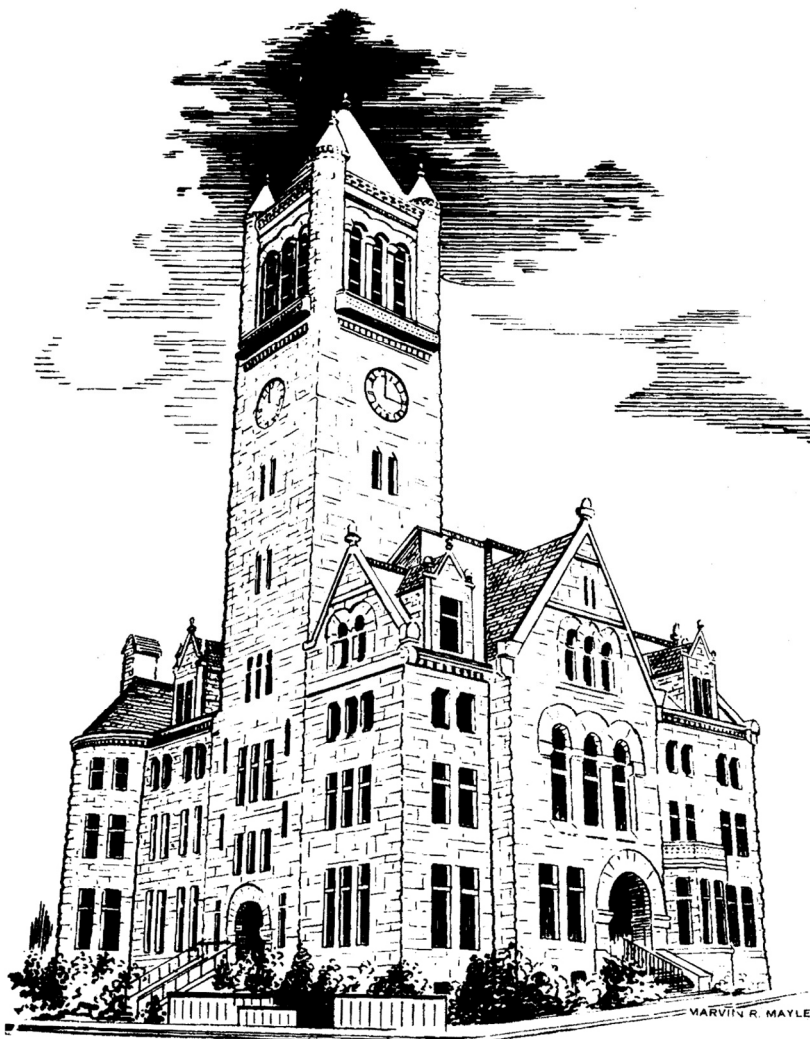


FAYETTE LEGAL JOURNAL

VOL. 85

AUGUST 20, 2022

NO. 34



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

RICHARD F. DODD, late of Connellsville,
Fayette County, PA (3)

Personal Representative:

Joshua Ryan Dodd
c/o Davis and Davis
107 East Main Street
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**CONSTANCE L. GHRIST, a/k/a
CONSTANCE GHRIST, a/k/a CONNIE L.
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813 Blackstone Road
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Connellsville, PA 15425
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Connellsville, PA 15425
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Second Publication

RALPH CATON, late of Georges Township,
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First Publication

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Tiffany Ann Sawyers
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Attorney: James Higinbotham

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Administrator: Misty Callahan

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Greensburg, PA 15601

Attorney: Kim Ross Houser

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Personal Representative: Melanie R. Rotz

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Fayetteville, PA 17222
c/o Hoskinson, Wenger & Rife
147 East Washington Street
Chambersburg, PA 17201

Attorney: Lawrence R. Rife, IV

LEGAL NOTICES

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about August 8, 2022, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of The Lair Of Artistic Gentlemen with the principal place of business at: 77 West Church Street Fairchance Pa 15436. The name or names and addresses of persons owning and interested are: Russell Kefover, 554 Madison Drive, Smithfield, Pa 15478.

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Tuesday, September 6, 2022, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2620-0321	JOHN H. RICHTER	Jerry D. Richter, Executor
2621-0111	JENNIE J. AMBRISCO	Eugene Falvo, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, September 19, 2022, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, Third Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Tuesday, September 6, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2619-0948	ROY W. TAYLOR	Eric D. Taylor and Heather L. Taylor, Co-Executors

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, September 19, 2022, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, Second Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

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Smithfield, PA 15478

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JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

FRANCIS MONGELL and	:	
BARB MONGELL, his wife,	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
PHILIP MARTELL and	:	
TRISHA MARTELL, his wife,	:	No. 1409 of 2017, G.D.
Defendants.	:	Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J.

