IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI
11TH JUDICIAL CIRCUIT

DANNY ROBERSON,	)	
	)	
Plaintiff,	)	No. 2411-CC00522
	)	
v.	)	
	)	
RACHEL HOMOLAK, et al.,	)	
	)	
Defendants	)	

DEFENDANT CHRIS BARRETT'S REPLY SUGGESTIONS IN SUPPORT OF HIS SPECIAL MOTION TO DISMISS

I. Both the anti-SLAPP statute and common law absolute immunity are applicable to this case.

Roberson insists that neither Missouri's anti-SLAPP statute nor common law absolute immunity are applicable to this case. He notes that the anti-SLAPP statute is merely procedural, and that it does not of itself create any form of substantive defense or immunity to a defamation action. (Opp.2-3). But this misses the point. Barrett acknowledges that the anti-SLAPP statute does not create any substantive defenses, and never claimed otherwise. Rather, the anti-SLAPP statute gives defendants the *procedural* right to have a dismissal motion filed under it decided on an expedited basis, without discovery being conducted in the meantime. Barrett did not—and does not—base any of his substantive legal arguments in support of his motion on the anti-SLAPP statute. Rather, he has invoked it to ensure this Court rules on his substantive legal arguments on an expedited basis and without having to undergo discovery.

Roberson further argues that the common law grant of absolute immunity to defamatory statements made during a legislative proceeding does not exist in Missouri. The sole basis he gives for this (Opp.3-4) is the anti-SLAPP statute's declaration that "[n]othing in [the anti-SLAPP statute] limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation." § 537.528.5. But this simply clarifies that the anti-SLAPP statute is procedural, not substantive, in nature. It does not say anything one way or the other about what substantive defenses actually exist to a claim, including a defamation claim, and that it should not be construed as prohibiting any substantive defenses to a defamation claim that might actually exist. The absolute immunity Barrett has raised has its origins in the common law and not in any statute passed by the Missouri General Assembly. Indeed, the Illinois Court of Appeals adopted this absolute privilege on its own authority, despite there being no indication that the Illinois General Assembly had enacted such an immunity as a statutory privilege. *See Krueger v. Lewis*, 794 N.E.2d 970, 976 (Ill. App. 1st Dist. 2003). What's more, given that § 537.528.5 explicitly declares that it does not prohibit any party to exercise a common law remedy, the anti-SLAPP statute cannot be a basis for holding that absolute immunity under the common law does not exist in Missouri.

In addition, Roberson argues that even though Missouri has privileged the publication of official records of legislative proceedings, *see* Restatement (Second) of

Torts §611 (1976), this privilege only "pertains to the news press and/or reporter repeating the defamatory comments as part of making a report on proceedings of public interest, not to the Defendant as the original speaker of defamatory comments." (Opp.5). This is totally groundless. The only two cases that Roberson cites to support this argument (Opp.5) involved news organizations, but nothing in either opinion supports the notion that the privilege is limited only to such organizations. *See Lami v. Pulitzer Pub. Co.*, 723 S.W.2d 458, 459 (Mo. App. E.D. 1986); *Hyde v. City of Columbia*, 637 S.W.2d 251, 268 n.24 (Mo. App. W.D. 1982). Indeed, the court in *Hyde* concluded that the published material at issue was not even a record of an official proceeding in the first place. *Id*. The privilege does not require the publisher to be a member of a formal new organization. Roberson's argument to the contrary fails.

II. Roberson is a limited purpose public figure.

Roberson also claims that he is not a limited purpose public figure because he "only worked periodic shifts in the children's section because of a universal requirement that all librarians work in that section of the library." (Opp.7). This ignores the fact that trans-ideology is a highly contentious topic at the moment, including the issue of men dressing as women. Roberson voluntarily chose to dress as a woman in the children's section of the library. As such, he has either "voluntarily inject[ed] himself or [has been] drawn into a particular public controversy and thereby become[ ] a public figure for a limited range of issues."

Stepnes v. Ritschel, 663 F.3d 952, 963 (8th Cir. 2011) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974)). Either way, he is a limited purpose public figure.

