IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

STEVEN KRAWATSKY, *et al.*,	:	
Plaintiffs	:	
v.	:	Case No. 455979V
RACHEL AVRUNIN, *et al.*,	:	
Defendants	:	

SHARON BARAD, *et al.*,	:	
Plaintiffs	:	
v.	:	Case No. 465254V
STEVEN KRAWATSKY, *et al.*,	:	
Defendants	:	

JOEL AVRUNIN, *et al.*,	:	
Plaintiffs	:	
v.	:	Case No. 471875V
STEVEN KRAWATSKY, *et al.*,	:	
Defendants	:	

OPINION SUPPORTING ORDER GRANTING DEFENDANTS HANNAH DREYFUS'S AND THE JEWISH WEEK, INC.'S MOTION FOR SUMMARY JUDGMENT

This action is before the Court on Defendants Hannah Dreyfus and the Jewish Week, Inc.'s Motion for Summary Judgment (Filed 02/11/2021) ("Summary Judgment Motion"), Plaintiff Steven and Shira Krawatsky's Response to Defendants Hannah Dreyfus and the Jewish Week, Inc.'s Motion for Summary Judgment (Filed 03/15/2021) ("Opposition"), and the Reply Memorandum of Points and Authorities in Further Support of Defendants Hannah Dreyfus and the

Jewish Week, Inc.'s Motion for Summary Judgment (Filed 03/25/2021) ("Reply"). Oral argument was heard on July 8, 2021, following which the Court took the action under advisement.[1]

On March 8, 2022, the Court granted the Newspaper Defendants' Summary Judgment Motion.[2] The Court explains in this Opinion the reasons for that action.[3]

Plaintiffs' Claims Against the Newspaper Defendants

From 2010 to 2015, Plaintiff Steven Krawatsky ("Rabbi K") was a head counselor at Camp Shoresh, a summer camp for children in Adamstown, Frederick County, Maryland. The parents of three boys who had attended the summer camp during that time have alleged that Rabbi K had sexually assaulted the boys. In 2017, Defendant Hannah Dreyfus ("Ms. Dreyfus"), a reporter for The Jewish Week, Inc. ("Jewish Week") (collectively, "the Newspaper Defendants"), began investigating the allegations. As a result of Ms. Dreyfus's investigation, on January 17, 2018, Jewish Week published an editorial drafted by its Editor and two articles authored by Ms. Dreyfus.

In the Third Amended Complaint (Filed 07/23/2021) ("Complaint"), Rabbi K and his wife, Plaintiff Shira Krawatsky ("Ms. Krawatsky) (collectively, "Plaintiffs" or the "Krawatskys"), allege 18 causes of action against Ms. Dreyfus and Jewish Week:

- Count 7 – Defamation (Ms. Dreyfus)[4]
- Count 8 – Defamation (Jewish Week)

[1] On October 15, 2021, the Krawatskys filed a "Line Filing Proposed Order" and a 13-page proposed "Order Denying Defendants' Hannah Dreyfus and The Jewish Week, Inc.'s Motion for Summary Judgment." On October 15, 2021, the Newspaper Defendants filed a 6-page "Defendants The Jewish Week, Inc. and Hannah Dreyfus's Response to Plaintiffs' 'Proposed Order' Denying Their Motion for Summary Judgment." These filings are essentially a surreply and a sur-surreply, respectively, neither of which was requested by the Court or permitted by the Scheduling Order (as amended) or the Maryland Rules. These filings are in addition to the 59-page Summary Judgment Motion, 46-page Opposition, and 30-page Reply. The Court declines to consider these additional and unnecessary submissions and cautions all parties to this action that future submissions not in accordance with the Scheduling Order (as amended) and the Maryland Rules could result in the imposition of sanctions.

[2] Order Granting Hannah Dreyfus's and Jewish Week, Inc.'s Summary Judgment Motion (Entered 03/10/2022).

[3] The Summary Judgment Motion was directed to the Second Amended Complaint (Filed May 6, 2019). Following the hearing on the Summary Judgment Motion, the Krawatskys on July 23, 2021 filed their Third Amended Complaint. Apparently recognizing the correctness of the Newspaper Defendants' argument that under *Deems v. Western Maryland Ry. Co.*, 247 Md. 95, 115 (1967), a loss of consortium claim can only be alleged in a joint claim by both spouses, the Third Amended Complaint appears to simply amend the loss of consortium claims to bring them on behalf of both Rabbi K and Ms. Krawatsky. The Court will treat the Summary Judgment Motion as being directed to the parallel claims in the Third Amended Complaint.

[4] The Krawatskys have used Roman Numerals to number the 87 (LXXXVII) Counts of their Third Amended Complaint. The Court finds this unnecessarily cumbersome and for simplicity will instead use Arabic Numerals herein.