July 25, 2022

Before the Court is a Motion for Summary Judgment filed by Defendants, Philip Martell and Trisha Martell, his wife, requesting this Court to dismiss the causes of action of Plaintiffs Francis Mongell and Barb Mongell, his wife.

In their Second Amended Complaint, Plaintiffs allege that Plaintiff Francis Mongell was the President of the School Board for the Connellsville School District in Connellsville, Fayette County from 2005 to 2009. Plaintiff Barbara Mongell is a retired school teacher from the same district but never held a political office. Plaintiffs have been married since 1975.

Plaintiffs allege that Defendant Philip Martell was the Business Manager for Connellsville School District from May 2015 through November 2016 then served as Superintendent of the District from November 2016 through at least the filing of the Second Amended Complaint in May 2018. Defendant Trisha Martell is married to Philip Martell but does not serve in any political positions.

Plaintiffs Mongells allege that Defendants Martells posted messages on Facebook and Fay-west.com using false names and/or accounts from April 2017 through the filing of the Second Amended Complaint. Plaintiffs allege that Defendants posted that Plaintiff Francis Mongell was having an “extramarital relationship with an individual identified as ‘KB’, ‘Karen Blocker’, and ‘Karen from Highlands Hospital’”, that he was “engaged in criminal activity including calling him a ‘thief’ and alleging that he had accepted services as part of his position in the Connellsville School Board.” See, Second Amended Complaint at ¶11, 13. Plaintiffs allege Defendants posted that Plaintiff Barbara Mongell was “engaged in criminal activity, to include allegation of theft from her mother’s estate and other criminal offenses.” Plaintiffs allege the statements are defamatory in nature, directed at Plaintiffs, and that Defendants knew the allegations to be untrue but nevertheless published said statements. At Counts I, II, and III, Plaintiffs allege defamation per se against Defendants and at Count IV a claim for libel.

At the defamation counts, Plaintiffs allege that Defendants “wrongfully and maliciously accused” them of the above allegations and that “[w]hen Defendants published the accusations of criminal activity, Defendants knew such statements to be false but nevertheless published said statements.” Plaintiffs allege that Defendants’ publication was “maliciously, and with reckless disregard for the fact that said statements were false and defamatory.” As a result of the “unlawful acts of Defendants,” Plaintiffs have “suffered, and continues to suffer, substantial damages and irreparable harm to [their] reputation.”

Similarly, in their libel claim, Plaintiffs allege that Defendants “on Facebook and Fay-west.com, wrongfully and maliciously accused Plaintiff Francis Mongell, in writing, of serious sexual misconduct [...] and] Plaintiffs Francis Mongell and Barbara Mongell, in writing, of engaging in criminal activity.” Plaintiffs allege Defendant published the accusation when they knew such statements to be false and published “maliciously and with reckless disregard for the fact that said statements were false and defamatory.” As a result, Plaintiffs allege they “have suffered, and continue to suffer, substantial damages and irreparable harm to their reputation.” Plaintiffs attach as an Exhibit to the Second Amended Complaint the alleged defamatory posts from Fay-west.com and further allege that Defendants deleted any Facebook post making the same inaccessible. Defendant Philip Martell filed an Answer, New Matter, and Counterclaim and Defendant Trisha Martell filed separately an Answer and New Matter. Defendants averred that Plaintiff Francis Mongell was additionally an elected school board member of the Connellsville School District for approximately 32 years, was the current board president at the filing of the Second Amended Complaint, and was a sitting elected school board member at the time any alleged statements or posts were made or published, thereby making him a public figure. Defendants answered that Defendant Philip Martell left his position as Superintendent of the Connellsville School District in November 2017.

Defendant Philip Martell further answered admitting that he made statements/comments directed at Plaintiffs on Fay-west.com, he denied the statements were defamatory, and that any statements made were only “posted for minutes before being removed by plaintiffs.” See, Answer, New Matter, and Counterclaim at ¶8, 11, 13, 15. Defendant Philip Martell denied any posting on the Facebook platform regarding Plaintiffs. Defendant Philip Martell admitted that he “made posts that may have been construed that plaintiff, Francis Mongell, may have been having an extramarital affair with an individual named Karen Blocker on Fay-west.com”; statements that he “accepted services as part of his position on the Connellsville School Board on Fay-west.com”; and statements that “plaintiff Barbara Mongell, allegedly stole from her mother’s estate on Fay-west.com” Id. at ¶11, 13, and 15. Defendant denied that the “exact posts attached as Exhibit[s] are the statements or posts he made concerning the plaintiffs on Fay-west.com.” Id. Philip Martell further answered that any statements he made on Fay-west.com were in response to defamatory statements made by Plaintiffs against him. Philip Martell answered that any statements he made were not made maliciously or wrongfully.

