappropriate contact was? I
18 mean, it's got to be more than reaching over
19 and touching someone's hair.

20 MR. BOWERS: I believe
21 Mr. Godlewski's answer to that speaking from
22 memory was that it was inappropriate for him
23 to develop a close plutonic relationship
24 with someone of her age. And, again, Judge,
25 maybe 12 people believe that, and maybe they

1 don't.

2 THE COURT: I've only been a judge
3 for 26 years, but I have yet to see criminal
4 charges come across my desk for corruption
5 of minors for sending text messages as part
6 of a plutonic relationship with a minor.

7 MR. BOWERS: Nonetheless, Judge,
8 that's what the documents say in the end
9 and, Judge, again, as we parse through those
10 as people learn in law and are familiar with
11 the process, we may think one thing but what
12 did the defendants think. And we actually
13 have testimony about that from Larry Holeva.
14 And incidentally, Mr. Holeva's testimony is
15 kind of what distinguishes this case from
16 any reported defamation case. Seldom do we
17 see an editor of a newspaper give a
18 breakdown of what's appropriate, what's not
19 and what you can conclude, what you cannot,
20 and when shown the affidavit of probable
21 cause and the information and the criminal
22 complaint Larry Holeva testifies you cannot
23 conclude from those documents that
24 Mr. Godlewski admitted to or was convicted
25 of having sex with a minor. That's the

1 editor saying that. He was very frank about
2 that when asked.

3 There is some of your subjective
4 belief, Judge, and we have got to precise
5 pinpoint references to that testimony in our
6 brief. What did they understand? Did they
7 understand the criminal process? Both
8 Mr. Holeva and Mr. Kelly testified that they
9 did. They understood it. We get a
10 complaint, the complaint is superceded by an
11 information. We have a guilty plea
12 colloquy. We know that. We know what to
13 look at. We know where to get our
14 information, and yet that information by
15 Mr. Holeva's testimony is insufficient to
16 reach the factual conclusions that were put
17 in Mr. Kelly's column.

18 There is an additional problem with
19 all of these text messages, your Honor.
20 There is a large spreadsheet, goes on pages
21 and pages and pages and pages, which
22 incidentally are not the same text messages
23 referenced I believe in the affidavit of
24 probable cause. There is no authentication
25 of that document that is proper for this

1 Court to consider at this point, perhaps at
2 trial there would be authentication but
3 there is not now. There is no affidavit or
4 other testimony by the person who purports
5 to have created them. In fact, it is
6 impossible from the factual record we have
7 to determine who did, who created that
8 report. In fact, we have attached documents
9 from the police record saying that the
10 phones were sent to Pennsylvania State
11 Police for forensic analysis, and the
12 results of that were that no data could be
13 extracted from any of Brie DuBorgel's
14 phones, and then we somehow somewhere have
15 all of this material with no explanation
16 about who generated it, what methods they
17 used, how they got it. It's completely
18 authenticated. All you have is Brie
19 DuBorgel saying, "Those are mine."

20 But she didn't create that document,
21 she didn't create the report. It's not like
22 I took screen shots and I know that that was
23 my phone and yes, I produced those, I
24 clicked. This is some sort of purported
25 extraction and absolutely no testimony about

1 it.

2 So the other thing, the other piece
3 of evidence we have about proving falsity is
4 Brie DuBorgel herself plead the Fifth
5 Amendment or asserted that she wanted to at
6 the preliminary hearing in the 2010 criminal
7 case. A jury might reasonably infer from
8 that that she feared being exposed for
9 having lied about the underlying facts and
10 circumstances, so we would suggest that at
11 least for summary judgment Mr. Godlewski has
12 come forward with the appropriate evidence.
13 That it's documentary and that it's
14 testimonial, and given that, you know, it
15 really comes down to --

16 THE COURT: Don't we have a waiver
17 of the preliminary hearing though in 2010 CR
18 2613?

19 MR. BOWERS: It's my understanding
20 that -- the preliminary hearing was not held
21 in the sense that there was testimony, but
22 there was a waiver and negotiation as a
23 result of Ms. DuBorgel's representation to
24 the prosecutor that she would not testify.

