

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO
CIVIL DIVISION

██████████ : CASE NO.: ██████████
Plaintiff, :
vs. :
██████████ et al. :
Defendants. :

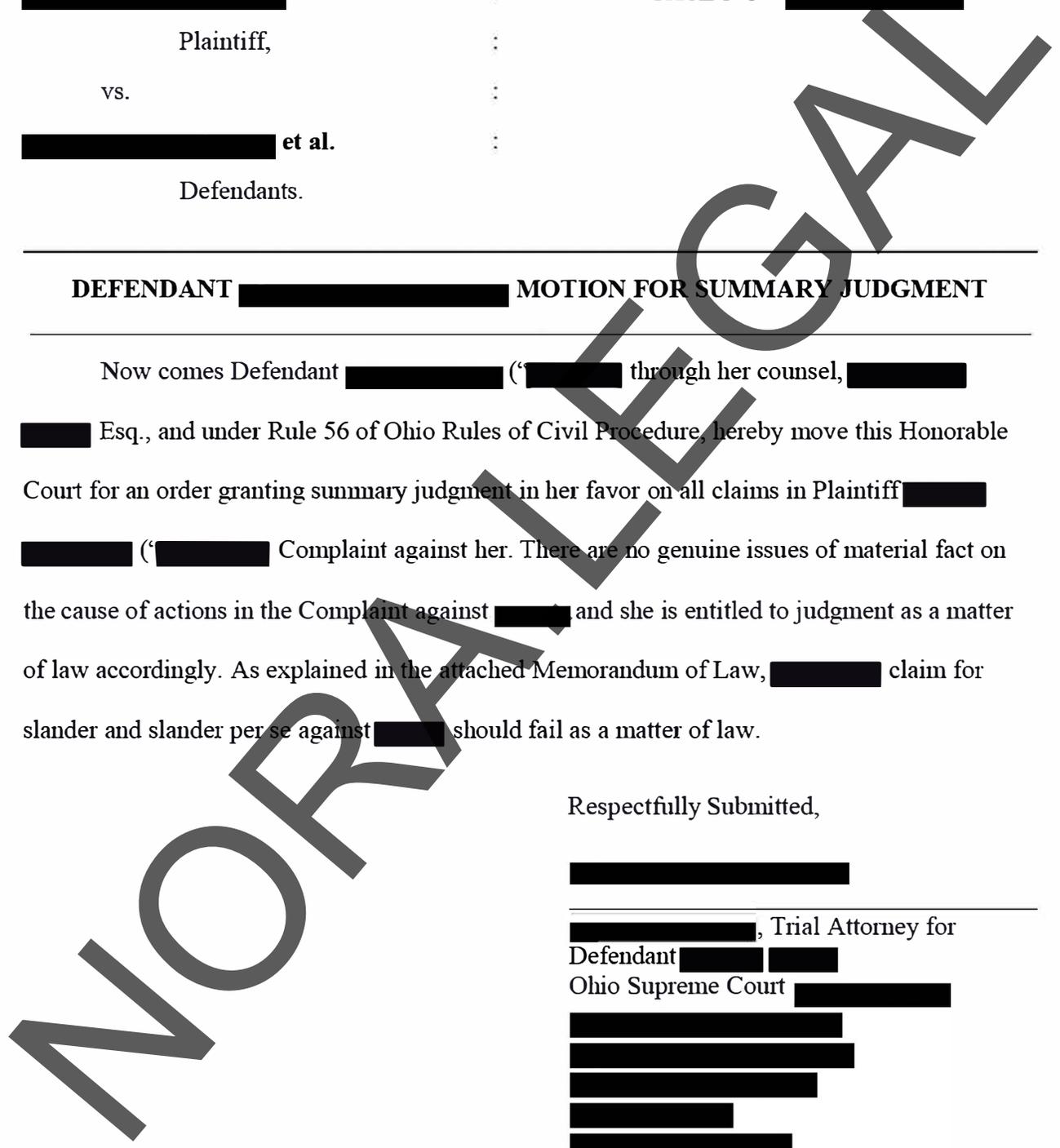
DEFENDANT ██████████ MOTION FOR SUMMARY JUDGMENT

