

IN THE CIRCUIT COURT FOR ST. LOUIS COUNTY
STATE OF MISSOURI

STEVE WINGFIELD AND)
FIRST CHRISTIAN CHURCH OF)
FLORISSANT,)

Plaintiffs,)

vs.)

DOUGLAS LAY,)
TITUS BENTON,)
KARI BENTON,)
DAWN VARVIL,)
and JANE DOE (a/k/a "ANNIE)
SHANKIN" and "Reform FCCF"),)

Defendants.)

Cause Number 15SL-CC01320

Division 41

**DEFENDANT DOUGLAS LAY'S MOTION TO DISMISS AND IN THE
ALTERNATIVE, MOTION TO STRIKE
AND SUGGESTIONS IN SUPPORT**

Comes now defendant Douglas Lay, by counsel, for his motion to dismiss and in the alternative, motion to strike, and states:

1. The backdrop for this case is a tragic story of sexual abuse of vulnerable children by a church-employed youth worker. The tragedy has been compounded by the filing of this frivolous lawsuit by the church's pastor against current and former members of the church. The defendants' sin? Making critical comments about the manner in which church leadership handled the child abuse allegations.

2. Plaintiff Steve Wingfield is the pastor of First Christian Church of Florissant ("FCCF"). FCCF is a large evangelical church located in North County and is associated with the Fellowship of Independent Christian Churches. FCCF, like other churches within the Fellowship, is congregational in its church governance.

3. Defendant Douglas Lay is a current member of FCCF. Lay is a professor at St. Louis Christian College (“SLCC”), a Bible college in Florissant that is supported by the Independent Christian Churches.

4. As documented in the petition and its attached documents, from 2006 through 2007 FCCF employed Brandon Milburn, a former student at SLCC, as a youth intern. After a very brief hiatus from the St. Louis area, Milburn returned in 2009 and was a member and a periodic paid staff member at FCCF from 2009 to early 2012.

5. In February of 2014, Milburn was charged with statutory sodomy for crimes he committed in 2007. The charges involved two victims and seven separate charges. Both victims were boys that were members of FCCF and that Milburn met while serving as a paid staff member of FCCF. *See State v. Brandon W. Milburn*, No. 14SL-CR01101 (St. Louis Co. Cir. Ct.).

6. On January 26, 2015, Milburn pled guilty to the charges. On March 30, 2015, Milburn was sentenced to 25 years in prison.

7. After the guilty plea in January of 2015, defendant began to raise questions about the manner in which plaintiff Steve Wingfield had handled the situation with Milburn. Of particular concern to Lay was the potential that other unidentified victims might still exist and that it did not appear that any serious effort by the church was being made to help the two identified victims. Lay also became concerned that Wingfield had received information from at least one source in 2012 that should have caused him to investigate the possibility that Milburn was using his ministry position at FCCF to engage in inappropriate relationships with young boys.

8. On March 3, 2015, Lay circulated a document called "*Is It Enough? Sexual Abuse Within the Church: A Case Study of the First Christian Church of Florissant*" ("a Case Study"). Another one of the defendants, Titus Benton, provided some information contained within the document, although Lay is the primary author. Titus Benton is a former assistant pastor at FCCF who is now in a similar pastoral position in Katy, Texas. He and his wife, Kari Benton, have both been publicly critical of Wingfield's handling of the Brandon Milburn situation and they are also defendants in the instant lawsuit. Lay first circulated the document to a very small audience including Wingfield and the leadership of FCCF. He attempted to obtain comments or corrections from Wingfield and the elders and made efforts to meet directly with Wingfield before circulating later versions of the document to a larger audience.

9. A major portion of Lay's Case Study is devoted to statements made by the fourth individual defendant, Dawn Varvil. Varvil is a former member of FCCF who alleges that she approached Wingfield and a former pastor at FCCF, Scott Strandell, in 2012 and raised concerns about Milburn's relationship with several teenage boys including a number of alleged incidents and observations that suggested that Milburn was engaging in sexually inappropriate behavior. As is clearly stated in the petition, Varvil's allegations regarding Milburn stopped short of alleging actual sexual abuse of any youth.

10. The substance of plaintiffs' case against Lay is contained in what he said in pages 8-12 of the Case Study. (See ¶¶ 16-18 of the petition). In the section of the paper titled, "The Allegations," Lay relates a conversation that he had with Varvil in 2012, shortly after a meeting that she had with Wingfield and Strandell. As explained in ¶¶ 5-7 of the petition, the meeting was initiated by Wingfield after he became aware of "rumors" that Varvil was alleging that

Milburn was spending excessive amounts of time with a minor. Wingfield traced the source of these “rumors” to Varvil and asked her to meet with him and Strandell.

