

FILED
ADAMS COUNTY
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IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
ADAMS COUNTY, OHIO

Larry Heller
CLERK

SHAWN D. COOLEY, et al.

PLAINTIFFS,

VS.

JOSEPH EDGAR FOREMAN, et al.

DEFENDANTS,

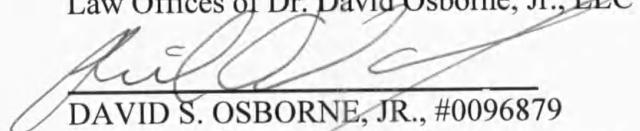
* CASE NO. CVH 2023-0069
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**DEFENDANT JOSEPH EDGAR FOREMAN'S MEMORANDUM IN SUPPORT
OF HIS MOTION FOR A DIRECTED VERDICT UNDER CIV. R. 50**

Comes now the Defendant, Joseph Foreman, by and through his Counsel and at the request of the court at the closing of day two of trial, after the Plaintiff rested their case in chief, and after a motion under Ohio Civil Rule 50. Parties put oral arguments on the record and then the Judge requested a brief on the issue. A memorandum in support is attached hereto and incorporated by reference.

Respectfully submitted,

Law Offices of Dr. David Osborne, Jr., LLC


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MEMORANDUM IN SUPPORT

March 17, 2026 is the second day of trial for this case. The day ended with the Plaintiff resting their case and moving to admit their exhibits. Following that, the Defense moved for a Directed Verdict under Ohio Civil Rule 50. Oral arguments were held by the parties with the Judge reserving judgment till tomorrow and a request for the parties to brief the issue.

As this case has progressed the number of claims of the Plaintiffs have decreased significantly. The Plaintiff has proceeded to trial on only two of their three claims: to wit, (1) Invasion of Privacy – False Light and (2) Defamation. These are defined as follows:

INVASION OF PRIVACY – FALSE LIGHT PUBLICITY

GENERAL

The Plaintiff [insert name of specific plaintiff] claims that the defendant violated [his/her] right to privacy by publicizing false information, [to wit: list false information publicized for this Plaintiff] that places the plaintiff in a false light before the public.¹

PROOF OF CLAIM

Before you can find for the Plaintiff, the plaintiff must prove that (a) the false light in which the plaintiff was placed would be highly offensive to a reasonable person, and (b) the defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.²

FALSE LIGHT

¹ 1 OJI CV 433.05(1).

² Murry v. Chagrin Valley Publ. Co., 2014-Ohio-5442, ¶ 38 (8th Dist.).

“False light” means the defendant knows that the plaintiff, as a reasonable person, would be justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity. The plaintiff’s privacy is not invaded when the unimportant false statement is made, even when it is made deliberately. It is only when there is such a major misrepresentation of the plaintiff’s character, history, activities, or beliefs that serious offense may reasonably be expected to be taken by a reasonable person in his/her position.³

ARGUMENT IN GENERAL

DOES NOT APPLY TO GROUPS

Under Ohio law, false-light invasion of privacy claims are recognized as a tort, yet they are inherently individual in nature and do not extend to "group" claims. The tort of false light is defined as giving publicity to a matter concerning another that places the *individual* before the public in a false light, provided that the false light would be highly offensive to a reasonable person and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the individual would be placed.⁴ Thus, there can be no group false light claims as the very definition refers to individuals. The Plaintiff is unable to raise a group claim for false light.

PLAINTIFF SHAWN COOLEY GENERAL

The tort applies only when the publicity involves a "major misrepresentation" of an individual's character, history, activities, or beliefs that would seriously offend a reasonable person.⁵

During the trial Plaintiff Shawn Cooley it was presented that the Defendant Mr. Foreman, has called Plaintiff Shawn Cooley by the name “Officer Pound Cake.” This name was based off

³ 1 OJI CV 433.05(3).

⁴ Murry v. Chagrin Valley Publ. Co., 2014-Ohio-5442, ¶ 38 (8th Dist.).

