

Adams County Legal Journal

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IN THE COURT OF COMMON PLEAS
OF CUMBERLAND COUNTY,
PENNSYLVANIA

CIVIL ACTION – QUIET TITLE
NO.: 12-5248 CIVIL TERM

Francis Worley Jr. and Daniel T. Worley,
Plaintiffs

vs.

Any Unknown Heirs of David Greist,
deceased, and Any Unknown Heirs of
I.D. Worley, deceased, Defendants

NOTICE

To Any Unknown Heirs of David Greist
(deceased) and Any Unknown Heirs of
I.D. Worley (deceased).

You are notified that the Plaintiffs,
Francis Worley Jr. and Daniel T. Worley,
have commenced an Action to Quiet
Title against you and is entered to 5248
Civil Term in the Court of Common Pleas
of Cumberland County, Pennsylvania,
which you are required to defend. The
subject property lies in the counties of
York, Cumberland, and Adams, with a
majority of the property being in
Cumberland County and numbered
2810 County Line Road. This Action
concerns the land described as:

BEGINNING at a stone pile in Franklin
Township, York County, on the north
side of County Line Road and property
of Clark Wagner; thence by said Clark
Wagner and crossing said road into
Adams County; south two degrees west
forty-four and five tenths perches to
stones; thence by lands now or late of
Barry Weaver, north fifty-six, west twenty-
one perches more or less to a post;
thence by lands of Charles M. Fogerty,
due north forty and nine tenths perches
to a ground oak; thence south sixty-
eight degrees, east nineteen perches
more or less to place of BEGINNING.

If you wish to defend, you must enter
a written appearance personally or by
attorney and file your defenses or objec-
tions in writing with the court. You are
warned that if you fail to do so, the case
may proceed without you and a judg-
ment may be entered against you with-
out further notice for the relief requested
by the plaintiff. You may lose money or
property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO
YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER, GO TO OR

TELEPHONE THE OFFICE SET FORTH
BELOW. THIS OFFICE CAN PROVIDE
YOU WITH INFORMATION ABOUT
HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A
LAWYER, THIS OFFICE MAY BE ABLE
TO PROVIDE YOU WITH INFORMATION
ABOUT AGENCIES THAT MAY OFFER
LEGAL SERVICES TO ELIGIBLE
PERSONS AT A REDUCED FEE OR NO
FEE.

Cumberland County Bar Association
32 South Bedford Street
Carlisle, PA 17013
1-800-990-9108
717-249-3166

Richard P. Mislitsky, Esq.
Attorney for Plaintiffs
One West High Street
Suite 208
P.O. Box 1290
Carlisle, PA 17013
717-241-6363
Supreme Court ID# 28123

10/12

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pur-
suant to the provisions of Section 311 of
the Act of December 16, 1982, P.L.
1309, No. 295, codified as amended (54
Pa. C.S.A. § 311), there was filed in
the Office of the Secretary of the
Commonwealth of Pennsylvania at
Harrisburg, Pennsylvania, on September
24, 2012, an Application for Registration
of Fictitious Name of DR. RITA TEMPEL
& ASSOCIATES, the address of the principal
place of business being 2018 York
Road, Gettysburg, Pennsylvania 17325.
The name and address of the entity who
is a party to said registration is: Rita A.
Tempel, DDS, LLC, a Maryland profes-
sional limited liability company at 2018
York Road, Gettysburg, Pennsylvania
17325.

Puhl, Eastman & Thrasher
Attorneys

10/12

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pur-
suant to the provisions of Section 311 of
the Act of December 16, 1982, P.L.
1309, No. 295, codified as amended (54
Pa. C.S.A. § 311), there was filed in
the Office of the Secretary of the
Commonwealth of Pennsylvania at
Harrisburg, Pennsylvania, on September
24, 2012, an Application for Registration
of Fictitious Name of GETTYSBURG
SMILES, the address of the principal
place of business being 2018 York
Road, Gettysburg, Pennsylvania 17325.
The name and address of the entity who
is a party to said registration is: Rita A.
Tempel, DDS, LLC, a Maryland profes-
sional limited liability company at 2018
York Road, Gettysburg, Pennsylvania
17325.