11. The body of the petition characterizes the conversation between Varvil, Wingfield and Strandell as nothing more than Varvil expressing “discomfort” and “concerns” about Milburn. However, the *Case Study*, attached to the petition as Exhibit B, contains details of the alleged conversation that could fairly be characterized as raising serious concerns of sexually inappropriate behavior by Milburn. The Case Study has 14 separate paragraphs describing various information that Varvil says she provided to Wingfield and Strandell and then an additional ten paragraphs describing Wingfield and Strandell’s response, most of it focused on Wingfield. Among other things, Varvil alleged that she told Wingfield and Strandell the following:

- a. That she was aware that Milburn had been spending excessive amounts of time with a male minor who was part of the FCCF youth group during times when he was either employed by or working as a volunteer at FCCF. The allegation included that Milburn had given a key to his apartment to the minor, given him gifts, and that the minor may have spent the night at Milburn’s apartment on at least one occasion;
- b. That several adults had observed Milburn sleeping in a “spooning” position with another FCCF male youth (“spooning” is an intimate position where one person lies with his/her back against the front of the other person);
- c. That Varvil’s daughter had told her that she heard a report from some of her male friends that Milburn had exposed his genitals to them and had encouraged men to

expose their genitals to him;

- d. That a staff member at FCCF, Virgil Brazel, had berated Varvil for allegedly “harassing” Milburn as a result of her raising these concerns; and
- e. That Wingfield was largely dismissive of Varvil’s concerns, questioning her ability to objectively assess the situation with Milburn, questioning her emotional state, and finally stating that he would “stake his career” on Milburn’s innocence.

12. The Case Study makes it clear that Lay is doing nothing more than reiterating what he was told by Varvil about the April 2012 meeting. In fact, on page 12 of the Case Study the following statement is contained:

The description of the meeting is from the prospective of only the parent [Varvil]. The senior pastor [Wingfield] and the executive minister [Strandell] have been asked repeatedly to present their perspective of the meeting, but they have, as of the present, ignored any requests.

13. At no point in the case study does Lay ever report that Varvil told him that she reported allegations of actual criminal sexual abuse to either Wingfield or Strandell. Rather, Lay characterizes Varvil’s statements to him as a “list of disturbing alleged sexual allegations between Brandon and a group of boys, all minors, from the youth group at FCCF.” This constitutes a fair, accurate, and truthful characterization of what Lay understood Varvil’s allegations to be. *See* Petition, Exh. B, p. 8.

14. At later points in the case study, Lay raises questions regarding whether Varvil’s revelations to Wingfield and Strandell in 2012 should have been sufficient to have at least caused them to investigate the situation further, determine if it were true, and then take action to protect the juveniles. At no place in the case study did Lay allege that Wingfield committed a crime by not addressing or reporting the allegations that he received from Varvil.

15. On Thursday, April 16, 2015 Lay received his long-awaited response regarding his request for a meeting with Wingfield. Unfortunately, the response was in the form of a five-count petition against Lay, Titus and Kari Benton, and Dawn Varvil, as well as against a Jane Doe (a/k/a Annie Shankin), an individual who Lay does not know and has no knowledge regarding her connection with the above-described events. The petition states four claims against Lay, including the following:

- a. Count I for injunctive relief;
- b. Count II for defamation;
- c. Count III for injurious falsehood; and
- d. Count V for negligent infliction of emotional distress.

16. The suit named the other four defendants in all counts except Count IV, which is a count for slander that is filed only against defendant Dawn Varvil.

Count I – Injunctive Relief

17. In a move that would appear to be deliberately designed to maximize the shock and inconvenience of four of the defendants, Wingfield, through his counsel, provided the petition together with a notice of the hearing on a temporary restraining order for 1:30 p.m. the following day, Friday, April 17, 2015. The plaintiffs violated Rule 92.02 of the Missouri Rules of Procedure in doing so, which requires at least 24 hours notice to a defendant before a hearing on a temporary restraining order can be conducted.

