

JUN 13 2011

MOLLY S. HENDERSON

: IN THE COURT OF COMMON PLEAS

vs.

: CHESTER COUNTY, PENNSYLVANIA

LANCASTER NEWSPAPERS, INC.,
JOHN M. BUCKWALTER, ERNEST J.
SCHREIBER, MARVIN I. ADAMS, JR.,
HELEN COLWELL ADAMS,
CHARLES RAYMOND SHAW.
ARTHUR E. MORRIS, GILBERT A.
SMART, JOHN H. BRUBAKER, III and
DAVID PIDGEON

: CIVIL ACTION - LAW

: NO. 2007-12003

2011 JUN -3 PM 10:01

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Esquire, and Leo Gibbons, Esquire, Attorneys for Plaintiff.

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Michael E. Baughman, Esquire, Raphael Cunniff, Esquire, and Eli M. Segal, Esquire,
Attorneys for Defendants Lancaster Newspapers, Inc., John M. Buckwalter, Ernest J.
Schreiber, Marvin I. Adams, Jr., Helen Colwell Adams, Charles Raymond Shaw, Gilbert
A. Smart, John H. Brubaker, III and David Pidgeon.

James H. Thomas, Esquire, Attorney for Defendant Arthur E. Morris

ORDER

AND NOW, this 7th day of JUNE, 2011, upon

consideration of Defendant Arthur E. Morris and the Lancaster Newspaper, Inc. ("LNI")


Defendants' Motions for Summary Judgment, Plaintiff's consolidated response thereto and

Defendants' reply brief, it is hereby ORDERED and DECREED that the Motion is

GRANTED and Judgment is entered in favor of Defendants and against Plaintiff and

Plaintiff's Complaint is STRICKEN with prejudice.¹

BY THE COURT:



EDWARD GRIFFITH

J.

1 In an action for defamation, the plaintiff must prove: (1) the defamatory character of the communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting from its publication; and (7) abuse of a conditionally privileged occasion. Moore v. Cobb-Nettleton, 889 A.2d 1262, 1268 (Pa. Super. 2005); 42 Pa.C.S.A. § 8343(a). If the statement in question bears on a matter of public concern, or the defendant is a member of the media, First Amendment concerns compel the plaintiff to prove, as an additional element, that the alleged defamatory statement is in fact false. Ertel, supra at 1041. If the plaintiff is a public official or public figure, she must also prove that the defendants acted with "actual malice," i.e. "with knowledge that the statement is false or with reckless disregard of whether it was false or not." Curran v. Philadelphia Newspapers, Inc., 546 A.2d 639, 642 (Pa. Super. 1988), quoting New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). Evidence of ill will or a defendant's desire to harm the plaintiff's reputation, although probative of the defendant's state of mind, without more does not establish "actual malice." Sprague v. Walter, 656 A.2d 890, 906-07 (Pa. Super. 1995.) The existence of a reliable source for a statement means that, as a matter of law, a plaintiff cannot show actual malice. Curran, supra at 652. "Actual malice" must be proven by clear and convincing evidence, the highest standard of proof for civil claims. Lewis v. Philadelphia Newspapers, Inc., 833 A.2d 185, 192 (Pa. Super. 2003). The "of and concerning" requirement prohibits a public official plaintiff from suing for defamation based on a statement that criticizes the government group of which she is a member even if a reasonable person could conclude that the statement is critical of her as well. Rosenblatt v. Baer, 383 U.S. 75, 83 (1966); New York Times Co., supra at 291-292. In a close case on the issue of whether defamatory speech is "of and concerning" an individual or the government itself, it should be construed as of and concerning the government. Andrews v. Stallings, 892 P.2d 611, 617 (N.M. Ct. App. 1995). It is the court's function to determine whether a statement is capable of defamatory meaning. Tucker v. Philadelphia Daily News, 577 Pa. 598, 614-15, 848 A.2d 113, 123-24 (1981). Plaintiff's failure to adduce evidence to substantiate any element of her cause of action for defamation entitles the defendants to summary judgment as a matter of law. Ertel v. Patriot-News Co., 674 A.2d 1038, 1042 (Pa. 1996).