Now comes Defendant ██████████ (“██████████” through her counsel, ██████████
██████████ Esq., and under Rule 56 of Ohio Rules of Civil Procedure, hereby move this Honorable
Court for an order granting summary judgment in her favor on all claims in Plaintiff ██████████
██████████ (“██████████” Complaint against her. There are no genuine issues of material fact on
the cause of actions in the Complaint against ██████████ and she is entitled to judgment as a matter
of law accordingly. As explained in the attached Memorandum of Law, ██████████ claim for
slander and slander per se against ██████████ should fail as a matter of law.

Respectfully Submitted,

██████████

██████████, Trial Attorney for
Defendant ██████████ ██████████
Ohio Supreme Court ██████████
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**DEFENDANT [REDACTED] MEMORANDUM OF LAW IN SUPPORT OF
THE MOTION**

I. STATEMENT OF FACTS

A. Background

[REDACTED] her son, [REDACTED] ([REDACTED] and her boyfriend attended a [REDACTED] at [REDACTED] [REDACTED] in Hamilton, Ohio.¹ [REDACTED] is the sister of [REDACTED] former father-in-law, [REDACTED] ([REDACTED]² [REDACTED] ([REDACTED] is [REDACTED] former mother-in-law. [REDACTED] had earlier petitioned for Civil Protection Order against [REDACTED] and [REDACTED] which was dismissed with an observation that [REDACTED] should stay away from [REDACTED] and her son, [REDACTED].³ [REDACTED] attended the same [REDACTED] along with [REDACTED] and [REDACTED].⁴ At the [REDACTED] [REDACTED] casually reminded [REDACTED] about the court's observation to stay away from her son.⁵ [REDACTED] did not have any interaction with [REDACTED] at all or say anything to [REDACTED] at the [REDACTED].⁶ [REDACTED] filed the complaint claiming that [REDACTED] made remarks directed at her that caused her embarrassment and harm.⁷ The Complaint alleges that [REDACTED] made certain statements "for the purpose of causing [REDACTED] embarrassment, reputational harm, and mental anguish."⁸

As shown below, there is no genuine issue of material fact at all to support [REDACTED] claims for slander and slander per se against [REDACTED]

¹ Compl. ¶ 6.

² Id. ¶ 4.

³ [insert citation]

⁴ Compl. ¶ 5.

⁵ [insert citation]

⁶ Compl. ¶ 10; First set of Admission, Interrogatories, and Production of Documents to Plaintiff, request 6.

⁷ Compl. ¶¶ 13-17.

⁸ Id. ¶ 13.

B. Procedural History

██████ filed the Complaint seeking compensatory damages and punitive damages and other reliefs. ██████ filed her answer. ██████ filed her first set of requests for admissions, interrogatories, and requests for production of documents. ██████ filed her unsigned responses to the discovery requests on _____ without notarizing under the law.

Thus, this Motion for Summary Judgment follows.

II. STANDARD OF REVIEW

“[S]ummary judgment may be rendered where the pleadings and the arguments of the party seeking summary judgment establish that the nonmoving party has no legally cognizable cause of action.”⁹ Under Ohio Rule of Civil Procedure 56(C), “[s]ummary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law.”¹⁰ “The evidentiary materials listed in Civ.R. 56(C) include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any”¹¹

[I]f the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.¹²

⁹ *Dresher v. Burt*, 75 Ohio St. 3d 280, 297–98, 662 N.E.2d 264, 277 (1996).

¹⁰ *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, ¶ 10 (2006) (citing Civ.R. 56(C)).

¹¹ *Salata v. Vallas*, 159 Ohio App.3d 108, 2004-Ohio-6037, 823 N.E.2d 50, ¶ 46 (quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264).