Puhl, Eastman & Thrasher
Attorneys

10/12

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that a
certificate was or will be filed under the
Fictitious Names Act approved May 24,
1945, in the Office of the Secretary of
the Commonwealth of Pennsylvania set-
ting forth that Janet A. McNeal is the
only person owning or interested in a
business, the character of which is pro-
viding consulting services for business-
es and organizations in the areas of risk
management, loss prevention, and ethi-
cal practices for topics like bullying,
sexual harassment/misconduct, recog-
nizing/reporting child abuse, and inter-
nal investigations, and that the name
under which said business will be con-
ducted is LAW AND GRACE
CONSULTING, and the location where
said business will be located is 810
Trolley Road, York Springs, PA 17372.

10/12

ALDRICH ET AL VS. FAIRFIELD COMM. FIRE CO. ET AL

1. A statement is defamatory under Pennsylvania law if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter a third party from associating or dealing with him.

2. First Amendment concerns compel the plaintiff to prove, as an additional element, that the alleged defamatory statement is in fact false. Additionally, in every defamation action brought by a public figure, the plaintiff must first show actual malice in order to establish the liability of the defendant.

3. It is beyond question that the tort of invasion of privacy does exist in Pennsylvania. Included within the tort of invasion of privacy is the analytically distinct tort of publicly placing a person in false light.

4. A publication is actionable if it is not true, is highly offensive to a reasonable person, and is publicized with knowledge or in reckless disregard of its falsity.

5. Reckless conduct sufficient to establish the causes of action alleged by the Plaintiffs is also sufficient to pierce any shield against individual liability for actions as a board member. Specifically, a corporate officer who participates in the wrongful acts of a corporation may be held personally liable for those acts.

6. Where a doubt exists as to whether a demurrer to a complaint should be sustained, the doubt should be resolved in favor of overruling the demurrer.

7. Defendants correctly cite current Pennsylvania law in claiming that punitive damages are only appropriate for acts done with bad motive or with reckless indifference for the rights of others. However, Plaintiffs' Complaint is replete with allegations that the Defendants published factually inaccurate information knowing that the same was false. At this stage of the proceedings, the allegations are sufficient to survive preliminary objection.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 11-S-2006, ANDREW J. ALDRICH, ADAM T. BROWN, AND ROY H. KENT VS. FAIRFIELD COMMUNITY FIRE COMPANY, INC., CLIFFORD HAMILTON, JAMES HAMMETT, D.O., WILLIAM JACOBS, CHARLES SCHUSSLER, LAWRENCE SCHNEIDER, NEAL ABRAMS, AND DAVID MILLSTEIN, INDIVIDUALLY AND COLLECTIVELY AS THE BOARD OF DIRECTORS OF THE FAIRFIELD COMMUNITY FIRE COMPANY, INC.

Todd A. King, Esq., for Plaintiffs

Brooks R. Foland, Esq., for Defendants

George, J., May 1, 2012

OPINION

This litigation arises from unfortunate bickering among leadership at Fairfield Community Fire Company, Inc. ("Fire Company"). According to their by-laws, the mission of the Fire Company is "the protection of lives, property, and environment" in the surrounding

community through the “highest level of response readiness to deliver emergency and non-emergency services in a safe, competent and caring manner.” As often happens when personalities come into play, the mission of the Fire Company appears to have taken a second seat to the exercise of personal animosity due to an internal power struggle among leadership. Although it appears that the animosity has been building up for some time, the flashpoint for the current litigation occurred when members of Fire Company leadership, the current Plaintiffs¹, took disciplinary action against a Fire Company employee. In response, the Board of Directors² notified Plaintiffs that their positions in leadership were suspended.³ A meeting with the entire Fire Company was scheduled for June 27, 2011 for purposes of considering disciplinary action against Plaintiffs. On June 27, 2011, resolution of the issues was continued to a meeting scheduled for July 6, 2011. Prior to that meeting, a document titled as an agenda for the July 6th meeting was forwarded by the Defendants to the entire membership of the Fire Company. The agenda included an Executive Summary; a Timeline of Events; a Discussion with subparagraphs titled “missing audits,” “fraudulent tax returns,” “conflicts of interest,” and “management and personnel missteps”; and a Statement of Charges against each of the Plaintiffs. The document included a litany of allegations including violations of child labor laws, the filing of fraudulent tax returns, the intentional sabotage of fire equipment, conflicts of interest, and lying to Fire Company membership. At the July 6, 2011 meeting, the Board of Directors removed Plaintiffs from their leadership positions. According to the

¹ Plaintiff, Andrew J. Aldrich, is a former President of the Board of Directors of the Fire Company. Plaintiff, Adam T. Brown, is a former Chief of the Fire Company. Plaintiff, Roy H. Kent, is a former EMS Captain of the Fire Company.