- Count 19 – Conspiracy – Defamation (Ms. Dreyfus)
- Count 20 – Conspiracy – Defamation (Jewish Week)
- Count 27 – Invasion of Privacy – False Light (Ms. Dreyfus)
- Count 28 – Invasion of Privacy – False Light – Malice (Jewish Week)
- Count 39 – Conspiracy – Invasion of Privacy – False Light (Ms. Dreyfus)
- Count 40 – Conspiracy – Invasion of Privacy – False Light (Jewish Week)
- Count 46 – Tortious Interference with Economic Relations (Ms. Dreyfus)
- Count 47 – Tortious Interference with Economic Relations (Jewish Week)
- Count 53 – Loss of Consortium (Ms. Dreyfus)
- Count 54 – Loss of Consortium (Jewish Week)
- Count 58 – Intentional Infliction of Emotional Distress (Ms. Dreyfus)
- Count 59 – Intentional Infliction of Emotional Distress (Jewish Week)
- Count 65 – Conspiracy – Intentional Infliction of Emotional Distress (Ms. Dreyfus)
- Count 66 – Conspiracy – Intentional Infliction of Emotional Distress (Jewish Week)
- Count 72 – Aiding and Abetting (Ms. Dreyfus)
- Count 73 – Aiding and Abetting (Jewish Week)

The Newspaper Defendants' Summary Judgment Arguments

A. Defamation claims.

The Newspaper Defendants contend that they are entitled to summary judgment on the defamation claims for three reasons:

1. "Many of the specific allegedly defamatory statements at issue are also nonactionable because they are either privileged, incapable of defamatory meaning, true, or constitute protected opinion."[5]

2. "The Newspaper Defendants' two Articles and Editorial at issue, viewed as a whole, are not defamatory as a matter of law because they do not assert that Plaintiff Steven Krawatsky committed sexual abuse."[6]

[5] Summary Judgment Motion ¶ 1a.

[6] Summary Judgment Motion ¶ 1b.

3. "Plaintiff Steven Krawtsky [sic] is a limited public figure and there is no clear and convincing evidence that any of the allegedly defamatory statements were made with actual malice, as required to sustain a defamation claim by a public figure."[7]

B. All non-defamation claims.

The Newspaper Defendants contend that they are entitled to summary judgment on all the non-defamation claims "because granting summary judgment on the defamation claims requires judgment on Plaintiffs' non-defamation claims as a matter of law, as they are based on the same newspaper articles."[8]

C. False light invasion of privacy.

The Newspaper Defendants contend that they are entitled to summary judgment on the false light invasion of privacy claims because the undisputed material facts fail to establish that they acted with actual malice.[9]

D. Tortious interference with economic relations.

The Newspaper Defendants contend that they are entitled to summary judgment on the tortious interference with economic relations claims because the undisputed material facts show that they committed no independently wrongful or unlawful conduct.[10]

E. Intentional infliction of emotional distress.

The Newspaper Defendants contend that they are entitled to summary judgment on the intentional infliction of emotional distress claims because (1) the undisputed material facts show they committed no extreme or outrageous conduct, and (2) speech on a matter of public concern cannot be the basis of liability for an Intentional infliction of emotional distress claim.[11]

F. Loss of consortium, aiding and abetting, and conspiracy.

The Newspaper Defendants contend that they are entitled to summary judgment on the loss of consortium, aiding and abetting, and conspiracy claims because the undisputed material facts

[7] Summary Judgment Motion ¶ 1c.

[8] Summary Judgment Motion ¶ 2.

[9] Summary Judgment Motion ¶ 3a.

[10] Summary Judgment Motion ¶ 3b.

[11] Summary Judgment Motion ¶ 3c.

do not establish the existence of (1) an underlying tort, and (2) any conspiracy with any other defendant to commit any tort.[12]

G. Intentional infliction of emotional distress, aiding and abetting, and conspiracy.

The Newspaper Defendants contend that they are entitled to summary judgment on Ms. Krawatsky's intentional infliction of emotional distress, civil conspiracy, and aiding and abetting claims because the undisputed material facts show that the Newspaper Defendants directed no conduct at her.[13]

H. Ms. Krawatsky's loss of consortium claims.

The Newspaper Defendants contend that they are entitled to summary judgment on Ms. Krawatsky's loss of consortium claims because (1) summary judgment on Rabbi K's claims requires summary judgment on Ms. Krawatsky's loss of consortium claim, (2) loss of consortium may only be asserted on behalf of both spouses, and (3) recovery is precluded for damages based on allegedly defamatory statements that are not "of and concerning" Ms. Krawatsky.[14]

Discussion

A. Counts 7 and 8 – Defamation.

The Newspaper Defendants contend that they are entitled to summary judgment on the Krawatskys' defamation claims because Rabbi K is a limited public figure and there is no clear and convincing evidence that they made any allegedly defamatory statements with actual malice.[15] Plaintiffs contend that the Newspaper Defendants are not entitled to summary judgment because Rabbi K is a private individual or figure, not a limited public figure, and they therefore need not prove actual malice.[16] They also aver that even if Rabbi K were determined to be a limited public figure, disputed material facts require a jury to decide whether the Newspaper Defendants acted with actual malice.[17]

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[12] Summary Judgment Motion ¶ 3d.

[13] Summary Judgment Motion ¶ 3e.

[14] Summary Judgment Motion ¶ 3f.

[15] Summary Judgment Motion at 2, 22, 30, 34, 39.

[16] Opposition at 11, 12, 17, 28.

[17] Opposition at 12, 28-29.

