

PHILIP GODLEWSKI,	:	IN THE COURT OF COMMON PLEAS
Plaintiff,	:	of LACKAWANNA COUNTY, PA
	:	
v.	:	CV-2023-1354
	:	
BRIENNA DuBORGEL,	:	CIVIL ACTION-LAW
Defendant.	:	JURY TRIAL DEMANDED

ORDER

AND NOW, this ____ day of _____ 2024, upon consideration of Plaintiff's Motion for Partial Summary Judgment it is hereby ORDERED as follows:

A. Defendant shall file an Answer in reply to the Motion for Partial Summary Judgment not later than the _ day of _____ 202__.

B. Plaintiff shall file a Brief in Support not later than the ____ day of _____ 202__.

C. Defendant shall file a Brief in reply to the Motion for Partial Summary Judgment not later than the ____ day of _____ 202__.

D. Argument shall be held on the ____ day of _____ 202__ at ____ o'clock ____M. in Courtroom No. _____ of the Lackawanna County Courthouse.

BY THE COURT:

, J.

PHILIP GODLEWSKI,	:	IN THE COURT OF COMMON PLEAS
Plaintiff,	:	of LACKAWANNA COUNTY, PA
	:	
v.	:	CV-2023-1354
	:	
BRIENNA DuBORGEL,	:	CIVIL ACTION-LAW
Defendant.	:	JURY TRIAL DEMANDED

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 RECORDS SECTION

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW Plaintiff Philip Godlewski, by and through his counsel, Kolman Law PC, and makes the following Motion:

1. Plaintiff Philip Godlewski ("Godlewski") commenced this action on March 27, 2023 by filing a Complaint against Defendant Brienna DuBorgel ("DuBorgel") alleging causes of action for defamation, false light invasion of privacy, and publicity to private life invasion of privacy.
2. On May 5, 2023 DuBorgel responded by filing an Answer with New Matter and Counterclaim alleging causes of action against Godlewski for defamation, false light invasion of privacy, assault, battery, intentional infliction of emotional distress ("IIED"), and negligent infliction of emotional distress ("NIED").
3. On July 7, 2023 Godlewski filed an Answer to DuBorgel's New Matter and New Matter to DuBorgel's counterclaim.
4. DuBorgel has filed a reply to Godlewski's New Matter.
5. The pleadings in this matter are closed.
6. Per the Court's Order docketed March 4, 2024, discovery in this matter closed on June 17, 2024.

7. Per the Court's Order docketed March 4, 2024, September 30, 2024 is the deadline for filing dispositive motions.

8. A motion for summary judgment may be brought after the close of the pleadings and within such time as not to unreasonably delay trial. Pa.R.C.P. 1035.2.

9. This motion will not delay trial of this matter.

10. Summary judgment may be granted when there is no genuine issue of material fact as to a defense or claim, or where after the completion of discovery, the adverse party has failed to produce evidence of facts essential to a claim or defense. Pa.R.C.P. 1035.2 (1) and (2).

COUNT I - DEEMED ADMISSION OF PLAINTIFF'S ALLEGATIONS - Pa.R.C.P. 1029 (b)

11. Paragraphs 1 through 10 of this Motion are hereby restated and reincorporated by reference as though fully set forth.

12. The Pennsylvania Rules of Civil Procedure require that ["a"] responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive." Pa.R.C.P. 1029 (a).

13. Further, "[a]verments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial ... shall have the effect of an admission." Pa.R.C.P. 1029 (b).

14. Paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 44, and 45 of DuBorgel's Answer contain the language "Denied as stated."

15. The language, "Denied as stated" is legally insufficient to specifically deny the allegations of paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 44, and 45 [sic] of the Complaint. See Hauser v. York Water Co., 278 Pa. 387, 123 A. 330 (1924).

16. Paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 44, and 45 of the Complaint must be deemed admitted.

17. Paragraph 12 of DuBorgel's Answer contains only the word, "Denied" along with a demand for strict proof.

18. The language, "Denied " is legally insufficient to specifically deny the allegations of paragraph 12 of the Complaint. See Swift v. Milner, 371 Pa.Super. 302, 538 A.2d 28 (1988).

19. Paragraph 12 of the Complaint must be deemed admitted.

20. Paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47 and 48 of DuBorgel's Answer purport to specifically deny the corresponding allegations of the Complaint but offer no contradicting facts or other explanation of the denials.

21. The purported specific denials without an offer of contradicting facts or other explanation contained in Paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47 and 48 of DuBorgel's Answer are legally insufficient to constitute specific denials and are mere general denials. See King v. Altman, 256 A.3d 1, 2021 WL 2287432 (Pa.Super. 2021); Kappe Associates, Inc. v. Aetna Casualty and Surety Company, 234 Pa.Super. 627, 341 A.2d 516 (1975); Yulsman v. Levy, 97 Pa.Super. 392 (1929).