Plaintiff's action against Lancaster Newspapers, Inc. ("LNI") and their employees and reporters is based on fifteen (15) newspaper articles published between December 14, 2006 and September of 2007. Plaintiff's action against Defendant Arthur E. Morris is based on three letters to the editor of LNI dated 12/17/06, 1/15/07 and 1/28/08. First, we find that the majority of the articles are "of and concerning" the Lancaster County Commissioners, which includes Plaintiff. In fact, when read in their entirety the articles are much more critical of the other two commissioners. Second, with the exception of the few minor errors which were corrected by LNI, Plaintiff has not produced any evidence that the articles were false and published with actual malice. The literal truth of a publication need not be established, only that the statement is "substantially true." Dunlap v. Philadelphia Newspapers, Inc., 448 A.2d 6, 15 (Pa. Super. 1982). For the most part, the factual allegations came from the 37 page published Grand Jury Report and the citation for Plaintiff's violation of the Sunshine Act. The existence of a reliable source for a statement at issue means that a plaintiff, as a matter of law, cannot show actual malice. Curran, supra at 661. Under the fair report privilege, media defendants have a qualified immunity from

defamation liability when they report on official government proceedings. Weber v. Lancaster Newspapers, Inc., 878 A.2d 63 (Pa. Super. 2005), reargument denied, appeal denied 903 A.2d 539, appeal denied 916 A.2d 634. The fair report privilege extends to court proceedings. Id. As for the editorials, an expression of opinion based on disclosed facts is not itself sufficient for an action of defamation, no matter how derogatory, unjustified or unreasonable the opinion may be. Matthias v. Carpenter, 587 A.2d 1, 3 (Pa. Super. 1991).

The elements of a cause of action for "false light" are: publicity; given to private facts; which would be highly offensive to a reasonable person; and which are not of legitimate concern to the public. Strickland v. University of Scranton, 700 A.2d 979 (Pa. Super. 1997). A cause of action for false light exists only where there is published such a major misrepresentation of plaintiff's character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable person in plaintiff's position. Id. "False light" includes publicity that unreasonably places one in false light before the public. Id. The facts about Plaintiff that Defendants published were not private. They stemmed from the published Grand Jury Report and Plaintiff's guilty plea to a Violation of the Sunshine Law. Furthermore, they were of legitimate concern to the public. Finally, the couple of errors pointed out by Plaintiff were rectified immediately by LNI's published corrections.

In order to state a claim for civil conspiracy, a complaint must allege: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in furtherance of the common purpose; and (3) actual legal damage. McKeeman v. Corestates Bank, N.A., 751 A.2d 655, 660 (Pa. Super. 2000). Proof of malice is essential to prove conspiracy. Reading Radio, Inc. v. Fink, 833 A.2d 199, 212 (Pa. Super. 2003), *app. den.* 847 A.2d 1287. Furthermore, a single entity cannot conspire with itself and agents of a single entity cannot conspire among themselves. Grose v. Procter & Gamble Paper Products, 866 A.2d 437, 441 (Pa. Super. 2005). A claim for civil conspiracy requires proof of a separate underlying tort. Sprinturf, Inc. v. Southwest Recreational Industries, Inc., 281 F.Supp.2d 784, 785 (E.D. Pa. 2003). Absent the underlying causes of action, the count for conspiracy also had to be stricken. Pelagatti v. Cohen, 536 A.2d 1337 (Pa. Super. 1987). Absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to commit that act. Goldstein v. Phillip Morris, Inc., 854 A.2d 585, 590 (Pa. Super. 2004). Because we conclude that Plaintiff cannot prove her claims of defamation or false light, we correspondingly find that no civil conspiracy occurred. GMH Associates, Inc. Prudential Realty Group, 752 A.2d 889, 905 (Pa. Super. 2000).