25 THE COURT: Okay, because all I'm

1 seeing on the docket is the waiver but --

2 MR. BOWERS: No, there was not a
3 hearing in which the magistrate made a call
4 about, you know, whether or not a prima
5 facie case was made.

6 THE COURT: Go ahead.

7 MR. BOWERS: So, Judge, under
8 Nanty-Glo we are where we need to be in
9 order to survive summary judgment. It's
10 really a question of whether or not 12
11 people are going to believe it, and that's
12 their determination because it's
13 credibility.

14 Some of the defendant's argument was
15 neither about exactly falsity nor about
16 actual malice, but it was about whether or
17 not certain statements were defamatory.
18 That threshold first element of the
19 plaintiff's burden of proof, and that is as
20 a matter of law you will recall, Judge.

21 With respect to the allegations that
22 Mr. Godlewski had sex with or plead guilty
23 to having sex with a minor, that would be --
24 that's a clear cut case of defamation. It
25 is defamatory. Now, maybe it's true, maybe

1 it's false, but it is defamatory. If
2 someone says, "You had sex with a minor,"
3 that lowers people's estimation of you.

4 The trickier issues are where we are
5 dealing with the imputation that
6 Mr. Godlewski was not fit to be a realtor.
7 So we saw the cartoon, your Honor,
8 unrealtor. Constant references to
9 Mr. Godlewski being a realtor, and the
10 argument today from the defendants is that
11 those are simply opinions. However, Judge,
12 when opinions suggest the existence of
13 undisclosed facts they are actionable. In
14 this case Mr. Holeva, the editor, testified
15 in his deposition that unreal in unrealtor
16 in the cartoon means not believable. Holeva
17 further testified that it would not be
18 unreasonable to think that the cartoon
19 suggested that Godlewski was not an honest
20 realtor. So that's Mr. Holeva's own
21 testimony.

22 Mr. Kelly testified that it does
23 draw a connection between Mr. Godlewski's
24 profession as a realtor and his "Q" beliefs,
25 so what we see is that we are making a

1 factual assertion by implications about
2 Mr. Godlewski's finances to be a realtor.

3 THE COURT: Is there any allegation
4 by the plaintiff that the articles reference
5 to his association with the QAnon movement
6 or his embracing and participating in the
7 QAnon movement is defamatory?

8 MR. BOWERS: Let me try to
9 understand your question, Judge. You are
10 asking me whether he alleges in the
11 complaint --

12 THE COURT: For example, one of my
13 colleagues from Philadelphia, Judge Patrick,
14 filed a defamation case, when there was an
15 article suggesting that she had spoken at an
16 event that was sponsored by people involved
17 in the QAnon movement and she argued that
18 that was defamation per se to suggest that
19 someone would be involved with it.
20 Plaintiff doesn't make that allegation here?

21 MR. BOWERS: Well, I think we are
22 alleging something slightly different,
23 Judge, about the "Q" movement. If I
24 understand your colleague -- the thrust of
25 your colleague's lawsuit is that if you say

1 that I am in "Q" it's defamatory per se
2 presumably because it's either an allegation
3 of criminal activity, an allegation -- I
4 wouldn't think of sexual misconduct, or
5 perhaps of unfitness for your colleague's
6 profession. What we are saying is that the
7 "Q" -- that the imputation of Q'ness, for
8 want of a better word, in this case was that
9 Mr. Godlewski bore responsibility for what
10 happened at the capital on January 6 during
11 the insurrection. That's clear imputation
12 of criminal conduct. So in this case --

13 THE COURT: But my question is he is
14 not claiming that an article saying he is
15 involved with or supports the QAnon movement
16 would adversely reflect his fitness as a
17 realtor?