22. The allegations contained in Paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47 and 48 of the Complaint must be deemed admitted.

COUNT II - STATUTE OF LIMITATIONS - ASSAULT

23. Paragraphs 1 through 22 of this Motion are restated and reincorporated by reference as though fully set forth.

24. Ordinarily, an action for assault must be commenced within two years. 42 Pa.C.S.C.A. § 5524 (1).

25. In the case of an unemancipated minor, the limitations period begins to run when the unemancipated minor reaches the age of 18. 42. Pa.C.S.A. § 5533 (b)(1)(i).

26. A minor is a person who has not yet reached the age of 18 years. 42. Pa.C.S.A. § 5533 (b)(1)(ii).

27. When a person is under 18 years of age at the time that a cause of action related to sexual abuse arises, that person will have a period of 37 years after attaining the age of 18 to bring an action. 42. Pa.C.S.A. § 5533 (b)(2)(i).

28. "Sexual abuse" for purposes of the statute of limitations requires that the "individual bringing the civil action engaged in such activities as a result of forcible compulsion or the threat of forcible compulsion which would prevent resistance by a person of reasonable resolution." 42. Pa.C.S.A. § 5533 (b)(2)(ii).

29. "Forcible compulsion" for purposes of the statute of limitations "shall have the meaning given to it by 18 Pa.C.S.A. § 3101.

30. "Forcible compulsion" is "[c]ompulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied." 18 Pa.C.S.A. § 3101.

31. DuBorgel has not brought her action for assault within the two years after turning 18.

32. DuBorgel has not produced sufficient evidence upon which a jury could conclude that she engaged in sexual activities with Godlewski as a result of forcible compulsion or threat of forcible compulsion which would prevent resistance by a person of reasonable resolution.

33. There is no genuine issue of material fact that DuBorgel is not entitled to the extended statute of limitations under 42. Pa.C.S.A. § 5533 (b)(2)(i) for minor victims of sexual abuse. Alternatively, DuBorgel has failed to produce evidence of facts essential to support a claim that she is entitled to the extended statute of limitations.

34. DuBorgel's assault claim is barred by the statute of limitations.

35. DuBorgel's assault claim must be dismissed.

COUNT II - STATUTE OF LIMITATIONS - BATTERY

36. Paragraphs 1 through 35 of this Motion are restated and reincorporated by reference as though fully set forth.

37. Ordinarily, an action for battery must be commenced within two years. 42 Pa.C.S.C.A. § 5524 (1).

38. In the case of an unemancipated minor, the limitations period begins to run when the unemancipated minor reaches the age of 18. 42. Pa.C.S.A. § 5533 (b)(1)(i).

39. A minor is a person who has not yet reached the age of 18 years. 42. Pa.C.S.A. § 5533 (b)(1)(ii).

40. When a person is under 18 years of age at the time that a cause of action related to sexual abuse arises, that person will have a period of 37 years after attaining the age of 18 to bring an action. 42. Pa.C.S.A. § 5533 (b)(2)(i).

41. "Sexual abuse" for purposes of the statute of limitations requires that the "individual bringing the civil action engaged in such activities as a result of forcible compulsion or the threat of forcible compulsion which would prevent resistance by a person of reasonable resolution." 42. Pa.C.S.A. § 5533 (b)(2)(ii).

42. "Forcible compulsion" for purposes of the statute of limitations "shall have the meaning given to it by 18 Pa.C.S.A. § 3101.

43. "Forcible compulsion" is "[c]ompulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied." 18 Pa.C.S.A. § 3101.

44. DuBorgel has not brought her action for battery within the two years after turning 18.

45. DuBorgel has not produced sufficient evidence upon which a jury could conclude that she engaged in sexual activities with Godlewski as a result of forcible compulsion or threat of forcible compulsion which would prevent resistance by a person of reasonable resolution.

46. There is no genuine issue of material fact that DuBorgel is not entitled to the extended statute of limitations under 42. Pa.C.S.A. § 5533 (b)(2)(i) for minor victims of sexual abuse. Alternatively, DuBorgel has failed to produce evidence of facts essential to support a claim that she is entitled to the extended statute of limitations..

47. DuBorgel's battery claim is barred by the statute of limitations.

48. DuBorgel's battery claim must be dismissed.

COUNT III - STATUTE OF LIMITATIONS - IIED

49. Paragraphs 1 through 48 of this Motion are restated and reincorporated by reference as though fully set forth.

50. Ordinarily, an action for IIED must be commenced within two years. 42 Pa.C.S.C.A. § 5524 (7).

51. In the case of an unemancipated minor, the limitations period begins to run when the unemancipated minor reaches the age of 18. 42. Pa.C.S.A. § 5533 (b)(1)(i).