⁵ Id.

the music video/song titled "Lemon Pound Cake." When asked specifically if this painted Plaintiff Shawn Cooley in a false light, he indicated this name was not what the Defendant has said that would place him in a false light with the public. This stance of Plaintiff Shawn Cooley is understandable as the name Officer Pound Cake, while not a name that the Plaintiff enjoys, it is not a "major misrepresentation" of an individual's character, history, activities, or beliefs and no reasonable person would believe so. Thus, the name could not, even if the Plaintiff desired it too could meet the standards for false light.

Plaintiff Shawn Cooley was asked to clarify and he indicated that his false light was due to a general posts directed at the Adams County Sherriff's Office as a whole. An example of this is seen in Plaintiff's Exhibit 4. No names are mentioned in the post. The post refers to the "Adams County Sherriff" and/or the "Adams County Sherriff's Office." No Officers are named. The image that follows the post is one of the Defendant Foreman with a TMZ headline that says "Afroman sued by Sheriffs ...". The witness referred to other exhibits which are also general accusations towards the Adams County Sherriff or Sheriff's Office.

PLAINTIFF MIKE ESTEP GENERAL

During the trial Plaintiff Mike Estep was question if his claim was based on upon him being called "Col. King Kong Bundy" to which the Plaintiff said it was not. He reiterated that the basis of his claims was the same general posts that Plaintiff Shawn Cooley had cited.

PLAINTIFF JUSTIN COOLEY GENERAL

During the trial Plaintiff Justin Cooley was questions about if his claim for false light was based upon him being called a "dip shit" or "Receding hair line" to which he indicated in the negative. Plaintiff Justin Cooley likewise indicated that his claims were based on the same general posts referred to by his father, Plaintiff Shawn Cooley, and Plaintiff Mike Estep.

PLAINTIFF SHAWN GROOMS GENERAL

During trial Plaintiff Shawn Grooms was questioned based on his claim of false light. He was asked if it was based upon being called "the hunch back of Notre Dame." He indicated that it could be and that he was also basing it on the general posts that the Plaintiff's Shawn Cooley, Justin Cooley, and Mike Estep are claiming.

PLAINTIFF RANDY WALTERS GENERAL

During the trial Plaintiff Randy Walters was questions based on his claim of false light. He indicated it was not based on him being called "Beetle Bailey" or "Gomer Pile." Rather he indicated it was based on a single thing that the Defendant stated, "he had slept with Randy Walters wife." Additionally, the Plaintiff indicated that he was also basing his claim on the general statements that were indicated by Plaintiffs Shawn Grooms, Shawn Cooley, Justin Cooley and Mike Estep.

ANALYSIS IN RELATION TO PLAINTIFF'S JUSTIN COOLEY, SHAWN COOLEY, MIKE ESTEP, SHAWN GROOMS, AND RANDY WALTERS.

To prevail the Plaintiff must show that the published statement involves a "major misrepresentation" of an individual's character, history, activities, or beliefs. The first issue appears is that the Plaintiff cannot show a miss representation as the comment of the Defendant is general and refers to a group of at least 50 officers. As such no reasonable person could determine that the post was referring to a specific individual person. If it is not referring to an individual person, then how can reasonable person find it highly offensive? It is more, likely that a person in that organization would find it offensive and not a reasonable person.

Even more at issue is that a reasonable person would never consider a general attack, commentary or etc. upon a Governmental Agency as a personal attack upon the privacy of an individual person. Afterall, governmental offices or agencies are not individuals and do not possess personal privacy rights. The tort of false light invasion of privacy is inherently tied to the

personal interests of an individual, such as their reputation and emotional well-being, which are not applicable to governmental entities. This was supported by 2nd District Court of Appeals in the case of *Duer v. Henderson*. In *Henderson*, the Court held that the Plaintiff, Duer, had no cause of action for invasion of privacy where the statements at issue do not concern Duer herself.”⁶ This is consistent with the False light being a invasion of privacy claim. A Governmental Agency does not have a right to privacy. As a governmental Agency they are subject to public record requests and other means that would render any privacy concerns moot.⁷ The Ninth District Court of Appeals held that a state or a municipal corporation, as a governmental entity, does not have a reputation that can be defamed.⁸ The court reasoned that a state is a concept or idea, a form of intangible sovereignty, and thus cannot be assaulted, slandered, or injured in the same way as an individual.⁹ Thus, the invasion of privacy claim of the Plaintiff fails and should be dismissed as a matter of law.