18 MR. BOWERS: Let me just -- I'm just
19 looking at the passages we have cited. I
20 believe, if I'm very specific about it,
21 Judge, our allegation is that the unreal
22 phrase, the suggestion of being a liar that
23 pervades the article is what imputes
24 unfitness for office, and that our quote is
25 that Larry Holeva testified that unreal

1 means not believable. Holeva further
2 testified that it would not be unreasonable
3 to think that the cartoon suggested that
4 Godlewski was not an honest realtor.

5 THE COURT: Okay, so he is not
6 contending that his being associated with
7 the QAnon movement or the QAnon beliefs in
8 the article is something that imputes his
9 lack of fitness to be a realtor.

10 MR. BOWERS: It's the suggestion of
11 dishonesty of unreality, and Mr. Holeva's
12 testimony supports our allegation.

13 So, Judge, if we delve a little
14 further into the "Q" component it's really
15 not so much that it says Mr. Godlewski has
16 "Q" beliefs, I think he would say that he
17 has espoused "Q" beliefs publically, it's
18 the tying of Mr. Godlewski to the criminal
19 insurrection at the capital on January 6.
20 And, again, the defendants want to say,
21 look, this is a --

22 THE COURT: It would be the
23 plaintiff's position that what happened at
24 the capital on January 6 was a criminal
25 insurrection?

1 MR. BOWERS: Judge, I'm not sure
2 what position Mr. Godlewski would take on
3 whether it was criminal or not, but
4 certainly readers of the article --

5 THE COURT: Then how can he claim it
6 would be defamatory for an article to
7 suggest that he was involved with January 6
8 unless he believes it to be a criminal
9 insurrection?

10 MR. BOWERS: Well, whether or not
11 it's defamatory is really -- well, first of
12 all, his opinion of whether or not it was
13 criminal is not material. We know that
14 those were criminal acts for which people
15 have been criminally prosecuted and
16 criminally convicted, all right? The public
17 who will hear about it understands that it
18 was criminal, so to be associated with
19 something that is regarded a criminal act is
20 defamatory, and in this case the defendant's
21 assert that Mr. Godlewski's lies have caused
22 millions of Americans to lose grandparents,
23 siblings, children and friends of the QAnon
24 cult and that he bears responsibility for
25 that.

1 Mr. Kelly testified that he may have
2 been trying to convey that Godlewski had at
3 least a moral responsibility for the capital
4 riot and, in fact, to undo the argument,
5 defendant's argument that this is a matter
6 of opinion, Mr. Holeva testified that
7 whether Godlewski beats the cadence of the
8 "Q" movement is a matter of fact rather than
9 opinion. For a journalist it's a matter of
10 fact and those facts can be found through
11 witnesses, literature, and documents all of
12 which must be reviewed under the appropriate
13 ethical standards. So I would suggest that
14 we have got three different categories of
15 statements all of which are defamatory in
16 nature.

17 So, Judge, I would just point out in
18 order for us to proceed beyond summary
19 judgment you don't have to believe that all
20 three of them are, and if we succeed on one
21 we still move forward with at least those
22 statements.

23 So, Judge, if I can, I'll move to
24 actual malice because that really is the
25 core of this matter, and again, we believe

1 that Curran vs. Philadelphia Newspapers is
2 instructive. Now, Curran stands for a few
3 things: First of all, the defendant cannot
4 win simply by testifying that they believe
5 what they wrote was true. Otherwise, it
6 would be absolutely impossible to win such a
7 case and, in fact, Judge, as you point out
8 through your extensive knowledge of criminal
9 law, we can infer intent from the
10 circumstances. What are those circumstances
11 in this case? We have a series of criminal
12 court documents which by admission of the
13 representative -- of a representative, Larry
14 Holeva, executive editor of the newspaper,
15 defendant says they simply do not support
16 the factual allegation that Mr. Godlewski
17 plead guilty to or had sex with a minor.