52. A minor is a person who has not yet reached the age of 18 years. 42. Pa.C.S.A. § 5533 (b)(1)(ii).

53. When a person is under 18 years of age at the time that a cause of action related to sexual abuse occurs, that person will have a period of 37 years after attaining the age of 18 to bring an action. 42. Pa.C.S.A. § 5533 (b)(2)(i).

54. "Sexual abuse" for purposes of the statute of limitations requires that the "individual bringing the civil action engaged in such activities as a result of forcible compulsion or the threat of forcible compulsion which would prevent resistance by a person of reasonable resolution." 42. Pa.C.S.A. § 5533 (b)(2)(ii).

55. "Forcible compulsion" for purposes of the statute of limitations "shall have the meaning given to it by 18 Pa.C.S.A. § 3101.

56. "Forcible compulsion" is "[c]ompulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied." 18 Pa.C.S.A. § 3101.

57. To the extent that DuBorgel's IIED claims are predicated on acts other than sexual abuse, they must be brought within two years after turning 18.

58. DuBorgel has not brought her action for IIED within the two years after turning 18.

59. DuBorgel has not produced sufficient evidence upon which a jury could conclude that she engaged in sexual activities with Godlewski as a result of forcible compulsion or threat of forcible compulsion which would prevent resistance by a person of reasonable resolution.

60. There is no genuine issue of material fact that DuBorgel is not entitled to the extended statute of limitations under 42. Pa.C.S.A. § 5533 (b)(2)(i) for minor victims of sexual

abuse. Alternatively, DuBorgel has failed to produce evidence of facts essential to support a claim that she is entitled to the extended statute of limitations.

61. DuBorgel's IIED claims is barred by the statute of limitations.

62. DuBorgel's IIED claim must be dismissed.

COUNT IV - STATUTE OF LIMITATIONS - NIED

63. Paragraphs 1 through 62 of this Motion are restated and reincorporated by reference as though fully set forth.

64. Ordinarily, an action for NIED must be commenced within two years. 42 Pa.C.S.C.A. § 5524 (7).

65. In the case of an unemancipated minor, the limitations period begins to run when the unemancipated minor reaches the age of 18. 42. Pa.C.S.A. § 5533 (b)(1)(i).

66. A minor is a person who has not yet reached the age of 18 years. 42. Pa.C.S.A. § 5533 (b)(1)(ii).

67. When a person is under 18 years of age at the time that a cause of action related to sexual abuse arises, that person will have a period of 37 years after attaining the age of 18 to bring an action. 42. Pa.C.S.A. § 5533 (b)(2)(i).

68. "Sexual abuse" for purposes of the statute of limitations requires that the "individual bringing the civil action engaged in such activities as a result of forcible compulsion or the threat of forcible compulsion which would prevent resistance by a person of reasonable resolution." 42. Pa.C.S.A. § 5533 (b)(2)(ii).

69. "Forcible compulsion" for purposes of the statute of limitations "shall have the meaning given to it by 18 Pa.C.S.A. § 3101.

70. "Forcible compulsion" is "[c]ompulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied." 18 Pa.C.S.A. § 3101.

71. To the extent that DuBorgel's NIED claims are predicated on acts other than sexual abuse, they must be brought within two years after turning 18.

72. DuBorgel has not brought her action for NIED within the two years after turning 18.

73. DuBorgel has not produced sufficient evidence upon which a jury could conclude that she engaged in sexual activities with Godlewski as a result of forcible compulsion or threat of forcible compulsion which would prevent resistance by a person of reasonable resolution.

74. There is no genuine issue of material fact that DuBorgel is not entitled to the extended statute of limitations under 42. Pa.C.S.A. § 5533 (b)(2)(i) for minor victims of sexual abuse. Alternatively, DuBorgel has failed to produce evidence of facts essential to support a claim that she is entitled to the extended statute of limitations.

75. DuBorgel's NIED claims is barred by the statute of limitations.

76. DuBorgel's NIED claim must be dismissed.

COUNT V - ASSAULT

77. Paragraphs 1 through 76 of this Motion are restated and reincorporated by reference as though fully set forth.

79. In order to sustain a cause of action for assault in Pennsylvania, a plaintiff must prove:

A. an act intended to cause offensive or harmful bodily contact or to put another in reasonable apprehension of offensive physical contact and;

B. the victim actually experiences apprehension.

80. DuBorgel has failed to adduce sufficient facts upon which a jury may conclude that Godlewski intended to cause offensive or harmful bodily contact.

81. DuBorgel has failed to produce sufficient facts to show that Godlewski committed an act intended to put DuBorgel in reasonable apprehension of offensive physical contact.

82. DuBorgel has failed to produce sufficient facts to show that DuBorgel experienced apprehension as a result of Godlewski's alleged acts.