Defendant Philip Martell further denied that any statement he made or was alleged to have made was untrue, answering instead that “same or similar allegations have been made by other members of the general community and circulated around the general community for some time.” Id. at ¶12, 14, 16. Defendant Philip Martell further alleged

that Plaintiff Francis Mongell is a public figure and cannot prove actual malice on his part if it is determined that he made any defamatory statements. *Id.* at ¶12, 14.

Defendant Trisha Mongell answered denying that she ever posted regarding the Plaintiffs on Facebook or Fay-west.com.

DISCUSSION

Defendants first move for summary judgment arguing that Plaintiffs have presented insufficient evidence to support a prima facie cause of action for defamation. Summary judgment is governed by Rule 1035.2 of the Pennsylvania Rules of Civil Procedure, which provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. No. 1035.2.

The comment to Rule 1035.2 provides,

Under subdivision (2), the record contains insufficient evidence of facts to make out a prima facie cause of action or defense and, therefore, there is no issue to be submitted to a jury. The motion in this instance is made by a party who does not have the burden of proof at trial and who does not have access to the evidence to make a record which affirmatively supports the motion. To defeat this motion, the adverse party must come forth with evidence showing the existence of the facts essential to the cause of action or defense.

Pa.R.C.P. No. 1035.2.

Under Pa.R.C.P. No. 1035.2(2), the ultimate inquiry in deciding a motion for summary judgment is whether the admissible evidence in the record, considered in the light most favorable to the respondent, fails to establish a prima facie case. *Johnson v. Harris*, 615 A.2d 771 (Pa.Super. 1992). Rule of Civil Procedure 1035.1 provides a definition for the term “record” to include any:

(1) pleadings,

(2) depositions, answers to interrogatories, admissions and affidavits, and

(3) reports signed by an expert witness that would, if filed, comply with Rule 4003.5(a)(1), whether or not the reports have been produced in response to interrogatories.

Pa.R.C.P. No. 1035.1.

Rule 1035.3 governs the response to a motion for summary judgment and provides the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion and identify:

- (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
- (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.

Pa.R.C.P. No. 1035.3(a)(1) and (2).

The comment to Rule 1035.1 explains,

The response provisions of subdivision (a)(1) and (2) correspond to the bases for summary judgment in Rule 1035.2(1) and (2).

Pa.R.C.P. No. 1035.3.

An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.

Pa.R.C.P. No. 1035.3(b).

To establish a claim for defamation, a plaintiff must aver:

- (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 to the plaintiff from its publication.
- (7) Abuse of a conditionally privileged occasion.

42 Pa.C.S.A. § 8343

In turn, when a prima facie case of defamation is properly raised, the defendant has the burden of proving:

- (1) The truth of the defamatory communication.
- (2) The privileged character of the occasion on which it was published.
- (3) The character of the subject matter of defamatory comment as of public concern.

Id. at § 8343(b).

Defamation per se is applicable in instances when the communications ascribe to the plaintiff any of the following: “commission of a criminal offense, a loathsome disease, serious sexual misconduct, or conduct or characteristics that adversely affect the plaintiff’s fitness to properly conduct his profession, trade or business.” *Krolczyk v. Goddard Sys., Inc.*, 164 A.3d 521, 531 (Pa. Super. 2017) (citing Restatement 2d of Torts, § 570). If a plaintiff establishes a prima facie claim for defamation per se, he is not required to provide proof of special harm. See *Joseph v. Scranton Times L.P.*, 959 A.2d 322, 344 (Pa. Super. 2008) (citing *Brinich v. Jencka*, 757 A.2d 388, 397 (Pa. Super. 2000) (“With words that are actionable per se, only general damages, i.e., proof that one’s reputation was actually affected by defamation or that one suffered personal humiliation, or both, must be proven; special damages, i.e., out-of-pocket expenses borne by the plaintiff due to the defamation, need not be proven.”)).

Here, Defendants Philip Martell and Trisha Martell moved for summary judgment on the basis that Plaintiffs Francis Mongell and Barbara Mongell have failed to produce evidence of facts essential to the cause of action which in a jury trial would require the issues to be submitted to a jury. Pa.R.C.P. No. 1035.2(2). Namely, that the Mongells have failed to come forward with evidence that would prove that the Martells, individually or jointly, published or posted the specific alleged defamatory messages or comments on the social media websites. Plaintiffs Mongells responded to the motion for summary arguing that genuine issues of material fact remain (Pa.R.C.P. No. 1035.2(1)) without addressing their alleged failure to establish a prima facie case for defamation as moved by Defendants (Pa.R.C.P. No. 1035.2(2)). In support though, Plaintiffs contended that they “allege that at all times relevant hereto, Defendants, as husband and wife, either jointly or individually posted said comments and/or statements, supported by the evidence and testimony received from Defendants during discovery.” Plaintiffs further responded to the motion that “it is certainly possible for a “meeting of the minds” where two (2) persons conspire to make any single comment and/or statement, especially two person who are married and share a household.”