18. Despite this defect, Lay retained legal counsel and appeared both in person and with counsel at the TRO hearing in front of the Honorable Colleen Dolan in Division 20 of the St. Louis County Circuit Court. The request for injunctive relief was contrary to clearly

established law that does not allow for injunctive relief in defamation cases until after a jury verdict or other final judgment. *Downey v. United Waterproofing, Inc.*, 253 S.W.2d 976 (Mo. 1953); *Wolf v. Harris*, 184 S.W. 1139 (Mo. 1916); *Marx & Haas Jeans Clothing Co. v. Watson*, 67 S.W. 391 (Mo. banc 1902). Accordingly, Judge Dolan denied the request for a TRO from plaintiffs. To the extent that plaintiffs are requesting preliminary injunctive relief, this count should be dismissed.

Count II - Defamation

19. It is up to the Court to determine whether published statements which are alleged to be defamatory meet the legal standard for defamation. *Brown v. Kitterman*, 443 S.W.2d 146, 149-50 (Mo. 1969). This is a question of law, and one properly decided on a motion to dismiss. *State ex rel. Diehl v. Kintz*, 162 S.W.3d 152, 155 (Mo. App. E.D. 2005); *Sterling v. Rust Communications*, 113 S.W.3d 279, 281 (Mo. App. E.D. 2003).

20. Count II of the petition, the claim for defamation, fails to state a claim against Lay. In the defamation count, plaintiffs allege that Lay published a false statement regarding the 2012 conversation between Varvil, Wingfield and Strandell that included “false claims that Defendants [it appears that this should read “Plaintiffs” rather than “Defendants”] were told of sexual abuse allegations and failed to report them to authorities.”

21. Plaintiffs further allege that the false statements are *per se* defamatory and libelous because they involve false allegations of criminal conduct.

22. The petition further alleges that Lay published these statements “intentionally and knowing the statements were false, or, at the very least, [was] negligent and did not exercise reasonable care to determine the veracity of these allegations before publishing.”

23. To properly plead a case for defamation against a non-public figure, plaintiff must plead:

- a. Publication by the defendant of a statement;
- b. The statement must be defamatory;
- c. The plaintiff must be clearly identified in the statement;
- d. The statement must be false;
- e. It must be published with a reckless degree of fault; and
- f. It must damage the plaintiff's reputation.

Farrow v. Saint Francis Medical Center, 407 S.W.3d 579 (Mo. 2013); *State ex rel. BP Products North America Inc. v. Ross*, 163 S.W.3d 922 (Mo. 2005); *Overcast v. Billings Mutual Ins. Co.*, 11 S.W.3d 62, 70 (Mo. 2000). If the plaintiff is construed as a public figure – which defendant could argue the petition establishes – then the standard is much higher and must involve an allegation of actual malice and that the defendant's conduct was done with knowledge that the statements were false or with reckless disregard for whether they were true or false at a time when the defendant had serious doubt as to whether they were true. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

24. The petition, at a minimum, fails to satisfy “b”, “d” and “e” of the six elements described in the preceding paragraph, to-wit:

- a. The alleged defamatory statement is contained nowhere in the case study which is attached to the petition as an exhibit and is referenced. A lawyer's characterizing of the alleged defamatory statement is insufficient. Rather the words have to be pled with specificity. *See Carey v. Pulitzer*

Publ'g Co., 859 S.W.2d 851, 854 (Mo. App. E.D. 1993); *Mo. Church of Scientology v. Adams*, 543 S.W.2d 776, 777 (Mo. 1976).

- b. The case study clearly and unequivocally states that defendant Lay is doing nothing more than republishing statements of Dawn Varvil. The good faith republication of another's allegations is not actionable. In paragraph 18 of their petition, plaintiffs concede that they had a conversation with Varvil in April of 2015 – prior to the filing of the lawsuit, and that she “confirmed that she provided to Lay and Titus Benton the statements attributed to her” in the case study.
- c. Nowhere in the case study is there any allegation of criminal conduct by Wingfield or any other current staff member at FCCF.
- d. Even if the Case Study can be construed to say what the plaintiffs believe it says—that Douglas Lay stated that criminal sexual abuse allegations were reported to Wingfield and that he should have reported it to authorities -- then this would absolutely be an expression of opinion by Lay and would not be actionable. *Nazeri v. Missouri Valley Coll.*, 860 S.W.2d 303, 314 (Mo. 1993) (“The First Amendment's guarantee of freedom of speech makes expressions of opinion absolutely privileged.”).

25. As noted in paragraph 8, *supra*, defendant Lay (who was a member of FCCF) originally only circulated the Case Study to Wingfield and elders at the church, and later expanded the distribution to others with relationships to the church. Constitutional provisions normally preclude judicial intervention in communications within a church or religious body.