1. Rabbi K is a limited public figure.

The Court must determine whether Rabbi K is a private individual or figure, or a public figure, because "when the speech is of public concern and the plaintiff is a public official or public figure, the Constitution clearly requires the plaintiff to surmount a much higher barrier before recovering damages from a media defendant than is necessary with a private plaintiff." *Waicker v. Scranton Times Limited Partnership*, 113 Md.App. 621, 629 (1997) (internal citations omitted). The threshold question, therefore, is whether Rabbi K is a limited public figure. Whether a plaintiff is a public figure is solely an issue of law. *Id.*[18]

The Newspaper Defendants do not contend that Rabbi K is a general public figure. They argue that Rabbi K is a limited public figure. Plaintiffs contend that Rabbi K is neither a general nor limited public figure, but rather a private individual or figure.

One can be deemed a public figure for defamation litigation purposes in one of two ways:

> [I]ndividuals may achieve such pervasive fame or notoriety that they become public figures for all purposes and in all concepts; or individuals may voluntarily inject themselves or be drawn into a particular public controversy and thereby become public figures for a limited range of issues.

Id. at 629-30.

To determine whether one has become a limited public figure, the Court must apply a two-factor inquiry: "(1) was there a particular public controversy that gave rise to the alleged defamation; and, if so, (2) was the nature and extent of the plaintiff's participation in that particular controversy sufficient to justify public figure status?" *Id.* at 630.

The parties agree that a particular controversy gave rise to the alleged defamation; they disagree over whether that controversy was public in nature.

The Newspaper Defendants contend that the record is clear that "there was a public controversy as early as 2016 about whether there was more to allegations of sexual abuse by a former Shoresh employee than what had been publicly disclosed, pointing out that (1) several nationally prominent blogs, organizations, and *The Baltimore Jewish Times* had weighed in, (2) the founder of a national organization to address sexual abuse in the Jewish community had

[18] The parties agree that whether a plaintiff is a public figure is solely an issue of law. *See* Summary Judgment Motion at 31, Opposition at 11, and Reply at 1, 5. Both parties have requested that the Court resolve this issue, as a matter of law, through the Summary Judgment Motion. *See* Summary Judgment Motion at 34 and Opposition at 28 ("Summary judgment should be entered finding that Rabbi K is a private individual, not a public figure.").

featured the case in a prominent journal article, and (3) Defendant Chaim Levin ("Mr. Levin") had posted on his blog that "ultimately went viral" a warning identifying Rabbi K and stating that "organizations that you rely on to protect your children completely messed up this case and failed the parents of these victims on every level possible."[19] Rabbi K testified that he felt like this had become even more of a public controversy at this point.[20]

Plaintiffs do not dispute the existence of a controversy that gave rise to the alleged defamatory statements.[21] They contend that the boys' and parents' allegations against Rabbi K concerned only those families, the resolution of those false allegations did not affect any other person, and the public's interest does not change the nature of the controversy.[22]

The record is clear that the allegations against Rabbi K did not concern only the boys and their families. The outcome of this controversy would certainly affect the general public or some segment of it in an appreciable way. The controversy concerned the safety of children. Moreover, it concerned broader policy questions about how Jewish institutions should best protect children upon learning of a sexual abuse allegation against one of its employees. The Court concludes that there was a particular public controversy that gave rise to the alleged defamation.

The parties also disagree over the nature and extent of Rabbi K's participation in the controversy. The Newspaper Defendants contend that Rabbi K's affirmative action to establish a positive public image, including working with a professional reputation management consultant to respond to the controversy by creating a positive image and silencing the negative information, confers upon Rabbi K limited public figure status. They argue that the controversy preexisted the allegedly defamatory statements' publication and Rabbi K retained public figure status at the time of the alleged defamation. Plaintiffs contend that Rabbi K's retention of a professional reputation management consultant is insufficient to justify limited purpose public figure status because the content of his publications did not address the defamatory allegations, but rather related either to Rabbi K's accomplishments or Jewish teachings.[23]

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[19] Summary Judgment Motion at 24, 32-33.

[20] Summary Judgment Motion at 24, 33.

[21] Opposition at 9, 12, 19, 20, 21, 26, 28.

[22] Opposition at 19.

[23] Opposition at 19-20.

Clearly, the controversy preexisted the allegedly defamatory statements' publication. The Krawatskys hired the public relations consultant in November 2017 "to help restore the damage to Rabbi K's online reputation caused by the controversy."[24] The articles and editorial were published two months later, on January 17, 2018.[25] The controversy continued unabated following the public relations consultant's November 2017 retention, through the articles' and editorial's January 17, 2018 publication.

Using the media to gain notoriety and establish a positive public image can confer limited public figure status. *Waicker*, 113 Md.App. at 633. It is beyond dispute that the professional reputation management consultant's objective was to influence and counter the adverse impact of the unfavorable publicity that attended the Newspaper Defendants' two Articles and Editorial. Rabbi K's public relations campaign did not substantively respond to the allegations[26] but rather was a more generalized effort to improve his image. Its objective was not to reply to the allegations, but rather to silence the negative information. By waging this public relations campaign, Rabbi K became a public figure in terms of First Amendment protection.