The Court has reviewed the record which includes only the Second Amended Complaint and Answer, New Matter, and Counterclaim of Defendant Philip Martell and Answer and New Matter of Defendant Trisha Martell. The record was not further supplemented by either party and includes no depositions, answers to interrogatories, admissions and affidavits, or expert reports. The Court notes that Plaintiffs and Defendants filed briefs supporting their positions, but that the briefs are not part of the official record for a Court reviewing a motion for summary judgment. *Scopel v. Donegal Mutual Insurance Company*, 698 A.2d 602 (Pa. Super. 1997). Evidence not filed of record also may not be considered in determining a summary judgment motion. *Thorsen v. Iron & Glass Bank*, 476 A.2d 928 (Pa. Super. 1984).

The failure of a non-moving party, in response to a summary judgment motion, to adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof establishes the entitlement of the moving party to judgment as a matter of law. *Shepard v. Temple University*, 948 A.2d 852, 233 (Pa. Super. 2008). In ruling on a motion for summary judgment, the court will consider uncontroverted allegations in the pleadings but ignore controverted facts appearing in the pleadings. *Nationwide Mut. Ins. Co. v. Nixon*, 682 A.2d 1310 (1996).

An essential element of defamation is proof of publication by the defendant. 42 Pa.C.S.A. § 8343(2). In their Second Amended Complaint, Plaintiffs allege that Defendants made defamatory statements about them which were attached as an Exhibit to the Complaint. In his Answer, Defendant Philip Martell admitted to making statements about Plaintiffs on Fay-west.com but denied making any statement on Facebook and denied that the statements attached as an Exhibit to the Second Amended Complaint were made by him. In her Answer, Defendant Trisha Martell denied making any defamatory statements about Plaintiffs on Facebook or Fay-west.com.

In Plaintiffs' brief, which is not a part of the record for purposes of summary judgment, they argued that they are not required at this stage to prove which Defendant made a specific post; that it is possible to prove both Defendants made a specific comment; and that the Defendants are a married couple residing and vacationing together. Plaintiffs further argued that they "also presented evidence to support their contention that members of the community believed [Defendants] to be making said posts" that evidence will be presented at trial to show the Defendants' animosity towards Plaintiffs; the general locations the posts were made in conjunction with Defendants' vacation to Mexico; and "other evidence to indicate that Defendants made these posts with the intention to harm Plaintiffs."

Assuming for arguendo that Plaintiffs are not required at this stage to prove which Defendant made the alleged defamatory statements, Plaintiffs have failed to adduce evidence that either Defendant made the statements. Even accepting as true the allegations in their brief, which are not part of the record, animosity towards Plaintiffs, the belief of members of the community, being married and residing and vacation together, would not prove that one or both Defendants published the comments.

In their response to the motion for summary judgment, Plaintiffs allege "evidence and testimony received from Defendants during discovery" are sufficient to survive the motion for summary judgment. No evidence or testimony exists in the record. In their brief, Plaintiffs allude to "other evidence" without specifying what evidence. The Court can find no evidence of record that would support a prima facie case for defamation, specifically that Plaintiffs provided no evidence that Defendants published the statements. Accordingly, the Motion for Summary Judgment filed by Defendants, Philip Martell and Trisha Martell, his wife, must be GRANTED and the Second Amended Complaint of Plaintiffs Francis Mongell and Barb Mongell is DISMISSED.

ORDER

AND NOW, this 25th day of July, 2022, the Motion for Summary Judgment filed by Defendants, Philip Martell and Trisha Martell, his wife, and the record, it is hereby ORDERED and DECREED that the Motion is GRANTED and the Second Amended Complaint of Plaintiffs Francis Mongell and Barb Mongell is DISMISSED.

BY THE COURT,
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, August 24th from 12:00 p.m. to 1:30 p.m.**
- Location: Courtroom No. 3 of the Fayette County Courthouse
- Discussion topics: **Impact of Imposter Syndrome, Stress, and Burnout**
- Presenter: Brian S. Quinn, Esquire -
Lawyers Concerned for Lawyers of Pennsylvania

CLE Credit

1.5 hours of Ethics CLE credit for the program. The fees are as follows:

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2017

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**** All fees to be paid at the door ****
A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or email to cindy@fcbars.org on or before Monday, August 22nd.

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