

IN THE CIRCUIT COURT OF THE COUNTY OF ST. CHARLES
ELEVENTH JUDICIAL CIRCUIT
STATE OF MISSOURI

DANNY ROBERSON,

Plaintiff,

V.

CASE NO.: 2411-CC00522

GRACE CHURCH STL, et al.,

Defendants.

**REPLY IN SUPPORT OF IMPROPERLY DESIGNATED DEFENDANT GRACE
CHURCH STL'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT**

This case arises out of alleged statements based on religion and religious belief made by different Defendants at different venues, some of which occurred during public meetings. This case involves the constitutionally guaranteed rights of this Defendant¹ and others of Freedom of Speech and Freedom of Religion, which include the freedom to choose one's religion and the freedom to practice and speak one's religious beliefs. As to this Defendant, in the Complaint, Plaintiff includes three Counts for Defamation (Count 23 based on Exhibit G; Count 24 based on Exhibit R; and Count 25 based on Exhibit S), three Counts for False Light Invasion of Privacy (Count 23-1 based on Exhibit G; Count 24-1 based on Exhibit R; and Count 25-1 based on Exhibit S), three Counts for Prima Facie Tort (Count 23-2 based on Exhibit G; Count 24-2 based on Exhibit R; and Count 25-2 based on Exhibit S) and a Count for Civil Conspiracy (Count 29) against this Defendant, Defendant Homolak and Defendant Puszkar.

On July 15, 2024, this Defendant filed its Motion to Dismiss or, in the alternative, Motion for More Definite Statement. On September 14, 2024, Plaintiff filed Suggestions in Opposition.

¹ As of this time, this Defendant has not been sued in its correct legal name.

This Defendant offers its current Reply in further support of its Motion to Dismiss as Plaintiff's Complaint fails to state any claim on which relief can be granted against this Defendant. As of this time, Defendants Hagedorn and Puszkas, Defendant Barrett and Defendant Homolak also have Motions to Dismiss pending. The Motions filed by Defendants Hagedorn and Puszkas and Defendant Barrett were heard on August 16, 2024 and taken under advisement. At this time, it is anticipated the Motions filed by this Defendant and Defendant Homolak will be noticed for hearing at the same time in the near future.

A. PLAINTIFF'S COMPLAINT FAILS TO STATE A DEFEAMATION CLAIM ON WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

Within Section Ia of Plaintiff's Suggestions in Opposition, Plaintiff attempts to cloud the issues about the alleged acts of this Defendant on which the Defamation claims in Counts 23, 24 and 25 are based and fails to provide any specific discussion of the three Exhibits (G, R and S) which form the basis of those claims. Further, Plaintiff continuously references and discusses the alleged actions of other Defendants rather than the alleged acts of this Defendant and Exhibits on which the Defamation claims are based. Within Section Ia, Plaintiff also says the Complaint properly pleads a claim for Defamation. As discussed in this Defendant's previously filed Suggestions in Support and below, Plaintiff is mistaken.

Within Plaintiff's Suggestions in Opposition, Plaintiff makes passing reference to several cases in hopes those citations help Plaintiff avoid dismissal. They do not.

Plaintiff references *Lovelace* where the discussion focused on intra-corporate immunity when a non-supervisor reported to a supervisor. The case is not dispositive of the issues raised in this Defendant's Motion. In *Ocello*, the opinion included a general statement about Exhibits being attached to a pleading but had nothing to do with a defamation claim and the requirement the words alleged to be defamatory be stated in the pleadings. See *Missouri Church of Scientology v. Adams*,

543 S.W.2d 776, 778 (Mo. 1976)(en banc)(wherein the Missouri Supreme Court stated when seeking recovery for libel, the petition should state the specific words or statements alleged to be libelous and attaching the text of five articles as exhibits was not sufficient because to do so required the “court search lengthy articles or books to discover whether they contain words which are libelous per se. Plaintiff knows the words claimed to be libelous and for which recovery is sought and should be and is required to specify them with particularity.”) In *Topper*, the opinion stated negligence is the requisite degree of fault if a person is not a public figure. And, in *Topper*, the Court held a defamation claim was improperly submitted to the jury as the statement was one of opinion and there was no evidence the statement damaged Plaintiff. As discussed in Defendant’s previously filed Suggestions in Support, Plaintiff is a limited-purpose public figure and the required standard is actual malice. In *Gertz*, the Court discussed whether an individual was a public figure for purposes of a defamation claim. As noted above, in this case Plaintiff is a limited-purpose public figure. Plaintiff also references *Stepnes*, an 8th Circuit case decided under Minnesota law, which has no bearing on this Missouri case.