Communications made in fair self-defense are privileged. *Shepherd v. Baer,* 96 Md. 152, 53 A. 790, 791 (1902); *see also Foretich v. Capital Cities/ABC, Inc.*, 37 F.3d 1541, 1558 (4th Cir. 1994) ("… [A] person who has been publicly accused of committing an act of serious sexual misconduct … cannot be deemed a 'limited-purpose public figure' merely because he or she makes reasonable public replies to those accusations."). However, the privilege extends only to such communications as are fairly an answer to the attacks. *Shepherd*, 53 A. at 791; *see also Foretich*, 37 F.3d 1560 ("A supposed 'reply' is not truly a reply if it is 'patently unrelated to the subject matter' of the antecedent attack."). Rabbi K cannot avail himself of the self-defense privilege because the professional reputation management consultant's communications were patently and admittedly unrelated to the subject matter of the Newspaper Defendants' publications.

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[24] Opposition at 9.

[25] Summary Judgment Motion at 20, 34; Opposition, Ex. R. Plaintiffs' averment at p. 8 that they were published January 17, 2018, is obviously a typographical error.

[26] Reply at 6 ("… Plaintiffs did *not* reply to the abuse allegations."); Opposition at 9 ("[The professional reputation management consultant] tried to restore Rabbi K's reputation by making positive information (unrelated to the controversy) more easily accessible to an internet user who searched for Rabbi K on Google."); Opposition at 20 ("The content did not address the defamatory allegations.").

2. There is no clear and convincing evidence that the Newspaper Defendants acted with actual malice.

To recover for defamation by a public figure, a plaintiff must prove, by clear and convincing evidence, that the statements in issue were defamatory in meaning, false, made with actual malice, and damages resulted. *Waicker*, 113 Md.App. at 637. The question whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law. *Id.* Statements made with actual malice are those that are made with knowledge that they were false or with reckless disregard of the truth. *Id.* at 638.

"The actual malice standard is subjective – it rests on the defendant's state of mind at the time of publication, and is a fact intensive inquiry." *Batson v. Shiflett*, 325 Md. 684, 729-30 (1992). To prove actual malice, a plaintiff must demonstrate:

> a defamatory statement was a calculated falsehood or lie knowingly and deliberately published, a defamatory statement was the product of the publisher's imagination; a defamatory statement was so inherently improbable that only a reckless person would have put it in circulation; or the publisher had obvious reasons to distrust the accuracy of the alleged defamatory statement or the reliability of the source of the statement.

Capital-Gazette Newspapers, Inc. v. Stack, 293 Md. 528, 539 (1982) (cleaned up).

The Supreme Court has explained the meaning of reckless conduct in the defamation context:

> Reckless conduct is not measured by whether a reasonably prudent person would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

St. Amant v. Thompson, 390 U.S. 727, 731 (1968) (cleaned up).

The Supreme Court has reiterated that while "reckless disregard for the truth" is not easily defined, it does mean having either "high degree of awareness of … probable falsity or "entertain[ing] serious doubts" as to the truth of the challenged statements. *Batson*, 325 Md. at 728-29 (quoting *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 667, 109 S.Ct. 2678, 2685-86, 105 L.Ed.2d 562, 576 (1989).

This subjective test thus focuses on what the defendant personally knew and thought. *Attorney Grievance Com'n of Maryland v. Stanalonis*, 445 Md. 129, 143 (2015). Malice is not

established if there is evidence to show that the publisher acted on a reasonable belief that the defamatory material was substantially correct and there was no evidence to impeach the publisher's good faith. *Capital-Gazette Newspapers, Inc. v. Stack*, 293 Md. at 540. The test to prove actual malice is a harsh one and proof under it is difficult. *A. S. Abell Co. v. Barnes*, 258 Md. 56, 81 (1970); *Kapiloff v. Dunn*, 27 Md.App. 514, 545 (1975), *cert. denied*, 426 U.S. 907 (1976).

The Krawatskys acknowledge that from the very beginning, Ms. Dreyfus believed the allegations that she had been told about Rabbi K.[27] Among the reasons supporting Ms. Dreyfus's belief in the allegations' truth were:

1. Ms. Dreyfus was first introduced to Mr. Avrunin by Dr. Berkovits, who she understood to be one of the leading abuse authorities in the Jewish community, as a parent who can speak about abuse and whose case Dr. Berkovits thought sufficiently compelling to include as a prime example in a journal article.

2. Ms. Dreyfus interviewed Mr. and Mrs. Avrunin by telephone multiple times and Mr. Avrunin once in person, during which they told her their child's allegations and provided her with documents.

3. Mr. and Mrs. Avrunin told Ms. Dreyfus that two other boys had made allegations against Rabbi K.

4. Ms. Dreyfus spent more than two months investigating the boys' allegations and the response of institutions and leaders in Maryland, New York, Pittsburgh, and elsewhere.

5. Ms. Dreyfus spoke or otherwise communicated with more than 30 sources, including at least one parent of each of the alleged victims, the Frederick County Assistant State's Attorney, a Frederick County Sheriff's Office Detective, a Frederick County Sheriff's Office spokesperson, representatives of the Maryland Attorney General's Office, employees of the Orthodox Union, parents of children at Beth Tfiloh, a parent of another child at Camp Shoresh, persons with knowledge of the Avrunins' situation in Baltimore, and other members of the Baltimore Jewish community.