² The Defendants are comprised of members of the Board of Directors who took action against Plaintiffs consisting of Clifford Hamilton, James Hammett, D.O., William Jacobs, Charles Schussler, Lawrence Schneider, Neal Abrams, and David Millstein. According to the Complaint, rather than follow the action of the other directors, Directors Roger Miller and Derrick Martin resigned. Additionally, the President of the Board, Plaintiff Andrew Aldrich, did not take part in the actions which are the subject of the Complaint.

³ The Board suspended Fire Captain Brown and EMS Captain Kent. Additionally, the Board indicated that disciplinary action was pending against one more officer involved. Although the officer is not identified in written documents, the implication in the Complaint is that the board member against whom discipline was pending was Board President Andrew Aldrich.

Complaint, shortly after the meeting, the Defendants released the document containing the allegations to media outlets. Both local newspapers repeated the allegations contained in the document.

Plaintiffs instituted suit against the Defendants on December 20, 2011. An Amended Complaint was filed on February 6, 2012. In the Amended Complaint, Plaintiffs allege causes of action based upon defamation of character and publicly placing a person in a false light. The Complaint alleges that the Defendants, both individually and as a board, harmed the Plaintiffs' reputations with blatantly false information. The Complaint itemizes a litany of factual claims which, if true, contradict numerous accusations in the list of allegations prepared and circulated by the Defendants. Plaintiffs claim that Defendants not only made false statements, but they also did so at a time when they knew or reasonably should have known the statements to be false.

Currently before the Court are the Preliminary Objections of the Defendants. In their first preliminary objection, the Defendants demur to the causes of action against them individually claiming that a director of a nonprofit corporation cannot be personally liable for monetary damages for actions taken on behalf of the board. In their second preliminary objection, Defendants seek to strike Plaintiffs' claim for punitive damages claiming that the allegations against the Defendants cannot be construed to consist of outrageous conduct sufficient to justify the award of punitive damages.

Plaintiffs request that the Preliminary Objections be overruled reasoning that the Complaint outlines both board and individual actions on the part of several Defendants. Plaintiffs further claim that individual board members are not shielded from liability for actions as members of the board unless the board by-laws provide such a shield from liability. Plaintiffs point out that the Fire Company by-laws do not include such a protection. In response to Defendants' request to strike the claim for punitive damages, Plaintiffs argue that it is premature to strike the claim as the allegations in the Complaint are more than sufficient to ultimately submit the issue to the trier of fact.

Before addressing the Preliminary Objections, it is helpful to understand the nature of the causes of action alleged by Plaintiffs. In the first count of their Complaint, Plaintiffs allege a cause of action based on defamation. In an action for defamation, the plaintiff has the

burden of proving: the defamatory character of the communication, its publication by the defendant, its application to the plaintiff, the understanding by the recipient of its defamatory meaning, the understanding by the recipient that it is intended to be applied to the plaintiff, and special harm resulting to the plaintiff from the defendant's publication of the communication. 42 Pa. C.S.A. § 8343(a). A statement is defamatory under Pennsylvania law if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter a third party from associating or dealing with him. *Tucker v. Philadelphia Daily News*, 848 A.2d 113, 124 (Pa. 2004).

Case law teaches that there are additional elements that arise in relation to the role of plaintiff as a public official or public figure: "If the statement in question bears on a matter of public concern...First Amendment concerns compel the plaintiff to prove, as an additional element, that the alleged defamatory statement is in fact false." *Louis v. Philadelphia Newspapers, Inc.*, 833 A.2d 185, 191 (Pa. Super. 2003). Additionally, "in every defamation action brought by a public figure, the plaintiff must first show actual malice in order to establish the liability of the defendant." *DeMary v. Latrobe Printing & Publishing Co.*, 762 A.2d 758, 764 (Pa. Super. 2000). Actual malice exists when the defendant acted "with knowledge that [the statement] was false or with reckless disregard of whether it was false..." *Louis*, 833 A.2d at 191.⁴

Plaintiffs' second cause of action is identified as publicly placing a person in false light. It is beyond question that the tort of invasion of privacy does exist in Pennsylvania. *Neish v. Beaver Newspapers, Inc.*, 581 A.2d 619 (Pa. Super. 1990). Included within the tort of invasion of privacy is the analytically distinct tort of publicly placing a person in false light.