Plaintiff also cites several other cases in hopes of avoiding dismissal. In *Castle Rock*, the opinion included a discussion of the two-part test to be applied in analyzing defamation claims. And, in *Castle Rock*, the Court held dismissal of the claim for libel was proper because the statements were not actionable as they were statements of opinion. In *Nigro*, the opinion stated truth is a defense to a claim of defamation. And, in *Nigro*, the Court held summary judgment was properly granted as the alleged statements were either true or substantially true. In *Smith*, the opinion included a discussion of what elements must be proven to establish a claim for defamation. And, in *Smith*, the Court held the defamation claim was properly dismissed and also held the false light invasion of privacy claim was properly dismissed as it was simply a claim of defamation.

Finally, in *Nazeri v. Missouri Valley College*, 860 SW.2d 303, 313 (Mo. 1992)(en banc), the Court discussed libel verses slander and said libel is usually “published through easily reproducible means such as a writing, printing, broadcast or electronic communication. Thus, in a libel case it is not unreasonable to expect a verbatim reproduction of the offending statement to assist the court in determining whether it is capable of defamatory meaning.” And, in *Nazeri*, the Court also dismissed a prima facie tort claim, noting recovery for untrue statements should be in defamation, and also dismissed a false light invasion of privacy claim, noting the Court had declined to recognize such a cause of action where the recovery sought was for untrue statements. As discussed below in Sections B and C, Plaintiff has also attempted to assert claims for false light invasion of privacy and prima facie tort in this case and those claims should be dismissed.

In addition to referencing the above cases in the Suggestions in Opposition, Plaintiff spends a great deal of time talking about the alleged actions of Defendant Homolak, Defendant Puszkarski and Defendant Barrett, as well as paragraphs in the Complaint which have nothing to do with this Defendant and nothing to do with the Defamation claims asserted against this Defendant. Plaintiff also fails to discuss any of the authority cited by this Defendant in its previously filed Suggestions in Support. And, Plaintiff fails to offer any analysis of Exhibits G, R and S which are the basis of the Defamation claims against this Defendant in Count 23 (Exhibit G), Count 24 (Exhibit R) and Count 25 (Exhibit S).

According to the Complaint, Exhibit G, a Facebook post, is the basis of the Count 23 Defamation claim. The only actual words Plaintiff says were included in the Facebook post are “church family” and “We must protect CHILDREN from being exposed to this!!!” (See Plaintiff’s Complaint ¶¶ 69 and 72) There is nothing defamatory or false in this post information nor anything that identifies Plaintiff. Even assuming for purposes of this Motion something was defamatory or

false, Plaintiff has not pled facts establishing this post information was published with the required degree of fault to a third-party. From a review of paragraphs 799 through 805 of Count 23, it is clear Plaintiff has failed to offer facts related to the required degree of fault but rather offers conclusory statements. Plaintiff is a limited-purpose public figure and must establish actual malice. In recent years and continuing to present, there have been a number of issues which have caused intense public debate, scrutiny and controversy and transgenderism is one of those issues. Further, Plaintiff has also not pled facts establishing damages due to this post information. The only information related to alleged damages due to Exhibit G is included in paragraph 806 of the Complaint; however, this paragraph consists of merely conclusory statements without factual support. It is hard to imagine Plaintiff suffered damages due to this post information.