¹² *Id.*

Even so, the non-moving party must produce “evidence on any issue for which that party bears the burden of production at trial.”¹³ To show a genuine material issue of fact, more than a “scintilla” of evidence is required.¹⁴ Further, a non-movant may not rest on the mere allegations or denials of his pleadings but must set forth specific facts showing there is a genuine issue for trial.¹⁵

Here, even construing all facts in the light most favorable to ██████ there is no scintilla of evidence in support of her claims under slander and slander per se. ██████ requests summary judgment under Civ.R. 56 because there remains no genuine issue of material fact in favor of ██████ to support her cause of actions.

III. ARGUMENT

A. ██████ Is Entitled To Motion For Summary Judgment As A Matter Of Law Absent Genuine Issues of Material Fact As To ██████ Cause of Action For Slander And Slander Per Se.

i. Summary judgment should be granted because there is no genuine issue of material fact in the Complaint to establish the elements of a slander claim.

“[S]lander refers to spoken defamatory words.”¹⁶ To prevail on a defamation cause of action, such as slander, a plaintiff must prove these elements: “(1) a false and defamatory statement; (2) about plaintiff; (3) published without privilege to a third party; (4) with fault of at least negligence on the part of the defendant; and (5) that was either defamatory per se or caused special harm to the plaintiff.”¹⁷

¹³ *Wells Fargo Bank, Natl. Assn. v. Pollard*, 8th Dist. Cuyahoga No. 108257, 2019-Ohio-4980, ¶ 21.

¹⁴ *Frick v. Potash Corp. of Sask., Inc.*, 3d Dist. Allen No. 1-09-59, 2010-Ohio-4292, ¶ 14.

¹⁵ Ohio Civ. R. 56(E).

¹⁶ *McClure v. Ohio Dep’t of Rehab. & Corr.*, 2020-Ohio-1035, ¶ 10 (Ct. App.) (citation omitted).

¹⁷ *Blackburn v. Am. Dental Ctrs.*, 10th Dist. Franklin No. 10AP-958, 2011-Ohio-5971, ¶ 31.

██████ has admitted in her response to the request for admissions that “██████ ████████ did not want ████████ ████████ to see Preston.”²¹ She admitted that her boss invited her to the ████████ ████████ because he knew Preston would come there. Thus, ████████ knew that ████████ did not want ████████ to see Preston. So, when ████████ reminded ████████ about the court’s order at the meet she had no reason to talk to ████████ Without supportive facts or pleadings to establish any statements from ████████ to ████████ she is pursuing a false slander claim against ████████ Thus, these mere allegations cannot create any genuine issue of material fact for trial as the present facts are clear that ████████ did not state any false and defamatory statement about ████████ to a third party.

██████ does not argue, at a minimum, that the alleged statements were not privileged publication made to a third party. Allegations in Paragraph 8 are that a large crowd witnessed the defamatory statements. Even though no third party, however, was identified specifically to establish the same the facts do not state that ████████ acted with the required degree of fault.

On the other hand, to cover the vexatious allegations, ████████ responded to ████████ interrogatories stating that “██████ ████████ never sought nor obtained a restraining order against ████████ ████████ and thus if her statement that she had a restraining order against her ordered by a judge would have been defamatory.”²² But this statement is not defamatory to ████████ especially because ████████ was talking to ████████ Thus, nothing should injure ████████ causing embarrassment and reputational harm to her.²³ The Complaint’s allegations are clear regarding harm to ████████ reputation or embarrassment.

██████ response to request for admission 3.

²² Compl. ¶ 12.

²² First set of Admission, Interrogatories, and Production of Documents to Plaintiff, request 5.

²³ Compl. ¶¶ 13-17.

Other than the bald assertions, ██████ cannot establish any genuine issue of material fact that the alleged words, even if spoken by ██████ at the ██████ defamed and embarrassed ██████. Rather, ██████ has admitted that ██████ did not mention her name in the ██████²⁴ Thus, ██████ pleadings cannot establish or bring out a prima facie case of any spoken statements about her, to her or any other person, as defamatory. There is, thus, no genuine issue of material facts in this case. That the facts in the Complaint do not require any further rebuttal of the elements for slander. With no defamatory statements directed to ██████ there is no slander claim against ██████

For that reason, the court should grant summary judgment on ██████ slander claim in favor of ██████

a. No admissible evidence shows that ██████ slandered ██████

There is no admissible evidence that would support ██████ slander claim. The plaintiff must produce competent evidence creating a genuine issue of material fact as to whether there was the publication of the defamatory statement to a third party.²⁵ ██████ in her discovery responses, has no competent evidence of slander. Rather, she has made bald assertions against ██████ about the same.