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116–17 (1952) (“Courts have held that churches have autonomy in making decisions regarding their own internal affairs. This church autonomy doctrine prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity.”).

26. Specifically, when a defamation claim cannot be litigated without intruding into matters of administration of a religious organization, then the First Amendment deprives the court of jurisdiction. *State ex rel. Gaydos v. Blaeuer*, 81 S.W.3d 186 (Mo. App. W.D. 2002); see also *Brady v. Pace*, 108 S.W.3d 54 (Mo. App. S.D. 2003).

Count III - Injurious Falsehood

27. The claim of Injurious Falsehood contains all of the elements of a defamation claim and in addition requires that the defendants either intended for the publication of the false statements to result in harm to the interest of plaintiffs or defendants should have recognized that publishing the false statements was likely to result in harm to the interest of plaintiffs.

Wandersee v. BP Products North America, Inc., 263 S.W.3d 623 (Mo. 2008); see also *Stein v. Novus Equities Co.*, 284 S.W.3d 597 (Mo. App. E.D. 2009).

28. The count for injurious falsehood fails to state a claim for the same reasons that Count II fails to state a claim against Lay and should be dismissed accordingly.

Count V - Negligent Infliction of Emotional Distress

29. In support of their claim for Negligent Infliction of Emotional Distress against Lay, plaintiffs allege the following:

- a. That the publication and dissemination of the false statements described in the petition was negligent and tortious (§ 66);

- b. That defendant should have realized that the conduct involved an unreasonable risk of causing emotional distress to Wingfield (§ 66);
- c. That defendant's conduct caused medically diagnosable, medically significant emotional distress (§ 68).

30. Plaintiffs' claim for negligent infliction of emotional distress fails to state a claim for two reasons:

- a. It does not plead any legal duty that defendant Lay had to plaintiff (*see Henson v. Greyhound Lines, Inc.*, 257 S.W.3d 627, 629 (Mo. App. W.D. 2008) ("legal duty of the defendant to protect the plaintiff from injury" is a required element of the claim));
- b. Even if their allegations in the petition could somehow be creatively construed to create a legal duty, an action for emotional distress does not lie in Missouri when the offending conduct consists *only* of defamatory statements. *Rice v. Hodapp*, 919 S.W.2d 240, 245 (Mo. 1996) (citing *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 316 (Mo. banc 1993)).

31. Plaintiff's petition is malicious, frivolous and fails to state a single cause of action against Lay and should be dismissed together, payment of costs, and any other sanctions or relief the Court deems just and proper under the circumstances.

DEFENDANT'S MOTION TO STRIKE

32. Alternatively, if the Court does not dismiss the four counts alleged against defendant Lay, then defendant requests that paragraphs and statements from the petition that are

superfluous, malicious and/or scandalous allegations should be stricken. *See* Rule 55.27(e) (court may strike from pleadings any “immaterial, impertinent, or scandalous matter”).

33. This includes the following:

- a. In Paragraph 1 of the petition plaintiffs allege that Lay and the other defendants “have been engaging in an escalating pattern of harassment” of plaintiffs;
- b. In Paragraph 4 of the petition plaintiffs allege that defendant’s publication of the various statements attributed to them has been “increasingly hostile and aggressive....” and injunctive relief is necessary to prevent Defendants from “propagating this lie any further.”;
- c. In Paragraphs 26-33, the count for injunctive relief, plaintiffs make numerous unnecessary and scandalous statements including that defendants are attempting to “sow discord within the church and create mistrust between the members of the church and the leadership, all based on completely false accusations of the cover-up of sexual abuse allegations.”;
- d. In Paragraph 27, plaintiffs described defendants’ conduct as “escalating out of control”;
- e. In Paragraph 28 plaintiffs accuse defendant Lay of engaging in a “sustained social media attack intended to disrupt the Church, and at least one fake Facebook account that is being used to further spread Defendants’ false accusations.”

34. Not only are these allegations individually superfluous and unnecessary to advance the purpose of the petition, but they are all contained within a count for injunctive relief which, as defendants have alleged herein, is not authorized by Missouri law.

WHEREFORE, for the reasons alleged herein, defendants pray for an order dismissing the claims against defendant Douglas Lay or, in the alternative, striking the individual paragraphs cited herein, together with costs and whatever other relief the Court deems just and proper in the circumstances.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed electronically with St. Louis County Circuit Court on April 27, 2015, to be delivered unto all attorneys of record via electric

notification.



Al W. Johnson