Next, according to the Complaint, Exhibit R, a blog post, is the basis of the Count 24 Defamation claim. The only actual words Plaintiff says were included in the blog post are “agenda” and “same-sex bathrooms in public schools, pornographic books in schools and public libraries, mandatory masks and vaccines, the sexual grooming of preadolescent children, and ‘transition plants’ without parental consent.” (See Plaintiff’s Complaint ¶¶69)² There is nothing defamatory or false in this blog information nor anything that identifies Plaintiff. Even assuming for purposes of this Motion something was defamatory or false, Plaintiff has not pled facts establishing this blog information was published with the required degree of fault to a third-party. From a review of paragraphs 824 through 830 of Count 24, it is clear Plaintiff has failed to offer facts related to the degree of fault but rather offers conclusory statements which are improper. Further, Plaintiff has also not pled facts establishing damages due to this post information. The only information related to alleged damages due to Exhibit R is included in paragraph 831 of the

² As noted in Defendant’s previously filed Suggestions in Support, the blog post does not use the phrase “transition plants” but rather “transition plans.”

Complaint; however, this paragraph consists of merely conclusory statements without factual support.

Finally, according to the Complaint, Exhibit S is the basis of the Count 25 Defamation claim. Plaintiff says Exhibit S is an audio recording of a Civic Engagement Meeting attended by church members in August 2023, with the speaking panel comprised of Defendant Homolak and other church members. Paragraphs 160, 163 through 168 and 172 of the Complaint relate to the alleged comments made by Defendant Homolak during the Meeting. There was nothing allegedly said, as stated in paragraphs 160, 163, 165, 166, 167 or 172, which is arguably defamatory or false. As for paragraph 168, Plaintiff alleges Defendant Homolak said Plaintiff's full first and last name. Setting aside the fact Defendant Homolak didn't say Plaintiff's correct first or last name at the Meeting, the fact remains even if Plaintiff's name was said, that is not defamatory or false. The same applies to Plaintiff's place of employment.

And, as for paragraph 164 of the Complaint, Plaintiff says Defendant Homolak ended her introduction during the Meeting "by stating she is fighting against Plaintiff who she alleged is indoctrinating and grooming children." Then, in paragraphs 849 and 850 of Count 25, Plaintiff says this Defendant accused Plaintiff of sexual misconduct by "endorsing, ratifying and acquiescing in Homolak's false accusations that Plaintiff engaged in indoctrinating and grooming children for sexual purposes" and "repeated Homolak's false accusations when it published a recording of the August 2023 Civic Engagement Meeting. . ." That is not what was said during the Meeting and not what occurred. Plaintiff's summary of what was said during the Meeting changes in the Complaint. This exemplifies the problem with Plaintiff's failure to recite the specific language alleged to constitute the defamation and why Missouri law requires the

defamatory statements be set forth in the pleading and for Plaintiff to plead facts establishing how this Defendant is alleged to have defamed Plaintiff by posting an audio of a Meeting.

What is true is any comments made by Defendant Homolak at the Meeting were her opinions based on her perceptions and beliefs. As noted in Defendant's previously filed Suggestions in Support, the First Amendment provides an absolute privilege for opinions and they cannot give rise to a defamation claim. This Defendant has no liability for any opinion stated by Defendant Homolak included in the recording of the Meeting. Even assuming for the sake of argument that something was defamatory, false and not protected speech, Plaintiff has not pled facts establishing the recording of the Meeting was published to any third-party with the required degree of fault. From a review of paragraphs 849 through 855 of Count 25, it is clear Plaintiff has failed to offer facts related to the degree of fault but rather offers conclusory statements which are improper. Further, Plaintiff has also not pled facts establishing damages due to this recording. The only information related to alleged damages due to Exhibit S is included in paragraph 856 of the Complaint; however, this paragraph consists of merely conclusory statements without factual support.

Plaintiff has failed to state a claim for Defamation on which relief can be granted against this Defendant based on Exhibits G, R or S and the Defamation claims included in Counts 23, 24 and 25 should be dismissed.