18 Mr. Holeva's testimony appears to be
19 unique in reported case law on this subject,
20 and during his deposition we took Mr. Holeva
21 very carefully down through the ethical
22 standards required of a journalist. We even
23 distinguished an opinion piece versus a
24 straight news piece, and there is really not
25 a whole lot of difference in the real level

1 of research that needs to be done. In fact,
2 it's the same. The same standards apply.
3 The opinion piece you get a little bit more
4 latitude to put your personal spin on those
5 facts, but the same standards apply, and
6 every one of those standards in this case
7 was not met. From that we can -- we have
8 enough evidence of recklessness, bearing in
9 mind that current newspapers stands for the
10 proposition that Nanty-Glo applies here to
11 survive summary judgment and ask a jury
12 whether or not they find the evidence clear
13 and convincing. We don't have to guarantee
14 that they will today, Judge, that's not the
15 point of summary judgment, but we have to
16 have enough that you are satisfied they
17 could find it. And Mr. Holeva's testimony
18 over and over and over gives us that. Was
19 this to be done? Yes. Was it done? No. I
20 looked at this document. Yes. I looked at
21 this document. Yes. What document was not
22 examined? The one that crucially -- the
23 information which crucially confounds the
24 narrative that Mr. Godlewski plead guilty to
25 having sex with a minor.

1 Additionally, Mr. Kelly testified
2 that he talked with some people, and
3 Mr. Kelly did not reveal their names, as is
4 his privilege under the law, but when you
5 don't reveal those names then you've got to
6 have a jury figure out whether or not that's
7 acceptable to them. Whether they believe
8 that, whether they believe it occurred.

9 So with that respect we are at least
10 to the point where we can provide evidence
11 of a gross -- grossly negligent approach
12 reporting and it doesn't come from our
13 witnesses, it comes from Mr. Holeva.

14 THE COURT: Gross negligence would
15 not be sufficient, you'd need recklessness,
16 wouldn't you?

17 MR. BOWERS: Recklessness. Yea, I
18 apologize, Judge, recklessness. And that
19 extreme deviation, that extreme deviation,
20 which is a form of recklessness, we have set
21 forth what the standards are and that they
22 were not met, and not just in a negligent
23 manner, but I believe we can conclude that
24 they were recklessly done.

25 THE COURT: But, I mean, because he

1 is a public figure you need to establish
2 recklessness, can we agree on that?

3 MR. BOWERS: We do, Judge.

4 THE COURT: In order to prove
5 malice, and the reason I mention that and
6 the law of the case doctrine and the
7 coordinate jurisdiction doctrine is under
8 Rule 4003.7 under the Rules of Pennsylvania
9 Civil Procedure you can obtain discovery of
10 defendant's wealth, but how it has been
11 interpreted in our county, and I believe in
12 our others as well, is that in order to
13 obtain that financial wealth discovery you
14 need to establish a prima facie case of your
15 entitlement to punitive damages which
16 requires you to establish recklessness, and
17 I see where on January 12 of this year,
18 2024, Judge Minora denied the plaintiff's
19 request for leave to conduct wealth
20 discovery under Rule 4003.7 because he said
21 the plaintiff had not submitted evidence
22 sufficient to establish a prima facie basis
23 for entitlement to punitive damages by
24 identifying evidence that the defendants
25 acted willfully, wantonly or recklessly.

1 Why would there not under the coordinate
2 jurisdiction doctrine and the law of the
3 case doctrine already be a determination in
4 this matter by Judge Minora that the
5 plaintiff has not established recklessness?

6 MR. BOWERS: All right, fair enough,
7 Judge. At the point in time when we were
8 looking a discovery issue, there are I
9 think, Judge, as you know, there is some
10 disagreement among Courts about the standard
11 which triggers wealth discovery. Some
12 Courts say you've got to make the prima
13 facie showing of factual material, others
14 say that the prima facie showing is made if
15 a case -- if a cause of action may
16 theoretically result in an award of punitive
17 damages. Now, Judge Minora went the other
18 direction. At that point in time, we did
19 not brief the case as a --

20 THE COURT: I'm not aware of any
21 ruling in the Commonwealth, and you can
22 enlighten me to it if there is that says
23 that just because somebody simply alleges an
24 assault and battery claim or, I mean, you
25 name them which would be matters that would

1 involve willful or wanton conduct, fraud,
2 whatever it may be, that just because they
3 allege that they are entitled to get
4 financial wealth discovery under "Rule
5 4003.7. Every case I have ever seen says
6 you have to come forth with facts or
7 evidence to establish the recklessness.