ADDITIONAL ANALYSIS FOR PLAINTIFF RANDY WALTERS

Defendant stated, “he had slept with Randy Walters wife.” Plaintiff Walters indicated that this would have placed him a false light. However, this fails for two reasons. The first and most obvious is that no reasonable person is going to believe that the Defendant had slept with his wife. This is supported by the second reason it fails. To prevail on a False Light claim the statement made must untrue.¹⁰ False-light claims, like defamation claims, require that the statement in question be false.¹¹ Statements of opinion, which are not capable of being proven

⁶ *Duer V. Henderson*, 2009-Ohio-6815, ¶ 60 (2nd Dist.).

⁷ *State ex rel. Lippitt v. Kovacic*, 70 Ohio App 3d. 525, 529 (8th Dist. 1991) stating that a claim of a fundamental right of privacy protected by the Constitutions is not well founded. The authorities upon which the city relies do not support that proposition.

⁸ *Grafton v. American Broadcasting Co.*, 70 Ohio App. 2d 205, 212 (9th Dist. 1980).

⁹ *Id.*

¹⁰ *Olthaus v. Niesen*, 2023-Ohio-4710, ¶ 24 (1st Dist.)

¹¹ *Id.*

true or false, cannot support a false-light claim.¹² This is where Plaintiffs Walters claim of false light fails. He admitted that he would hope that his wife would not have extramarital affairs, yet he could not articulate if the statement made by Mr. Foreman was false. The use of the word, hope, is nebulous and renders the statement by the Defendant such that the truth or falsity of it cannot be proven. If that cannot be proven, then it is an opinion.¹³ Opinions are not capable of being untrue.¹⁴ Thus, without false information a claim for false light can not stand.

PLAINTIFF BRIAN NEWLAND

During the trial testimony was presented that the Defendant had called Plaintiff Newland a "Pedophile", and a "Child Molester." When asked on cross, the Plaintiff articulated that he believed that the statements made by the Defendant, while nasty, were the Defendants personal opinion. As articulated opinions the statements can not support a claim for False Light. The Plaintiffs attorneys attempts to save Plaintiff Newlands case by articulating that the jury could find that the statements of the Defendant were fact. This is a misstatement of Ohio Law.

In Ohio, allegedly defamatory statements that constitute opinion enjoy an absolute privilege and may not give rise to a cause of action for defamation.¹⁵ 'Once a determination is made that specific speech is "opinion," the inquiry is at an end.¹⁶ Thus, while the Plaintiffs attorney is attempting to save the case of Plaintiff Newland, his testimony that the statements were the Defendants opinions stopped any further analysis under false light.

PLAINTIFF LISA PHILLIPS

No additional argument is provided other than was orally argued by Defense when they raised their Rule 50 Motion in Court.

¹² Olthaus v. Niesen, 2023-Ohio-4710, ¶ 24 (1st Dist.)

¹³ Id.

¹⁴ Id.

¹⁵ Fronk v. Univ. of Toledo, 2010-Ohio-4307, ¶ 51 (Court of Claims)

¹⁶ Id.

DEFAMATION

GENERAL

The plaintiff [insert name of Plaintiff here] claims that the defendant defamed him/her/it, causing [(injury) (damage)]. Defamation is a false written or oral statement that [(injures) (damages)] another's reputation. The defendant's alleged defamatory statement consisted of [(insert defendant's statement)].

PROOF OF CLAIM

To establish defamation, the plaintiff [insert plaintiff name here] must show (1) that a false statement of fact was made [to wit: enter false statement]; (2) that the statement was defamatory; (3) that the statement was published; (4) that the plaintiff suffered injury as a proximate result of the publication; and (5) that the defendant acted with the requisite degree of fault in publishing the statement.

TWO TYPES OF DEFAMATION

Actionable defamation falls into one of two categories: defamation per se or defamation per quod.¹⁷ Defamation per se occurs when a statement, on its face, is defamatory.¹⁸ When a statement is only defamatory through interpretation, innuendo, or consideration of extrinsic evidence, then it is defamatory per quod and not defamatory per se.¹⁹ Whether an unambiguous statement constitutes defamation per se is a question of law.²⁰

DEFAMATION PER SE

If a statement is defamatory per se, a plaintiff may maintain an action for defamation and recover damages, without pleading or proving special damages.²¹ When defamation is per se, proof of

¹⁷ Gilson v. Am. Inst. Of Alternative Med., 2016-Ohio-1324, ¶ 38 (10th Dist.)