B. PLAINTIFF'S COMPLAINT FAILS TO STATE A FALSE LIGHT INVASION OF PRIVACY CLAIM ON WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

Within Section III of Plaintiff's Suggestions in Opposition, Plaintiff does not address the arguments raised by this Defendant in Section B of its previously filed Suggestions in Support or the specific alleged actions of this Defendant. Rather, Plaintiff continuously references

“Defendants” and appears to be addressing some argument raised by some other Defendant in a different pending Motion to Dismiss. Within Section III, Plaintiff also says the Complaint properly pleads a claim for False Light Invasion of Privacy. As discussed in this Defendant’s previously filed Suggestions in Support and below, Plaintiff is mistaken.

In Plaintiff’s Suggestions in Opposition, Plaintiff fails to address the cases of *Couzens v. Donohue*, 2015 WL 13345611 (D. Mo. 2015) and *Johnson v. Usera*, 2024 WL 3152568 *11 n9 (Mo. App. 2024) discussed in Defendant’s previously filed Suggestions in Support, wherein the Courts held there is no cause of action in Missouri for false light and further noted the false light claims were nothing more than claims for defamation such that dismissal was appropriate. Likewise, Plaintiff does not bring any other authority to the Court’s attention for consideration other than saying, “Although the Missouri Supreme Court has not yet recognized a claim for False Light Invasion of Privacy, it has not foreclosed the possibility that such a claim could be recognized in the right circumstance. *Smith v. Humane Soc’y of United States*, 519 S.W.3d at 803.” Plaintiff offers no discussion of the *Smith* case, other than making this statement. Plaintiff neglects to mention in *Smith*, the Missouri Supreme Court specifically said it has refused to recognize a false light invasion of privacy claim when the claim is nothing more than a defamation claim where one party alleges the other published false accusations. *Smith v. Human Society of United States*, 519 S.W.3d 789, 803 (Mo. 2017)(en banc)

Plaintiff’s Count 23 for Defamation and Alternate Count 23 for False Light Invasion of Privacy are both based on the same Exhibit G Facebook post. Plaintiff’s Count 24 for Defamation and Alternate Count 24 for False Light Invasion of Privacy are both based on the same Exhibit R blog post. And, Plaintiff’s Count 25 for Defamation and Alternate Count 25 for False Light Invasion of Privacy are both based on the same Exhibit S recording of an August 2023 Civic

Engagement Meeting. Each of these Counts include the same paragraphs alleging “Plaintiff has been damaged and suffered public humiliation, embarrassment, degradation, invasion of her privacy, mental anguish, pain and suffering, loss of enjoyment of life, loss of self-esteem, interference with her employment, and general emotional distress.” (See Plaintiff’s Complaint ¶¶806 and 815 for the Count 23 claims, ¶¶831 and 840 for the Count 24 claims and ¶¶856 and 865 for the Count 25 claims) And, all of the Counts incorporate paragraphs 6 through 243 of Plaintiff’s Complaint wherein Plaintiff alleges damage to reputation due to the alleged defamatory statements of the collective Defendants.

As Plaintiff clearly acknowledges in the Suggestions in Opposition, the Missouri Supreme Court has refused to recognize a false light invasion of privacy claim. Rather, the Missouri Supreme Court has said the potentially proper claim is for defamation when based on alleged untrue statements. That is exactly what Alternative Counts 23, 24 and 25 are based on, alleged untrue statements made about Plaintiff. Further, this Defendant believes it is also important to point out the discussion in Section A above related to Exhibits G, R and S would apply equally to any potential claim for False Light Invasion of Privacy.

Plaintiff cannot state a claim for False Light Invasion of Privacy against this Defendant based on Exhibits G, R or S and the False Light Invasion of Privacy claims included in Alternate Counts 23-1, 24-1 and 25-1 should be dismissed.

C. PLAINTIFF’S COMPLAINT FAILS TO STATE A PRIMA FACIE TORT CLAIM ON WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

Within Section IV of Plaintiff’s Suggestions in Opposition, Plaintiff does not address the arguments raised by this Defendant in Section C. of its previously filed Suggestions in Support or the specific alleged actions of this Defendant. Rather, Plaintiff focuses on and references

Defendant Barrett and his alleged statements and says Defendant Barrett's Motion should be dismissed. It appears Plaintiff has cut and pasted portions of the Opposition filed in response to Defendant Barrett's pending Motion to Dismiss. Within Section IV, Plaintiff also says the Complaint properly pleads a claim for Prima Facie Tort. As discussed in this Defendant's previously filed Suggestions in Support and below, Plaintiff is mistaken.