83. DuBorgel has failed to produce sufficient facts to sustain a cause of action for assault.

84. DuBorgel's claim for assault must be dismissed.

COUNT VI - BATTERY

85. Paragraphs 1 through 84 of this Motion are restated and reincorporated by reference as though fully set forth.

86. In order to sustain a cause of action for battery in Pennsylvania, a plaintiff must prove that she was intentionally subjected to unwelcome bodily contact, however slight.

87. DuBorgel has failed to produce sufficient facts to show that Godlewski intentionally subjected DuBorgel to unwelcome physical contact.

88. DuBorgel has failed to produce sufficient facts to sustain a cause of action for battery.

89. DuBorgel's claim for battery must be dismissed.

COUNT VII - IIED

90. Paragraphs 1 through 89 of this Motion are restated and reincorporated by reference as though fully set forth.

91. In order to state a cause of action for IIED, a plaintiff must prove:

- A. Extreme and outrageous conduct;
- B. that is intentional and reckless;
- C. causing severe emotional distress; and
- D. resulting in some physical harm.

92. DuBorgel has failed to produce sufficient facts which support an inference of extreme and outrageous conduct on the part of Godlewski.

93. DuBorgel has failed to produce sufficient acts to show intentional or reckless conduct on the part of Godlewski.

94. DuBorgel has failed to produce sufficient facts supporting an inference that Godlewski has caused DuBorgel severe emotional distress.

95. DuBorgel has failed to produce sufficient facts to support an inference of resulting physical harm.

96. DuBorgel has failed to produce sufficient facts to sustain a cause of action for IIED.

97. DuBorgel's IIED claim must be dismissed.

COUNT VIII - NIED

98. Paragraphs 1 through 97 of this Motion are restated and reincorporated by reference as though fully set forth.

99. DuBorgel attempts to state a claim for NIED based upon an alleged "special relationship" with Godlewski

100. In order to sustain a cause of action for NIED, a plaintiff must prove:

- A. that defendant had a contractual or fiduciary duty to the plaintiff; and
- B. that plaintiff suffered immediate and substantial physical harm;
- C. resulting from negligent conduct.

101. DuBorgel has failed to produce sufficient facts of a fiduciary or contractual duty, or other legally sufficient special relationship on the part of Godlewski.

102. DuBorgel has failed to produce sufficient facts of a duty of care owed to DuBorgel by Godlewski.

103. DuBorgel has failed to produce sufficient facts of a breach of duty of care on the part of Godlewski.

104. DuBorgel has failed to prove resulting harm from a breach of a duty of duty of care.

105. DuBorgel has failed to prove immediate and substantial physical harm.

106. DuBorgel has failed to produce facts sufficient to sustain a cause of action for NIED.

107. DuBorgel's NIED claim must be dismissed.

WHEREFORE, Plaintiff Philip Godlewski respectfully requests that the Honorable Court grant his Motion for Partial Summary Judgment and entering an Order providing the following relief:

- A. Deeming paragraphs 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 22, 44, and 45 of the Complaint admitted.
- B. Deeming paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47 and 48 of the Complaint admitted.
- C. Dismissing Count III (Assault) of DuBorgel's Counterclaim with prejudice.
- D. Dismissing Count IV (Battery) of DuBorgel's Counterclaim with prejudice.
- E. Dismissing Count V (Intentional Infliction of Emotional Distress) of DuBorgel's Counterclaim with prejudice.
- F. Dismissing Count VI (Negligent Infliction of Emotional Distress) of DuBorgel's Counterclaim with prejudice.

Respectfully submitted,

KOLMAN LAW, PC

DATE: 9/30/2024

Timothy M. Kolman

Timothy M. Kolman, PA51982



Timothy A. Bowers, PA77980

Kymerberley L. Best

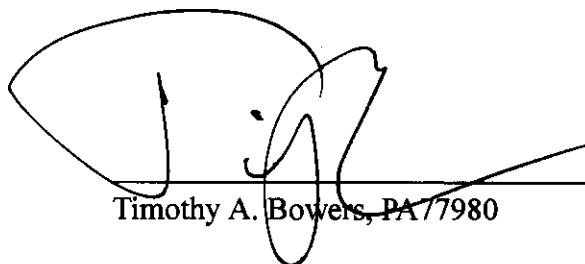
Kymerberley L. Best, PA94596
414 Hulmeville Avenue
Pennel, PA 19047
(215) 750-3134
Attorney for Plaintiff.

COMBINED CERTIFICATE

I HEREBY CERTIFY that I have, this 30th day of September 2024, served a true and correct copy of the foregoing document by first class mail, postage prepaid upon the following:

Gregory E. Fellerman, Esquire
gef@fclawpc.com
Edward J. Ciarimboli, Esquire
ejc@fclawpc.com
Molly Dempsey Clark, Esquire
mclark@fclawpc.com
Counsel for Defendant

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



Timothy A. Bowers, PA77980

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