One who gives publicity to a matter concerning another that places the other before the public in false light is subject to liability to the other for the invasion of privacy

⁴ Although courts have long held that a private figure must show mere negligence by the defendant in establishing a defamation claim under Pennsylvania law, *Franklin Prescriptions, Inc. v. The New York Times Co.*, 267 F. Supp. 2d 425 (E.D. Pa. 2003), in light of recent decisions by the U.S. Supreme Court, the concept that mere negligence may support an action for defamation is eroding. See *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S. Ct. 1975, 18 L. Ed 2d 1094 (1967) (the U.S. Supreme Court extended the actual malice standard from public officials to public figures).

if the false light in which the other was placed would be highly offensive to a reasonable person and the person responsible for the publicity had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Section 652E of the Reinstatement (2nd) of Torts; see also *Neish v. Beaver Newspapers, Inc.*, *supra* at 598. Thus, a publication is actionable if it is not true, is highly offensive to a reasonable person, and is publicized with knowledge or in reckless disregard of its falsity. *Larson v. Philadelphia Newspapers, Inc.*, 543 A.2d 1181, 1188 (Pa. Super. 1988).

The foregoing teaches that central to both causes of action is the making of a communication which tends to harm the reputation of another or lower him in the estimation of the community with reckless disregard as to the truth of the statements. Fatal to Defendants' first preliminary objection is that reckless conduct sufficient to establish the causes of action alleged by the Plaintiffs is also sufficient to pierce any shield against individual liability for actions as a board member. Specifically, a corporate officer who participates in the wrongful acts of a corporation may be held personally liable for those acts. *Shay v. Flight C Helicopter Services, Inc.*, 822 A.2d 1 (Pa. Super. 2003). See also 15 Pa. C.S.A. § 5713 (a director may be personally liable where there has been a reckless breach or failure to perform duties).

Whether Plaintiffs are able to prove reckless conduct on behalf of the individual board members is not before the Court. Appellate authority firmly establishes that in ruling upon a demurrer, the court must accept as true all well pleaded allegations of material fact as well as all inferences reasonably deducible from those facts. *Ballroom, LLC v. Commonwealth*, 984 A.2d 582, 586 n. 3 (Pa. Cmwlth. 2009). Preliminary objections in the form of a demurrer will be sustained only where the case is clear and free from doubt. *Rambo v. Greene*, 906 A.2d 1232, 1235 (Pa. Super. 2006). Where a doubt exists as to whether a demurrer to a complaint should be sustained, the doubt should be resolved in favor of overruling the demurrer. *R.W. v. Manzek*, 888 A.2d 740, 749 (Pa. 2005). Instantly, the demurrer will be overruled as a fair reading of the Complaint alleges, at a minimum, reckless conduct on behalf of the individual members of the Fire Company Board.

In their second preliminary objection, Defendants seek to strike Plaintiffs' claim for punitive damages. Defendants correctly cite current Pennsylvania law in claiming that punitive damages are only appropriate for acts done with bad motive or with reckless indifference for the rights of others. *Chambers v. Montgomery*, 192 A.2d 355, 358 (Pa. 1963). Defendants' objection, however, is misplaced in light of the allegations in Plaintiffs' Complaint. In the context of defamation claims, a plaintiff seeking punitive damages must show the defendant acted with actual malice and prove the allegedly defamatory statements were, in fact, false. *American Future Assistance, Inc., v. BBB*, 872 A.2d 1202, 1211 (Pa. Super. 2005), *affirmed* 923 A.2d 389. As previously discussed, "[a] statement is made with 'actual malice,' if it is made 'with knowledge that it was false or with reckless disregard of whether it was false or not.'" *Id.* A.2d at 1211. Plaintiffs' Complaint is replete with allegations that the Defendants published factually inaccurate information knowing that the same was false. At this stage of the proceedings, the allegations are sufficient to survive preliminary objection. Accordingly, Defendants' preliminary objection seeking to strike the claim for punitive damages is denied.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 1st day of May 2012, Defendants' Preliminary Objections are overruled. The Defendants are directed to file an Answer to the Complaint within twenty (20) days of the date of this Order or suffer judgment by default.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