In Plaintiff's Suggestions in Opposition, Plaintiff does not bring any authority to the Court's attention for consideration. Likewise, Plaintiff does not address any of the cases discussed in Defendant's previously filed Suggestions in Support, wherein the Courts noted a claim premised on publication of false statements must be for defamation and not some other tort. As discussed in Defendant's previously filed Suggestions in Support, Missouri Courts have held "claims predicated on the publication of untrue statements cannot support claims for invasion of privacy. . . ., intentional infliction of emotional distress. . . ., or prima facie tort." *Bigfoot on the Strip, LLC v. Winchester*, 2019 WL 4144320, *10 (D. Mo. 2019) (citation omitted)(emphasis added)

All of Plaintiff's Count 23 claims, including the Prima Facie Tort claim in Second Alternate Count 23, are based on the same Exhibit G Facebook post. All of Plaintiff's Count 24 claims, including the Prima Facie Tort claim in Second Alternate Count 24, are based on the same Exhibit R blog post. And, all of Plaintiff's Count 25 claims, including the Prima Facie Tort claim in Second Alternative Counts 25, are based on the same Exhibit S recording of an August 2023 Civic Engagement Meeting. And, according to the Complaint, all of these claims are based on alleged untrue statements about Plaintiff in the referenced Exhibits. Under Missouri law, Plaintiff cannot state a claim for Prima Facie Tort.

Even assuming for the sake of this Motion that Missouri law permitted Plaintiff to bring these claims against Defendant, the fact remains Plaintiff has not properly pled the claims. For

example, as discussed in Defendant's previously filed Suggestions in Support, one of the elements of a Prima Facie Tort claim is a lawful act done by the Defendant. What Plaintiff has alleged is untrue statements were posted on social media in Exhibit G, included in a blog post in Exhibit R and included in a recording in Exhibit S, all of which were unlawful because they were false and entitle Plaintiff to recover. Plaintiff has not alleged a lawful act done by this Defendant. Rather, what Plaintiff has alleged are unlawful acts. Additionally, Plaintiff has not included facts establishing this Defendant acted with the required intent, which is another required element. As noted in *Jackson County Missouri v. Merscopr, Inc.*, 915 F. Supp.2d 1064, 1072 (D. Mo. 2013), cited in Defendant's previously filed Suggestions in Support, it is not sufficient to simply allege a defendant intended to injure the plaintiff and the allegation must be the Defendant acted maliciously or with malicious intent. In Counts 23-2, 24-2 and 25-2, Plaintiff has not alleged this Defendant acted maliciously or with malicious intent. Rather, what Plaintiff has alleged is this Defendant intended to cause harm by making the Facebook post, making the blog post and then posting the recording of the August 2023 Civic Engagement Meeting. (See Plaintiff's Second Alternative Count 23, Second Alternative Count 24 and Second Alternative Count 25) Further, this Defendant believes it is also important to point out the discussion in Section A above related to Exhibits G, R and S would apply equally to any potential claim for Prima Facie Tort.

Plaintiff cannot state a claim for Prima Facie Tort against this Defendant based on Exhibits G, R or S and the Prima Facie Tort claims included in Second Alternate Counts 23-2, 24-2 and 25-2 should be dismissed.

D. PLAINTIFF'S COMPLAINT FAILS TO STATE A CIVIL CONSPIRACY CLAIM ON WHICH RELIEF CAN BE GRANTED AGAINST THIS DEFENDANT.

Within Section I.v. of Plaintiff's Suggestions in Opposition, Plaintiff suggests a claim for Civil Conspiracy has been properly plead in Count 29 against this Defendant, Defendant Homolak and Defendant Puszkur. As discussed in this Defendant's previously filed Suggestions in Support and below, Plaintiff is mistaken.