¹⁸ Id.

¹⁹ Martin v. Wegman, 2019-Ohio-2935, ¶ 10 (1st Dist.)

²⁰ Gilson v. Am. Inst. Of Alternative Med., 2016-Ohio-1324, ¶ 38 (10th Dist.)

²¹ Id. at ¶ 39.

the defamation itself establishes the existence of some damages.²²

DEFAMATION PER QUOD

When a statement is defamatory per quod, a plaintiff must plead and prove special damages.²³

"Special damages are damages of such a nature that they do not follow as a necessary consequence of the claimed injury.²⁴ Civ.R. 9(G) requires that if special damages are claimed, they must be specifically stated.²⁵ Special damages include 'an actual, temporal loss of something having economic or pecuniary value.'²⁶ Special damages may include the loss of "particular contracts, sales, customers, patients or clients."²⁷ "Loss of reputation alone is not enough to make the defamer liable unless it is reflected in some kind of economic or pecuniary loss. So too, lowered social standing and its purely social consequences are not sufficient."²⁸ "Embarrassment and mental anguish" are not special damages for purposes of a defamation claim.²⁹

APPLICATION TO PLAINTIFF SHAWN COOLEY. PLAINTIFF SHAWN GROOMS, PLAINTIFF MIKE ESTEP, PLAINTIFF JUSTIN COOLEY, AND PLAINTIFF RANDY WALTERS.

These Plaintiffs have articulated that their defamation claims are based upon the same things that they have indicated has put them into a false light. With regard to any statements directed at the Adams County Sheriff's Office, these would be defamation per quod as without naming person additional information, interpretation, innuendo, or consideration of extrinsic evidence is needed to connect the statement to the Plaintiff. This makes these statements

²² Id.

²³ Gilson v. Am. Inst. Of Alternative Med., 2016-Ohio-1324, ¶ 39 (10th Dist.)

²⁴ Mitchell v. Fix, 2023-Ohio-1957, ¶ 28 (5th Dist.)

²⁵ Id.

²⁶ Allen v. Dep't of Rehab. & Corr., 2015-Ohio-5560, ¶ 16 (Court of Claims); citing Griffis v. Klein, 2nd Dist. Montgomery No. 22285, 2008-Ohio-2239, ¶ 47, quoting Whiteside v. Williams, 12th Dist. Madison No. CA2006-06-021, 2007-Ohio-1100, ¶ 7.

²⁷ Id.; citing Moore v. P.W. Publishing Co., Inc., 3 Ohio St.2d 183, 190, 209 N.E.2d 412 (1965).

²⁸ Allen v. Dep't of Rehab. & Corr., 2015-Ohio-5560, ¶ 16 (Court of Claims).

²⁹ Id.

defamation per quod. As they are defamation per quod, the Plaintiffs are required to have specifically plead by the Plaintiffs. They have not in the case at hand. Furthermore, they have introduced no evidence of Special Damages which would include an actual or temporal loss of something having economic or pecuniary value. Loss of reputation alone is not enough. As the Plaintiff has not plead nor introduced any evidence to support special damages, the claims of the Plaintiffs in relation to defamation must be dismissed as matter of law for failure to plead and present evidence on special damages.

ADDITIONAL ANALYSIS FOR PLAINTIFF RANDY WALTERS

Plaintiff Randy Walters requires additional analysis as he has indicted that the Defendant has made statement about sleeping with his wife. This statement is defamatory per quod because it requires extrinsic evidence. The name of Randys wife and even the fact that he has a wife is necessary to determine and fully understand the defamatory nature of the statement. Thus, the statement fails due to the same reasons as set forth above. However, should one be inclined to consider the statement defamatory per se then the testimony of Plaintiff Walters must be taken into account.