[27] Opposition at 2 ("From the very beginning, Ms. Dreyfus believed Dr. Berkovits and Mr. Avrunin and expressed sympathy for Mr. Avrunin … From that very first meeting, Ms. Dreyfus believed the allegations that Mr. Avrunin told her about Rabbi K."); Opposition at 33 ("[Ms. Dreyfus] believed the Avrunins' allegations from the very first meeting in November 2017."); Opposition at 33 n. 23 ("In fact, Ms. Dreyfus believed the Avrunins' allegation before even knowing their real names.").

6. Shannon Pulsipher, a CPS investigator with 13 years of experience, cautioned the Orthodox Union that Rabbi K should not be leading a youth service.

7. Ms. Dreyfus interviewed multiple experts, including at least 6 experts on child sexual abuse.

8. Experts told Ms. Dreyfus that false abuse allegations are rare, CPS indications are not the norm, and settling appeals is common.

9. There was no apparent motive to fabricate the allegations.

10. Rabbi K did not return a voicemail message from Ms. Dreyfus in which she explained why she wanted to speak with him.

11. Rabbi K's attorney refused Ms. Dreyfus's request to speak with Rabbi K, instead providing her with a written statement in lieu of the requested interview.

In opposing the Newspaper Defendants' summary judgment motion, the Krawatskys argue that disputed material facts require a jury to decide whether the Newspaper Defendants acted with actual malice.[28] They contend that "[t]he designated material facts provide circumstantial evidence of Ms. Dreyfus's negligence, improper motive, and intent to 'expose' Rabbi K and certain Jewish institutions from which a jury could find the existence of actual malice."[29]

"The use of circumstantial evidence to prove actual malice is explicitly permitted and encouraged by *St. Amant*." *Batson*, 325 Md. at 730. "Actual malice may be inferred from objective facts. … These facts should provide evidence of negligence, motive, and intent such that an accumulation of the evidence and appropriate inferences supports the existence of actual malice." *Id.* (cleaned up). However, circumstantial evidence of those factors can only ever be relevant if it could be "supportive of the court's ultimate conclusion" that a reporter had serious doubts about the truth of what was published. *Harte-Hanks Communications*, 491 U.S. at 667-68. Ill will, hatred, or the desire to injure taken alone, are insufficient to establish actual malice. *Batson*, 325 Md. at 730.

The Krawatskys contend that the following evidence of negligence, motive, and intent supports the existence of actual malice:

[28] Opposition at 28.

[29] Opposition at 30 – 31.

1. Negligence: The Krawatskys' expert on journalism best practices, Joel Kaplan, opined that the two stories written by Ms. Dreyfus and published in The Jewish Week departed from basic journalism standards.[30]

2. Motive and intent: a jury could find that Ms. Dreyfus acted with ill will and improper motive. … Ms. Dreyfus harbored an intent to expose Rabbi K as the child molester she assumed him to be.[31]

If proven, the accumulation of this evidence and appropriate inferences would not support the existence of actual malice. Abundant evidence establishes that, from the very beginning, Ms. Dreyfus believed that Rabbi K had abused one or more of the children who had accused him of abuse. Despite her belief, however, Ms. Dreyfus thoroughly investigated the allegations. The facts simply do not support the Krawatskys' contention that Ms. Dreyfus "accept[ed], at face value, the facts of a story from a single participant without further investigation."[32]

The Krawatskys' proffered circumstantial evidence is precisely the type of evidence the Court of Appeals has summarized as insufficient to constitute actual malice:

> Actual malice cannot be established merely by showing that: the publication was erroneous, derogatory or untrue, the publisher acted out of ill will, hatred or a desire to injure the official, the publisher acted negligently, the publisher acted in reliance on the unverified statement of a third party without personal knowledge of the subject matter of the defamatory statement, or the publisher acted without undertaking the investigation that would have been made by a reasonably prudent person. Moreover, malice is not established if there is evidence to show that the publisher acted on a reasonable belief that the defamatory material was substantially correct and there was no evidence to impeach the publisher's good faith.

Batson, 325 Md. at 729 (quoting *Capital-Gazette Newspapers, Inc. v. Stack*, 293 Md. at 539-40 (cleaned up).

Applying the principles set forth in *Batson*, the Court concludes that there is no evidence that the Newspaper Defendants either had a high degree of awareness of the probable falsity of any of the published statements or entertained any serious doubts as to the publications' truth. The

[30] Opposition at 31.

[31] Opposition at 33.

[32] Opposition at 33.

evidence shows that the Newspaper Defendants reasonably believed that the published statements were substantially correct, and nothing was presented to impeach their good faith. The undisputed material facts conclusively resolve the issue of actual malice as a matter of law. Accordingly, employing the requisite clear and convincing evidence standard, the Court finds insufficient proof of actual malice upon which to find the Newspaper Defendants liable for defamation. The Court will grant Defendants Hannah Dreyfus and The Jewish Week, Inc.'s Motion for Summary Judgment (Filed 02/11/2021) as to Counts 7 (Defamation as to Defendant Hannah Dreyfus) and 8 (Defamation as to Defendant The Jewish Week, Inc.) of Plaintiffs Steven and Shira Krawatsky's Third Amended Complaint (Filed 07/23/2021).