Under Missouri law, to properly plead a civil conspiracy, a plaintiff must plead facts demonstrating: (1) two or more persons; (2) with an unlawful objective; (3) after a meeting of the minds; (4) committed at least one act in furtherance of the conspiracy; and (5) that plaintiff was thereby damaged. *Williston v. Vasterling*, 536 S.W.3d 321, 335 (Mo. App. 2017)(citation omitted) "The Missouri Supreme Court has articulate[d] that a meeting of the minds is a unity of purpose of a common design and understanding." *Lewis v. Executive Dining, LLC*, 2021 WL 3847136, *7 (D. Mo. 2021)(citations omitted)(holding a civil conspiracy claim failed and stating Plaintiff failed to allege a meeting of the minds when Plaintiff simply claimed an agreement between the Defendants and did not allege an agreement between the Defendants to do an unlawful act.) "A claim for civil conspiracy is not itself actionable in the absence of an underlying wrongful act or tort." *State ex rel. Diehl v. Kintz*, 162 S.W.3d 152, 156 (Mo. App. 2005)(citation omitted)

As discussed in Defendant's previously filed Suggestions in Support, Plaintiff has failed to allege facts establishing the required elements of a Civil Conspiracy claim including an unlawful objective between this Defendant, Defendant Homolak and Defendant Puszkur, a meeting of the minds of these Defendants and/or at least one act in furtherance of the conspiracy between these Defendants. The Complaint fails to include facts establishing a unity of purpose of a common design and understanding between this Defendant, Defendant Homolak and Defendant Puszkur. Why? Because there was no conspiracy. Plaintiff's Complaint contains many conclusory allegations but lacks facts. Why? Because they don't exist. What Plaintiff essentially alleges is

certain things happened and there has to be some reason and connection between all the alleged things which occurred.

Plaintiff has failed to properly plead a claim for Civil Conspiracy consistent with Missouri law and the claim should be dismissed in its entirety. Should the Court determine dismissal of the Civil Conspiracy claim in its entirety is not appropriate at this time, at a minimum the Court should enter its Order finding none of the alleged comments made by other Defendants during any of the public meetings can form the basis of any Civil Conspiracy claim against this Defendant.

Nowhere in the Suggestions in Opposition does Plaintiff attempt to address the specific arguments relating to RSMo. 537.528 raised by this Defendant in its previously filed Suggestions in Support. And, while it is unclear at this time as to the scope of alleged actions by this Defendant which form the basis of the Civil Conspiracy claim and what specific actions of Defendant Homolak and Defendant Puszkar Plaintiff is alleging this Defendant is responsible or liable, what is clear is Plaintiff's Complaint includes allegations relating to Defendant Homolak and Defendant Puszkar and statements allegedly made by them at public meetings.

Plaintiff's Complaint references Defendant Homolak's alleged statements during a June 12, 2023 St. Charles City-County Council Meeting. (*See* Plaintiff's Complaint ¶¶53-67) This Meeting took place prior to this Defendant's first alleged involvement on June 20, 2023 when the Exhibit G Facebook post was made. (*See* Plaintiff's Complaint ¶¶ 68 and 69) Plaintiff has no potential claim for Civil Conspiracy against this Defendant based on anything that allegedly happened on June 12, 2023, or before June 20, 2023, as Plaintiff has not plead facts to support any such claim.

Plaintiff's Complaint also alleges Defendant Homolak and Defendant Puszkar attended a St. Louis Library Board Meeting on June 20, 2023. (*See* Plaintiff's Complaint ¶¶76-102) As for

the allegations about Defendant Homolak and the June 20, 2023 Meeting, paragraphs 80 through 83 of the Complaint include information about the alleged statements. These paragraphs fail to set forth the specific comments by Defendant Homolak. Even so, what these paragraphs generally allege is Defendant Homolak made statements about Plaintiff's appearance and dress attire. As for the allegations about Defendant Puszkas and the June 20, 2023 Meeting, paragraphs 85 through 91 of the Complaint include information about the alleged statements. Likewise, these paragraphs fail to set forth the specific comments by Defendant Puszkas. Even so, what these paragraphs generally allege is Defendant Puszkas made statements about Plaintiff's appearance and dress attire. As for the allegations about Defendant Homolak and the July 31, 2023 Meeting, paragraphs 136 through 142 of the Complaint include information about the alleged statements. These paragraphs fail to set forth the specific comments by Defendant Homolak. Even so, what these paragraphs generally allege is Defendant Homolak made statements relating to Plaintiff's appearance and dress attire.