(No Estate Notices Submitted)

SECOND PUBLICATION

ESTATE OF PAUL EUGENE CARL a/k/a PAUL E. CARL, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Nelson Howard Leiphart, 678 Wenksville Road, Biglerville, PA 17307; Daniel Eugene Carl, 676 State Street, Lemoyne, PA 17043

Attorney: John J. Mooney III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF RICHARD J. DICKSON, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Patricia Dickson, 34 West Mountain Top Drive, Orrtanna, PA 17353

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF KATHERINE E. KELLER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Leslie G. Baust, 1419 Bendersville-Wenksville Road, Aspers, PA 17304

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF ELVA G. KUHS, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Co-Executrices: Sandra Kuhns Sneeringer, 33 Ocker Avenue, Littlestown, PA 17340; Sharon Kuhns Rippman, 48 Cannon Lane, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF BEVERLY W. MANLEY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sharon Bilenki, 452 Seward Avenue, Baltimore, MD 21225

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF STEPHANIE M. POTISK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Steven F. Potisk, 2314 Persimmon Drive, Ijamsville, MD 21754

Attorney: David K. James III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF NICHOLAS B. ADAMS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Dennis Adams, c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, 66 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 66 West Middle Street, Gettysburg, PA 17325

ESTATE OF HELEN R. HEISER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: William E. Heiser, 260 Oakwood Drive, Spring Grove, PA 17362

Attorney: Alex E. Snyder, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF LUCY K. HENDERSON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Sherri M. Henderson, 20 Ringneck Trail, Fairfield, PA 17320

Attorney: David C. Cleaver, Esq., Keller, Keller and Beck, LLC, 1035 Wayne Avenue, Chambersburg, PA 17201

ESTATE OF MARGIE M. LAUGHMAN, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Co-Executors: Patsy L. Kehr, 2259 Walnut Bottom Road, York, PA 17408; Stanley E. Laughman, 3284 Centennial Road, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF M. ARLENE REEVER a/k/a MILDRED ARLENE REEVER, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania

Co-Executors: Frank J. Reever, 1426 Cranberry Road, York Springs, PA 17372; David A. Reever, 434 Braggtown Road, York Springs, PA 17372; Robert H. Reever, 6218 Colchester Road, Fairfax, VA 22030

Attorney: Katrina M. Luedtke, Esq., Mooney & Associates, 115 Carlisle Street, New Oxford, PA 17350

IN THE COURT OF COMMON PLEAS
OF LANCASTER COUNTY,
PENNSYLVANIA

ORPHANS' COURT DIVISION
No. 2012-1390

IN RE: BABY GIRL KMIECIAK
A Minor

TERMINATION OF PARENTAL
RIGHTS OF JOSE CASTALEN

TO: JOSE CASTALEN

You are hereby notified that a Petition for Involuntary Termination of Parental Rights has been filed against you, asking the Court to terminate all rights you have to your child, BABY GIRL KMIECIAK, having been born May 8, 2012. The Court has set a hearing to consider ending your rights to your child. That hearing will be held in Court Room No. 6 (Orphans' Court Room), on the Third Floor of the Lancaster County Court House, situate at 50 North Duke Street, Lancaster, Pennsylvania, with said hearing to be held on Thursday, November 1, 2012 at 10:40 a.m. If you do not appear at this hearing, the court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you, and your rights to your child may be ended by the Court without you being present.

You are also notified that following the hearing to consider ending your rights to your child, an adoption hearing may be held; as a result of which, the Court may decree that an adoption take place whereby your child shall be adopted by another and all parental rights with respect to the child shall be placed in another.

YOU HAVE THE RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Court Administrator's Office
Lancaster County Court House
50 North Duke Street
Lancaster, PA 17602
Telephone No. 717-299-8041

10/12 & 19