8 MR. BOWERS: Judge, I'm pulling up
9 my brief that we filed in that case, if you
10 would give me one second.

11 THE COURT: And the only appellate
12 case law on it is the Cabot Oil decision
13 from 2020 from the Pennsylvania Superior
14 Court at 241 A.3d 1191 where they said you
15 are not entitled to that kind of discovery
16 unless it's accompanied with evidence to
17 establish there is a factual basis for the
18 punitive damages claim.

19 MR. BOWERS: All right. Judge, I
20 have a citation for you.

21 THE COURT: Okay.

22 MR. BOWERS: It's Glenn, G-L-E-N-N
23 Holland, H-O-L-L-A-N-D vs. The Physical
24 Therapy Institute, Incorporated. The
25 citation is 2023 West Law 254887, at star

1 nine. Pennsylvania Superior Court March 17,
2 2023. And the quote from the Court is
3 first, as a preliminary consideration the
4 Court must ascertain if a plaintiff's claim
5 is successful at trial could warrant
6 punitive damages against any of the named
7 defendants. So the first part of that is
8 what is the claim? Are punitive damages
9 available as a remedy to that claim?

10 For example, a breach of contract
11 action, no. In a tort, yes. Further, if it
12 answers that inquiry to any degree in the
13 affirmative then, secondly, the Court must
14 impose restrictions on discovery pursuant to
15 Rule 4003.7. So what it looked at, what
16 Glen Holland looked at was the legal
17 availability of damages rather than whether
18 or not there was an evidentiary showing at
19 the point in time when discovery was made
20 about a prima facie case of damages.

21 THE COURT: And that's an
22 unpublished opinion by the Superior Court?

23 MR. BOWERS: It is.

24 THE COURT: Okay. How did they
25 reconcile it with their earlier published

1 determination in Cabot Oil where they said
2 that they are not entitled to it unless it's
3 accompanied by evidence providing a factual
4 basis for the recovery of punitive damages?

5 MR. BOWERS: Judge, if you can give
6 me a minute I'll bring the case up.

7 THE COURT: If you don't recall, I
8 mean, I can look at it. I shouldn't bog you
9 down with that. It would just seem to be if
10 that's the standard I can file a fraud claim
11 against you that I really don't have any
12 facts or evidence to back it up, but as long
13 as I allege a fraud claim, which would
14 involve willful, wanton or intentional or
15 reckless conduct I can get your tax returns
16 without having come forth with anything
17 else.

18 MR. BOWERS: Yes, Judge. And I
19 think that the check on that, as the
20 Superior Court contemplated, was the notion
21 that the Court then imposes restrictions.
22 Those restrictions may involve timing, they
23 may involve the persons to whom that
24 information was shared under the case law
25 and that rule substantiates -- or permits a

1 restriction even on giving the information
2 to the client.

3 So I think you were asking about
4 Cabot Oil, Judge, and Cabot Oil is mentioned
5 in the text.

6 THE COURT: I can look at it later.

7 MR. BOWERS: Yeah. Yeah.

8 THE COURT: It's not that imperative
9 that you find it.

10 MR. BOWERS: So at the point where
11 we filed our motion we are proceeding under
12 the theory that with Holland vs. Physical
13 Therapy Institute that what we needed to
14 show at that point in time was, you know,
15 the legal availability of punitive damages
16 in a cause of action citing defamation or
17 invasion of privacy. We did not make a
18 factual assertion, and the judge clarified
19 for us, Judge Minora clarified for us that
20 hey, in his courtroom I'm going with that
21 prima facie standard. I want to see the
22 evidentiary showing and I don't believe that
23 he denied our request with prejudice, in
24 other words, you know, we had the ability to
25 come back. Now, we chose not to burden

1 Judge Minora with a repeat request until we
2 got past sort of this point to know whether
3 or not those things would be more useful,
4 you know, going to trial. So we don't
5 believe we are foreclosed by the law of case
6 doctrine because it really hasn't been
7 established. The judge did not have to make
8 a determination at that point because we
9 didn't give him anything to determine at
10 all. So here though, we have put forth all
11 of our facts.