Within the Complaint, Plaintiff says: 1) Plaintiff was assigned the sex of male at birth but does not comport with traditional sex stereotypes of a person assigned the sex of male; 2) Plaintiff identifies as non-binary and trans-femme, meaning Plaintiff uses feminine (she/her) and gender neutral (they/them) pronouns rather than masculine (he/him) pronouns; 3) Plaintiff expresses non-binary gender identity by wearing a combination of traditionally masculine and feminine clothing, make-up (mascara and eye shadow) and natural facial hair; and 4) Plaintiff dresses this way at work. (See Plaintiff's Complaint ¶¶7, 8 and 9) Plaintiff's Complaint confirms the alleged statements related to Plaintiff's appearance and dress attire are essentially true. But, even if they were not essentially true, the alleged statements amount to opinions based on their perceptions and beliefs and cannot form the basis of a Civil Conspiracy claim. The alleged statements made at

these public hearing are not actionable. Given a Civil Conspiracy claim is not actionable itself in the absence of an underlying wrongful act or tort, the alleged statements cannot form the basis of a Civil Conspiracy claim.

Plaintiff has failed to state a claim for Civil Conspiracy on which relief can be granted against this Defendant and the claim should be dismissed against this Defendant in its entirety.

Should the Court determine otherwise, at a minimum the Court should enter its Order dismissing the claim to extent it to based on the alleged statements made at the public meetings discussed above.

E. PLAINTIFF’S CLAIMS FOR PRE-JUDGMENT INTEREST SHOULD BE DISMISSED AS SUCH RECOVERY IS NOT PERMITTED.

Within Plaintiff’s Suggestions in Opposition, Plaintiff does address the argument raised by Defendant in Section E of Defendant’s previously filed Suggestions in Support. As discussed therein, within Counts 23, 24 and 25 and the Alternate and Second Alternate Counts, Plaintiff seeks the recovery of pre-judgment interest. The general rule is pre-judgment interest is not allowed in tort cases. *Pediatric Associates, Inc. v. Charles L. Crane Agency Co.*, 21 S.W.3d 884, 886 (Mo. App. 2000)(citation omitted). Plaintiff has not pled any basis for such an award, as no basis exists. As such, Plaintiff’s prayer for an award of pre-judgment interest should be dismissed.

F. PLAINTIFF’S SUGGESTION THE COURT SHOULD DENY DEFENDANT’S MOTION AND AWARD PLAINTIFF’S ATTORNEY FEES IS WITHOUT MERIT.

Within Section VI of Plaintiff’s Suggestions in Opposition, Plaintiff suggests the Court should enter its Order “overruling Defendants’ motion and award Plaintiff the attorney fees to which she is entitled.” Again, Plaintiff is referencing the Defendants as a collective group. With this statement, Plaintiff is essentially suggesting if the Court finds any one of the pending Motions to Dismiss should be denied then they should all be denied and this would mean Plaintiff should

be entitled to attorney fees from all Defendants for time spent responding to all the various pending Motions. Plaintiff's position is without merit.