Defamation is a false written or oral statement. The key word is false. Plaintiff Randy Walters admitted that he would hope that his wife would not have extramarital affairs, yet he could not articulate if the statement made by Mr. Foreman was false. The use of the word, hope, is nebulous and renders the statement by the Defendant such that the truth or falsity of it cannot be proven. If that cannot be proven, then it is an opinion.³⁰ Opinions are not capable of being untrue.³¹ In Ohio, allegedly defamatory statements that constitute opinion enjoy an absolute privilege and may not give rise to a cause of action for defamation.³² 'Once a determination is

³⁰ Id.

³¹ Id.

³² Fronk v. Univ. of Toledo, 2010-Ohio-4307, ¶ 51 (Court of Claims)

made that specific speech is "opinion," the inquiry is at an end.³³ Thus, while Plaintiff Randy Walters may not like what was said it can not be proven true or false rendering it an opinion which cannot support defamation. Thus, Plaintiff Randy Walters defamation must be dismissed as a matter of law.

PLAINTIFF BRIAN NEWLAND

Plaintiff Newland was called a pedophile by the Defendant. This would be a classic example of defamation per se. Yet even this claim fails as Plaintiff Newland testified that he believed that the statements of the Defendant were his personal opinions. Opinions are not capable of being untrue.³⁴ In Ohio, allegedly defamatory statements that constitute opinion enjoy an absolute privilege and may not give rise to a cause of action for defamation.³⁵ 'Once a determination is made that specific speech is "opinion," the inquiry is at an end.³⁶ Plaintiff Newland has made that determination and thus his defamation claim must be dismissed as a matter of law.

PLAINTIFF LISA PHILLIPS

Plaintiff Phillips was called "lic em low lisa." This statement is no defamation per se as it requires interpretation, innuendo, or consideration of extrinsic evidence to show the defamatory meaning of the statement. The additional information is the deep voice of the Plaintiff. If it is read as a innuendo then it would be referring to possible lesbian sexual activity. Such activity is not a crime in the United States. A women dressing as a man or vise versa is not a crime in the United States. The Plaintiff Phillips testified to this during her cross examination. Thus, innuendo is needed if not additional information to understand the nature of the statement

³³ Id.

³⁴ Id.

³⁵ Fronk v. Univ. of Toledo, 2010-Ohio-4307, ¶ 51 (Court of Claims)

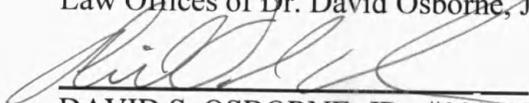
³⁶ Id.

and how it is defamatory. Thus, while not polite, it is not defamation per se, it is defamation per quod. With it being defamation per quod the Plaintiff was required to plead special damages in the complaint and present evidence at trial for that. Testimony was given that she had seen a doctor, yet it would appear that her attorney had failed to obtain those records and plead those damages. Thus, while sad, Plaintiff Phillips claims be must be dismissed as a matter of law.³⁷

WHEREFORE, the Defendant respectfully requests that this Court dismiss the claims of the Plaintiffs against the Defendant as a matter of law and further relief as the Court deems just and proper.

Respectfully submitted,

Law Offices of Dr. David Osborne, Jr., LLC



DAVID S. OSBORNE, JR., #0096879

Attorney for Defendant Joesph E. Foreman

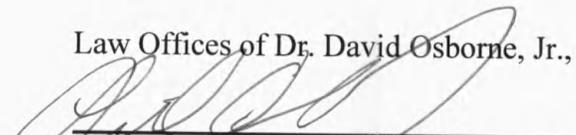
TO THE COURT

The undersigned hereby certifies that he did use the Artificial Intelligence program Lexis Nexis Protege.

legal research was completed using the AI program.

Respectfully submitted,

Law Offices of Dr. David Osborne, Jr., LLC



DAVID S. OSBORNE, JR., #0096879

Attorney for Joseph Edgar Foreman

³⁷ She would still maintain an action against her attorney to collect for such a failure in relation to her case.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon to following:

1. **Robert A. Klinger**, Robert A. Klinger Co., LPA, 895 Central Ave. Ste. 300, Cincinnati, Ohio 45202;
2. **Sara McElroy**, Fishel Downey Albrecht and Riepenhoff, LLP, 7775 Walton Parkway, Suite 200, New Albany, Ohio 43054.

by regular U.S. mail, hand delivery, email, fax, by dropping off in the Attorney box at Adams County Court, or email this 17 day of March, 2026.

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