12 Your Honor, as a final note, the
13 defendants have made considerable argument
14 about the need for a showing of damages and
15 specific testimony about, you know, damage
16 to reputation, but they completely ignore
17 the doctrine of defamation per se which
18 allows us to proceed without those showings
19 when we have allegations of criminal
20 activity and here there are at least two
21 allegations: One, having sex with an
22 underage girl; and two, you know, being a
23 part of an insurrection at the capital.

24 Also, you can proceed on a theory of
25 defamation per se for an allegation of gross

1 sexual misconduct. I would suggest that the
2 allegation that someone had sex with a minor
3 when they were an adult is an allegation of
4 gross sexual misconduct.

5 Additionally, you can proceed under
6 a theory of defamation per se when you are
7 impugning someone's fitness for their chosen
8 profession and in this case we have a
9 cartoon which impugns Mr. Godlewski's
10 fitness as a realtor by questioning his
11 honesty, so we believe when we can proceed
12 under a theory of defamation per se.

13 THE COURT: Okay.

14 MR. BOWERS: Judge, if you have any
15 questions I can answer at this point.

16 THE COURT: No, as I indicated
17 counsel made their arguments very well in
18 their submissions and during their argument
19 today as well.

20 MR. HINTON: Your Honor, could I
21 address one thing?

22 THE COURT: Yeah, I'll allow you
23 some rebuttal. I just want to make sure,
24 are you finished?

25 MR. BOWERS: Yes, Judge, thank you

1 very much.

2 THE COURT: Thank you. Go ahead.

3 MR. HINTON: So Mr. Bowers made a
4 statement that I never asked Mr. Godlewski
5 at his deposition about what were the
6 specific statements that he said to the
7 victim in text message for which you were
8 pleading guilty to corruption, and that's
9 just not true. So if your Honor can turn to
10 page 20 of my brief.

11 THE COURT: Why don't you turn me to
12 whatever the page would be of his testimony?

13 MR. HINTON: Certainly.

14 THE COURT: Or just give me the
15 citation. I mean, I have --

16 MR. HINTON: Pages 110 through 113
17 of his deposition, which is Exhibit 2, but I
18 quoted at length in my brief --

19 THE COURT: Was anything asked of
20 him during the sanctions hearing before
21 Judge Minora along those lines?

22 MR. HINTON: I don't remember, your
23 Honor --

24 THE COURT: Okay.

25 MR. HINTON: -- as I sit here today,

1 but I think this is instructive. What I
2 asked him on page 110 through 113 of the
3 deposition. "QUESTION: But if you are
4 pleading guilty to corrupting somebody's
5 morals you are admitting you did something
6 wrong?

7 ANSWER: Yes.

8 Okay. When did you do something
9 wrong against Brie?

10 Again, I believe the entire
11 conversations from the very beginning to the
12 time that I was arrested were completely
13 inappropriate and completely corrupting of
14 her morals. I should not have talked to her
15 at all. I should have referred her to a
16 guidance counselor or a psychiatrist or I
17 should have backed away from the situation.
18 The very fact that I didn't back away from
19 the situation and I inserted myself as that
20 person was in my mind fits the definition of
21 corruption if you read the definition.
22 That's what I did.

23 QUESTION: Can you give me just one
24 example of a statement you made to Brie that
25 morally corrupted her?

1 have put you in jail for five years?

2 MR. COLEMAN: Objection.

3 MR. HINTON: You can answer.

4 ANSWER: Again, that's not what I
5 said. You said that just now. What I said
6 was the entire nature of my conversations
7 with Brie in my opinion were fitting the
8 definition of corruption of minors. I
9 didn't say -- you just said that my specific
10 statement that I gave you as an example of
11 something I may not have even said. You
12 said that that statement is why I plead
13 guilty to corruption of minors. That's not
14 true.