B. Counts 27, 28 – Invasion of privacy – false light.

The Krawatskys contend in Counts 27 and 28 that the Newspaper Defendants, "with actual malice and with reckless or tortious disregard for the truth … gave publicity about Rabbi K that places him before the public in a false light."[33]

False light invasion of privacy is defined as:

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if (a) the false light in which the other person was placed would be highly offensive to a reasonable person, and (b) 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 other would be placed.

Bagwell v. Peninsula Regional Medical Center, 106 Md.App. 470, 513-14 (1995), *cert. denied*, 341 Md. 172 (1996).

To be held liable for false light invasion of privacy, a plaintiff must prove that the statement was made with actual malice, *i.e.*, knowledge of falsity or reckless disregard for the truth. *Lindenmuth v. McCreer*, 233 Md.App. 343, 367 (2017). As discussed *supra*, the Krawatskys cannot establish that the Newspaper Defendants acted with actual malice, *i.e.*, they knew of or recklessly disregarded the falsity of the publicized matter. For this reason, the Newspaper Defendants are entitled to summary judgment as a matter of law on the false light invasion of privacy claims.

[33] Third Amended Complaint ¶¶ 300, 304, 308, 311.

C. Counts 46, 47 – Tortious interference with economic relations.

In Counts 46 and 47, the Krawatskys contend that the Newspaper Defendants' statements and actions were intentional, improper, and willful, and calculated to cause Rabbi K damage in a loss of his lawful business.[34]

The elements required to establish the tort of wrongful interference with contractual or business relations are (1) intentional and willful acts; (2) calculated to cause damage to the plaintiff in his lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the defendants' part (which constitutes malice); and (4) actual damage and loss resulting. *Blondell v. Littlepage*, 413 Md. 96, 125 (2010) (quoting *Kaiser v. Financial Protection Marketing, Inc.* 376 Md. 621, 628-29 (2003)).

The Court of Appeals has defined the wrongful or unlawful acts necessary to support the tort of interference with economic relations:

> [W]rongful or malicious interference with economic relations is interference by conduct that is independently wrongful or unlawful, quite apart from its effect on the plaintiff's business relationships. Wrongful or unlawful acts include common law torts and violence or intimidation, defamation, injurious falsehood or other fraud, violation of criminal law, and the institution or threat of groundless civil suits or criminal prosecutions in bad faith.

Alexander & Alexander Inc. v. B. Dixon Evander & Associates, Inc., 336 Md. 635, 657 (1994).

As discussed *supra*, as a matter of law, the Krawatskys cannot establish defamation or injurious falsehood. Moreover, there is no evidence of any other independently wrongful or unlawful conduct, apart from the Newspaper Defendants' conduct's effect on the Krawatskys' business relationships. There is insufficient evidence to show any common law torts, violence or intimidation, fraud, criminal law violations, the institution or threat of groundless civil suits, or bad faith criminal prosecutions. Having failed to establish that the Newspaper Defendants engaged in any independently wrongful or unlawful conduct, as a matter of law, the Krawatskys cannot prevail on their tortious interference with economic relations claims. For this reason, the Newspaper Defendants are entitled to summary judgment as a matter of law on the tortious interference with economic relations claims.

[34] Third Amended Complaint ¶¶ 445, 446, 451, 452.

Even assuming *arguendo* that the Krawatskys had identified some legally sufficient evidence of independently wrongful or unlawful conduct, their tortious interference with economic relations claims cannot survive. The Krawatskys have not identified evidence of the Newspaper Defendants having acted with the unlawful purpose to cause them damage and loss, without right or justifiable cause on the Newspaper Defendants' part. The same absence of malice that is fatal to the defamation claims is likewise fatal to the tortious interference with economic relations claims. For this additional reason, the Newspaper Defendants are entitled to summary judgment as a matter of law on the tortious interference with economic relations claims.

D. Counts 58, 59 – Intentional infliction of emotional distress.

The Krawatskys in Counts 58 and 59 contend that the Newspaper Defendants' conduct was "intentional, reckless, and in deliberate disregard of a high degree of probability that emotional distress would result to Plaintiffs …, extreme and outrageous and beyond the bounds of decency in society …, [causing them] to suffer severe and extreme emotional distress …".[35] The Krawatskys' intentional infliction of emotional distress claims against the Newspaper Defendants are based entirely on the published articles at issue.

Intentional infliction of emotional distress requires that the conduct at issue be extreme and outrageous. *Harris v. Jones*, 281 Md. 560, 566 (1977); *Mixter v. Farmer,* 215 Md.App. 536, 547-48 (2013). The tort should be "used sparingly and only for opprobrious behavior that includes truly outrageous conduct." *Kentucky Fried Chicken Nat. Management Co. v. Weathersby,* 326 Md. 663, 670 (1992). Whether conduct may be considered extreme and outrageous is a question of law for the Court to determine in the first instance. *Harris,* 281 Md. 560 at 569. For conduct to meet the "outrageousness" test, it must be "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* at 567.