III. Barrett's statements are protected opinion.

Roberson (Opp.8) cites to *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 312 (Mo. 2013) in support of her argument that Barrett's statements are not protected opinion. It is true that in *Nazeri* the Missouri Supreme Court held that "[m]atters of sexuality and sexual conduct are intensely private, intensely sensitive, and a false public statement concerning them is particularly harmful." *Id*. But Roberson overlooks the fact that here, there is no dispute over the actual conduct that Roberson committed. It is undisputed by all sides that Roberson dressed as a woman in the children's section of a public library. What is in dispute is whether this behavior, of itself, amounts to the "sexualization and indoctrination of kids," as Barrett characterized it. Roberson insists it does not, while Barrett insists that it does. By definition, this is a matter of opinion over which different minds can come to different conclusions. As such, it is a matter of opinion protected under the First Amendment. The same goes for the term "pervert." Barrett insists that by dressing as a woman in the children's section of a library, Roberson is engaging in behavior that makes him a "pervert." Roberson disagrees that this behavior makes him a "pervert." As a matter of opinion, it cannot form the basis of a defamation action.

IV. Roberson has failed to plead adequate damages.

In response to Barrett's argument that Roberson has failed to plead anything beyond a subjective claim of embarrassment as damages, Roberson points out that

he also pled that he "suffered damage through public humiliation, embarrassment, degradation," as well as "hatred and rage" towards him, resulting in "professional and personal injury from the community." (Opp.9). But this is a textbook example of the conclusory allegations of damages that the Supreme Court of Missouri held was insufficient to state a defamation claim in *Kenney v. Wal-Mart Stores, Inc.*, 100 S.W.3d 809 (Mo. 2003). In *Kenney*, the Supreme Court concluded that the plaintiff failed to establish sufficient evidence of damages when all she claimed was "that she felt 'embarrassed, shocked, [and] made' because of the [alleged defamatory statements]." *Id*. at 817. Indeed, the plaintiff could "not name a single person who held her in lower regard after seeing the [alleged defamatory statements]." *Id*. This is no different from what Roberson alleges here. He never specifies who expressed "hatred and rage" towards him, nor does he specify how his reputation in the community has been damages. He has not sufficiently pled damages.

V. Roberson's prima facie tort claims fail on the merits.

While Roberson acknowledges that a prima facie tort may not duplicate other intentional torts, he insists that such duplication is not at issue here because he did not plead in the alternative to his defamation claims that Barrett made false statements against him, but rather that Barrett committed an intentional action to injure Roberson. (Opp.11). This ignores how the intentional act Roberson accuses Barrett of committing is the publication of the allegedly false statements. Roberson cannot maintain a prima facie tort claim.

VI. Barrett's motion to dismiss is not frivolous or solely intended to cause unnecessary delay, and as such Roberson is not entitled to attorneys' fees.

Finally, Roberson asks for attorneys' fees under § 537.528.2 on the ground that Barrett's special motion to dismiss is frivolous and serves no other purpose than to cause unnecessary delay. (Opp.12). This is preposterous. An issue is only frivolous if the matter is not "fairly debatable." *See Kruse v. Karlen*, 692 S.W.3d 43, 53 (Mo. App. E.D. 2024). As the briefing and arguments in this case have demonstrated, this case raises serious issues which are far more than fairly debatable, including whether absolute immunity under the common law applies to this case, whether Barrett's statements are matters of opinion, whether Roberson is a limited purpose public figure, and whether Roberson has sufficiently pled damages. Roberson's claim for attorneys' fees should be denied.

VII. Conclusion

This Court should dismiss all of Roberson's claims with prejudice, deny her request for attorneys' fees, and award Barrett reasonable attorneys' fees and costs.

Respectfully submitted,

/s/ John M. Reeves

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed with the Court's electronic filing system, to be served on all counsel of record via the same ECF system, on **October 7, 2024.** The undersigned further certifies that, pursuant to Rule 55.03(a), he has signed and retained the original of the foregoing and this certificate.

/s/ John M. Reeves