In *McChure v. Ohio Dept. of Rehab. & Correction*, supra, the appellate court found allegations in the complaint that damaged the appellant's "reputation as a model prisoner."²⁶ No supportive affidavits or the complaint alleged any facts that "appellant suffered financial losses resulting from his impaired reputation as a model inmate and dog handler."²⁷ Affirming the trial court's grant of summary judgment on appellant's slander claim, the court noted that absent

²⁴ First set of Admission, Interrogatories, and Production of Documents to Plaintiff, request 6.

²⁵ *Bennett v. Roadway Express*, 9th Dist. Summit C.A. No. 20317, 2001 Ohio App. LEXIS 3394, at *13 (Aug. 1, 2001).

²⁶ *Id.* at ¶ 18.

²⁷ *Id.*

proof of special damages, “appellant cannot satisfy an essential requirement to his slander claim.”²⁸

Apparently, “[t]he reputation of another is harmed when the publication lowers the community’s estimation of that person or when it deters third parties from associating or dealing with that person.”²⁹ ██████ could not produce any evidence to show her reputational harm due to the alleged defamatory statements. Recall, ██████ response to ██████ interrogatories that these statements were not directly related to ██████ but were ██████ feelings or suspicions. Feelings or suspicions cannot be the basis for alleging defamation. As a result, the alleged defamatory statements, cannot support ██████ slander claim against ██████

Thus, no admissible evidence establishes ██████ slander claim and this Court should grant summary judgment to ██████ as to ██████ slander claim.

ii. Summary judgment should be granted because ██████ cannot properly support her slander per se claim.

“[S]lander refers to spoken defamatory words.”³⁰ “A slanderous statement may be defamatory either per se or per quod.”³¹ “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.”³² “Slander *per se*, by contrast, means that the slander is accomplished by the very words spoken.”³³

So, “to be considered slander per se, a remark ‘must consist of words which import an indictable criminal offense involving moral turpitude or infamous punishment, imputes some

²⁸ *Id.*

²⁹ *N. Coast Cable Ltd. Partnership v. Hanneman*, 98 Ohio App.3d 434, 442, 648 N.E.2d 875 (8th Dist.1994).

³⁰ *McClure* at ¶ 10 (citation omitted).

³¹ *Straus v. Doe*, 11th Dist. Lake No. 2003-L-082, 2004-Ohio-5316, ¶ 27.

³² *Dudee v. Philpot*, 2019-Ohio-3939, 133 N.E.3d 590, ¶ 68 (1st Dist.).

³³ *Mallory v. Ohio Univ.*, 10th Dist. Franklin No. 01AP-278, 2001-Ohio-8762 (internal quotation and citation omitted).

loathsome or contagious disease which excludes one from society or tends to injure one in his trade or occupation.”³⁴

As for “slander *per se*” claims, Ohio courts have made it clear that a plaintiff must establish that “the defamatory statements are injurious by their very nature.”³⁵ And “[w]here an oral statement is not defamatory *per se*, a plaintiff must plead and prove special damages.”³⁶ “The determination of whether a statement is slander *per se* or slander *per quod* is a question of law for the trial court.”³⁷

Only an oral defamatory statement that injures one in a possible future occupation would qualify as slander *per se*. In *McClure*, supra, the court found the defamatory statements to only ‘portray appellant as a ‘troublemaker’ and a poor dog handler’ but those statements did not import “an indictable criminal offense” or “some loathsome or contagious disease” that would exclude or injure appellant in his trade or occupation.³⁸ Thus, “an oral defamatory statement that injures one in a possible future occupation would qualify as slander *per se*.”³⁹ The appellate court, however, could not find anything from the appellant’s complaint nor the affidavits he submitted in opposition to summary judgment mentioning “a possible future vocation as a dog trainer.”⁴⁰ Here the court found no genuine issue of fact, whether any oral statements, to constitute slander *per se*.⁴¹

Likewise, the appellate court has held that “[t]he mere report of a possible theft to law enforcement by [defendant], without ever accusing appellant of the theft is not a false or

³⁴ *Id.* (quoting *McCartney v. Oblates of St. Francis deSales*, 80 Ohio App.3d 345, 353, 609 N.E.2d 216 (6th Dist.1992)).