The Court's absence of actual malice finding is fatal to the Krawatskys' intentional infliction of emotional distress claims. The Krawatskys have failed to identify evidence of extreme and outrageous conduct sufficient to support their intentional infliction of emotional distress

[35] Third Amended Complaint ¶¶ 489 – 91, 493 – 95.

claims. For this reason, the Newspaper Defendants are entitled to summary judgment as a matter of law on the intentional infliction of emotional distress claims.[36]

E. Counts 53, 54 – Loss of consortium.

In Counts 53 and 54, Rabbi K and Ms. Krawatsky claim that they "have suffered injury to their marital relationship involving loss of society, affection, conjugal fellowship, and/or impairment of sexual relations" as a direct and proximate result of the Newspaper Defendants' actions.[37]

"A claim for loss of consortium arises from the loss of society, affection, assistance, and conjugal fellowship suffered by the marital unit as a result of the physical injury to one spouse through the tortious conduct of a third party." *Oaks v. Connors*, 339 Md. 24, 33-34 (1995). A loss of consortium claim can only be asserted in a joint action for injury to the marital relationship. *Deems v. Western Maryland Ry. Co.*, 247 Md. 95, 115 (1967).

In the first three iterations of their Complaint,[38] only Ms. Krawatsky asserted claims for injury to the marital relationship. Since the loss of consortium claims were not asserted in a joint action, those first three Complaints all failed to state a loss of consortium claim upon which relief can be granted. Nearly three years after they brought this action, the Krawatskys filed their Third Amended Complaint, jointly asserting in their Complaint's fourth iteration their loss of consortium claims. The Newspaper Defendants did not move to strike the Third Amended Complaint or file a new or additional answer. As a result, the Newspaper Defendants' previously filed answer shall be treated as their answer to the amendment. *See* MD. RULES, RULE 2-341(a) ("If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment."). It appears that the filing of the Third Amended Complaint has caused the Newspaper Defendants to abandon their summary judgment argument based upon the consortium claim not having been asserted jointly by both Rabbi K and Ms. Krawatsky.

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[36] Ms. Krawatsky's intentional infliction of emotional distress claim fails for the additional reason that that undisputed material facts show that none of the conduct attributed to the Newspaper Defendants was directed at her. The allegedly defamatory statements are not "of and concerning" Ms. Krawatsky. For this additional reason, therefore, the Newspaper Defendants are entitled to summary judgment as a matter of law on Ms. Krawatsky's intentional infliction of emotional distress claims.

[37] Third Amended Complaint ¶¶ 471, 472, 474, 475.

[38] Complaint (Filed 10/16/2018), Amended Complaint (Filed 02/04/2019), and Second Amended Complaint (Filed 05/06/2019).

Nonetheless, the Court concludes that the loss of consortium claims fail. The loss of consortium claim is dependent upon the viability of the underlying defamation claim. As discussed *supra*, the Krawatskys have failed to sufficiently establish that the Newspaper Defendants committed an underlying tort. The Krawatskys have failed to adduce sufficient proof of actual malice upon which to find the Newspaper Defendants liable for defamation. For this reason, the Newspaper Defendants are entitled to summary judgment on the loss of consortium claims.

F. Counts 72 and 73 – Aiding and Abetting.

In Counts 72 and 73, Rabbi K and Ms. Krawatsky claim that the Newspaper Defendants "aided, abetted, and encouraged the other defendants' wrongful and tortious conduct, and knowingly provided substantial assistance, aid, and encouragement to the other defendants in their defamation of Rabbi K."[39]

The elements of a tortious aiding and abetting action are:

1. Independent tortious conduct by the direct perpetrator of the tort;
2. Substantial assistance, aid, or encouragement to the principal tortfeasor; and
3. The aider and abettor's actual knowledge of the wrongful conduct and his or her role in furthering such conduct.

Alleco Inc. v. Jeanette Weinberg Foundation, Inc., 340 Md. 176, 186 (1995).

The record evidence offered in support of the Krawatskys' allegations fails to demonstrate that the Newspaper Defendants' actions, alleged to have aided and abetted the other defendants' defamation of Rabbi K, were anything more than those normally attendant to a newspaper reporter investigating a news story. Ms. Dreyfus communicating with the parents of children alleging abuse and Mr. Levin does not give rise to an aiding and abetting claim. The Krawatskys' proof of cooperation among the defendants, who share a common purpose to produce a news story, is insufficient to sustain an actionable aiding and abetting claim. Such cooperation among the defendants does not rise to the level of any defendant encouraging or inciting any other defendant's alleged defamation of Rabbi K. For this reason, the Newspaper Defendants are entitled to summary judgment as a matter of law on the aiding and abetting claims.[40]

[39] Third Amended Complaint ¶¶ 547, 551.

[40] Ms. Krawatsky's aiding and abetting claims fail for the additional reason that that undisputed material facts show that none of the allegedly tortious conduct was directed at her; the allegedly defamatory statements are not "of and concerning" Ms. Krawatsky. For this additional reason, therefore, the Newspaper Defendants are entitled to summary judgment as a matter of law on Ms. Krawatsky's aiding and abetting claims.