15 QUESTION: Well, I just wanted to
16 know what statement it was that caused you
17 to plead guilty to corruption of minors?

18 Objection.

19 THE WITNESS: I don't know exactly
20 the statements that I made to Brie 14 years
21 ago. I'm telling you what I think I would
22 have said to Brie in this particular
23 situation. We had hundreds of text messages
24 with each other on this topic. I was trying
25 to console her. I was trying to make her

1 feel better. I was trying to get her to not
2 commit suicide so I would say stuff on the
3 encouraging level to a person that is about
4 to commit suicide. You would say things
5 like those. So that's what I think I said.
6 Specifically did I say that? I don't
7 recall. I wish I still had the messages
8 because we wouldn't be here today.

9 So you were trying to console her
10 because you were afraid she was going to
11 commit suicide?

12 Well, after the first, yes. Not
13 originally, but yes.

14 So, whatever your Honor, you can
15 interpret from that line of questioning,
16 first of all, I did question him.

17 THE COURT: I know you did question
18 him, but he didn't say the text messages --

19 MR. HINTON: He wouldn't give me an
20 answer.

21 THE COURT: -- established a sexual
22 relationship or any sexual conduct. He
23 talked about consoling her, encouraging
24 or --

25 MR. HINTON: I don't think there is

1 anybody in this country that would plead
2 guilty to an M-1 for offering consoling
3 messages to a 9th grader or a 10th grader
4 and that's what the plaintiff would have
5 this Court believe.

6 THE COURT: No, I guess when you
7 referenced them I thought you were going to
8 point to a line or a page where he
9 acknowledged that the text messages had a
10 sexual content or memorialized a sexual
11 contact between them.

12 MR. HINTON: No, he is not going to
13 admit to these 2010 text messages.

14 THE COURT: Okay.

15 MR. HINTON: Your Honor, and
16 secondly, their biggest piece of evidence
17 here to counter our summary judgment is
18 Larry Holeva's testimony? We know that
19 Larry has testified, you have his
20 deposition. He said he had absolutely no
21 involvement in this article, he was not an
22 editor on it, he wasn't consulted on it, he
23 is an executive editor at the paper and
24 Mr. Bowers reported in his deposition to
25 just ask for his thoughts on basic

1 journalism principles but no reference at
2 all to this article at all.

3 THE COURT: Well, I mean, his
4 testimony will speak for itself.

5 MR. HINTON: Yes.

6 THE COURT: As to what he was asked
7 about. Okay. Anything else then in
8 rebuttal?

9 MR. HINTON: No, that's it, your
10 Honor.

11 THE COURT: Anything you can think
12 of before -- anything else you wish to have
13 before we take it under advisement?

14 MR. BOWERS: No, we thank you for
15 the Court's consideration.

16 THE COURT: No, that's all right.
17 And again, if we had kept the normal -- or
18 the initial schedule by the Court
19 Administrator, as Mr. Hinton has probably
20 had the experience in other cases, we try to
21 do what we can by advance communication
22 technology and so we will do the arguments,
23 you know, by phone, or by zoom, whatever the
24 case may be to save people the travel and
25 the like, but they would have allotted as

1 the time period for your argument 9:00 to
2 9:30, and since we started at two and it's
3 now 3:40 I think it's probably a good idea
4 we didn't stick with that original schedule,
5 okay? But we will take it under advisement
6 and continue our review of our voluminous
7 record here and get to it as soon as we can.
8 Thank you.

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes of testimony taken by me at the hearing of the above-captioned matter and that the foregoing is a true and correct transcript of the same to the best of my ability.

CATHENE S. NARDOZZI, RPR
OFFICIAL COURT REPORTER

The foregoing record of the proceedings of the above cause is hereby approved and directed to be filed.

Date

HONORABLE TERRENCE NEALON