RSMo. 537.528 relates to SLAPP Motions based on conduct and speech at public hearings or public meetings. What must first be pointed out is only a small portion of this Defendant's pending Motion to Dismiss involves RSMo. 537.538. The statute was only mentioned in Section D. of Defendant's previously filed Suggestions in Support when addressing the Civil Conspiracy claim. Some of the alleged statements of Defendant Puszkar and Defendant Homolak referenced in the Complaint were made at public meetings and that is why RSMo. 537.528 was raised Section D. The majority of Defendant's pending Motion has nothing to do with RSMo. 537.528. Rather, the majority of the Motion relates to Plaintiff's failure to plead claims in compliance with Missouri law and assertion of claims not recognized in Missouri. What also requires mention is none of the arguments raised by this Defendant in regard to RSMo. 537.528 or otherwise are frivolous or intended to cause unnecessary delay. Rather, they are based on Missouri law and are warranted given the claims and allegations in the Complaint.

Now, to the extent Plaintiff is suggesting Plaintiff spent significant time responding to this Defendant's pending Motion to Dismiss, the facts suggest otherwise. Within Plaintiff's Suggestions in Opposition, Plaintiff many times fails to focus on the arguments raised by this Defendant and/or the actions of this Defendant which form the basis of the claims against it. For example, throughout Plaintiff's Suggestions in Opposition, Plaintiff continually refers to the "Defendants" and "Defendants' Motions" and the actions of other Defendants, which for the most part has nothing to do with the Motion filed by this Defendant. What is also apparent from reviewing Plaintiff's Suggestions in Opposition is Plaintiff has been cutting and pasting information from Suggestions in Opposition filed in response to other Defendants' Motions. For

example, as discussed in Section B. above, Plaintiff continuously references “Defendants” and appears to be addressing some argument raised by some other Defendant in a different Motion. Likewise, as discussed in Section C above, Plaintiff makes references to Defendant Barrett, his alleged statements and says Defendant Barrett’s Motion should be dismissed. It appears Plaintiff spent minimal time preparing an Opposition to this Defendant’s Motion, including responding to Section D of this Defendant’s Motion wherein RSMo. 537.528 was addressed, as Plaintiff has already prepared and filed similar Oppositions to other Defendants’ Motions.

II. ALTERNATIVELY, SHOULD THE COURT DETERMINE DISMISSAL IS NOT APPROPRIATE, THIS DEFENDANT REQUESTS THE COURT ENTER ITS ORDER REQUIRING THAT PLAINTIFF PROVIDE A MORE DEFINITE STATEMENT OF THE CLAIMS ASSERTED AGAINST THIS DEFENDANT.

As discussed above and in Defendant’s previously filed Suggestions in Support, dismissal of all the Count 23, 24 and 25 claims and Count 29 is appropriate as they fail to state any claim on which relief can be granted against this Defendant. Should the Court find dismissal is not appropriate, this Defendant requests the Court enter its Order requiring that Plaintiff provide a more definite statement of the claims asserted against this Defendant. As discussed above and in Defendant’s previously filed Suggestions in Support, there are issues with the allegations, lack of facts and various claims asserted against this Defendant. There are issues with every claim asserted against this Defendant. Given this, should the Court determine dismissal in the entirety is not appropriate, Plaintiff should be required to fully plead the claims in compliance with Missouri law.

Conclusion

As discussed above and in Defendant’s previously filed Suggestions in Support, there are issues with all the claims asserted against this Defendant in Plaintiff’s Complaint. Given this, dismissal of the claims asserted against this Defendant is appropriate. In the alternative, should the Court determine dismissal in its entirety is not appropriate, this Defendant requests the Court

enter its Order requiring that Plaintiff provide a more definite statement of the facts supporting all claims asserted against this Defendant.

WHEREFORE, improperly designated Defendant Grace Church STL prays the Court enter its Order dismissing the claims asserted against it in Plaintiff's Complaint or, in the alternative, enter its Order requiring that Plaintiff provide a more definite statement of the facts supporting all the claims asserted against this Defendant and for such further and different relief as the Court deems appropriate.

Respectfully submitted,

/s/ Merry M. Tucker

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Certificate of Service

The undersigned hereby certifies that the instant pleading was electronically filed through the Missouri State e-filing system this 4th day of October, 2024, which will provide copies of same to all attorneys of record.

/s/ Merry "Maggie" Tucker
ATTORNEY FOR IMPROPERLY
DESIGNATED DEFENDANT GRACE
CHURCH STL