³⁵ *Straus* at ¶¶ 27-28.

³⁶ *McClure*, at ¶ 16.

³⁷ *Temethy v. Huntington Bancshares, Inc.*, 8th Dist. Cuyahoga No. 83291, 2004-Ohio-1253, ¶ 15 (citation omitted).

³⁸ *Id.* at ¶ 17.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

defamatory statement concerning appellant.”⁴² The statement “is insufficient to create a factual dispute on [the] appellant’s claim for slander per se.”⁴³ In the case, no one associated with the defendant specifically accused the appellant of theft and the appellant acknowledged this fact in his deposition.⁴⁴ Thus, in *McClure*, the court granted summary judgment on appellant’s slander per se claim.⁴⁵

In this case, like *Watson*, the Complaint does not identify a defamatory statement with [REDACTED] name specifically announced by [REDACTED] to any third party. Here, the alleged defamatory statement only uses the term “you” and not [REDACTED]. The allegation in paragraph 8 of the Complaint simply states [REDACTED] name as one among the large crowd of people standing with [REDACTED]. Much like *Watson*, the mere possibility of directing the alleged defamatory statement to [REDACTED] without ever announcing her name, does not create any genuine issue of material fact or factual dispute to prove the slander per se claim. There is more possibility for [REDACTED] to speak anything to [REDACTED] than [REDACTED]. Here, the circumstances surrounding the statement should be referenced as distinguished from the words themselves. Thus, none of the alleged defamatory oral statements made by [REDACTED] qualify as slander per se against [REDACTED]. First, the words “[REDACTED]” neither import an indictable criminal offense or infamous punishment nor impute some loathsome or contagious disease which would exclude [REDACTED] from society or tends to injure [REDACTED] in her trade or occupation. Second, there is very less possibility for any person to believe that [REDACTED] has a restraining order against [REDACTED] more than [REDACTED] ex-mother-in-law. Third, [REDACTED] is not involved in any prior dispute with [REDACTED] or has she alleged any such incident, and so the

⁴² *Watson v. Highland Ridge Water & Sewer Assn.*, 4th Dist. Washington No. 12CA12, 2013-Ohio-1640, at ¶ 40.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

chances of any third party to believe [REDACTED] was talking to her is negligent. And also, [REDACTED] has no allegation of any future injury.

It is also unclear from the allegations whether [REDACTED] has alleged slander per se or slander *per quod*. If the complaint alleges slander *per quod*, the pleadings fail to contain an allegation of special damages. There is, thus, no genuine issue of fact whether [REDACTED] conduct towards [REDACTED] constituted slander per se or slander *per quod*.

IV. CONCLUSION

For these reasons, no genuine issue of material fact applies to a slander claim against Defendant [REDACTED] [REDACTED] and reasonable minds can only find no admissible evidence that Defendant [REDACTED] [REDACTED] slandered Plaintiff [REDACTED] [REDACTED]. Plaintiff [REDACTED] [REDACTED] cannot present disputed material facts nor can she establish that Defendant [REDACTED] [REDACTED] has no right to judgment as a matter of law. As a result, Defendant [REDACTED] [REDACTED] respectfully requests that this court grant summary judgment motion against Plaintiff [REDACTED] [REDACTED] in its entirety.

Respectfully Submitted,

[REDACTED]

[REDACTED], Trial Attorney for
Defendant [REDACTED] [REDACTED]
Ohio Supreme Court [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon [REDACTED] .,

[REDACTED] ,

[REDACTED] , by regular U.S. Mail, first class, prepaid, on the [REDACTED] 2020.

[REDACTED] Attorney for
Defendant [REDACTED]

NORA.LEGAL