G. Counts 19, 20, 39, 40, 65, 66 – Conspiracy.

In Counts 19, 20, 39, 40, 65, and 66 of their Third Amended Complaint, the Krawatskys contend that the Newspaper Defendants conspired with each other and with Defendants Rachel Avrunin, Joel Avrunin, Sharon Avrunin-Becker, Scott Becker, Yaniv Barad, Sharon Barad, and Chaim Levin to defame and commit other torts against Rabbi K. Counts 19 and 20 allege a conspiracy to commit defamation, Counts 39 and 40 allege a conspiracy to commit invasion of privacy, and Counts 65 and 66 allege a conspiracy to commit intentional infliction of emotional distress.

The Newspaper Defendants seek summary judgment on the conspiracy claims for several reasons:

1. Non-defamation torts based on the same speech as a defamation claim must meet the same First Amendment requirements, *i.e.*, a plaintiff must prove that the publication contains a false statement of fact made with actual malice.[41]

2. The Krawatskys cannot prevail on the conspiracy claims because, as a matter of law, they have not established that the Newspaper Defendants committed an underlying tort.[42]

3. There is no evidence that the Newspaper Defendants conspired with each other or with any of the other defendants to commit defamation or any other tort.[43]

The Court concludes that the conspiracy to commit defamation claims (Counts 19 and 20) fail because the Krawatskys have failed to adduce sufficient proof of actual malice upon which to find the Newspaper Defendants liable for defamation. *See Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988) ("Public figures … may not recover for the tort of intentional infliction of emotional distress by reason of publications … without showing in addition that the publication contains a false statement of fact which was made with 'actual malice' …"); *see also Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 194 F.3d 505, 522 (1999) (A plaintiff cannot recover defamation-type damages under non-reputational tort claims, without satisfying the stricter (First Amendment) standards of a defamation claim, as such an "end-run around" First Amendment strictures is foreclosed by *Hustler*.).

[41] Summary Judgment Motion at 39.

[42] Summary Judgment Motion at 43.

[43] Summary Judgment Motion at 43.

The Court also concludes that the Krawatskys cannot prevail on their conspiracy to commit defamation claims (Counts 19 and 20) because, as a matter of law, they have not established that the Newspaper Defendants committed an underlying tort. Conspiracy is not a separate tort capable of independently sustaining an award of damages in the absence of other tortious injury to the plaintiff. *Alleco Inc. v. Harry & Jeanette Weinberg Foundation, Inc.*, 340 Md. 176, 189 (1995). It is well settled that a conspiracy, standing alone, is not actionable. *Van Royen v. Lacey*, 262 Md. 94, 97 (1971).

The Third Amended Complaint is unclear as to whether the conspiracy to commit defamation claims (Counts 19 and 20) are premised upon the Newspaper Defendants' allegedly defamatory publications (Counts 7 and 8), Mr. Levin's allegedly defamatory publications, the children's parents' allegedly defamatory statements, or all the many allegedly defamatory statements. After incorporating by reference paragraphs 1 through 238 of the Third Amended Complaint, the Krawatskys allege:

- "As set forth herein, Defendant Hannah Dreyfus conspired with Defendants Rachel Avrunin, Joel Avrunin, Sharon Avrunin-Becker, Scott Becker, Yaniv Barad, Sharon Barad, Chaim Levin, and the Jewish Week, Inc. to publish defamatory statements to third parties regarding Rabbi K."[44]
- "Defendant Hannah Dreyfus is legally at fault in making, and conspiring with the other defendants to make, said statements."[45]
- "As set forth herein, Defendant The Jewish Week, Inc. conspired with Defendants Rachel Avrunin, Joel Avrunin, Sharon Avrunin-Becker, Scott Becker, Yaniv Barad, Sharon Barad, Chaim Levin, and Hannah Dreyfus to publish defamatory statements to third parties regarding Rabbi K."[46]
- "Defendant The Jewish Week, Inc. is legally at fault in making, and conspiring with the other defendants to make, said statements."[47]

The Summary Judgment Motion focuses only on the Newspaper Defendants' allegedly defamatory publications. The Krawatskys' Opposition is as imprecise in this regard as is their

[44] Third Amended Complaint ¶ 240.

[45] Third Amended Complaint ¶ 245.

[46] Third Amended Complaint ¶ 249.

[47] Third Amended Complaint ¶ 254.

Third Amended Complaint. However, the Third Amended Complaint's allegations that Ms. Dreyfus and The Jewish Week, Inc. are "legally at fault *in making* … the said statements" suggest, and the Court finds, that the Newspaper Defendants' publications, and not any of the other defendants' statements, are the intended subject of the Krawatskys' conspiracy to commit defamation claims.

The Court also concludes that the conspiracy to commit invasion of privacy claims (Counts 39 and 40) fail because the Krawatskys have failed to adduce sufficient proof of actual malice upon which to find the Newspaper Defendants liable for defamation. As discussed *supra*, the Krawatskys cannot establish that the Newspaper Defendants acted with actual malice, *i.e.*, they knew of or recklessly disregarded the falsity of the publicized matter. For this reason, the Newspaper Defendants are entitled to summary judgment as a matter of law on the conspiracy to commit invasion of privacy claims (Counts 39 and 40).

The Court also concludes that the conspiracy to commit intentional infliction of emotional distress claims (Counts 65 and 66) fail because the Krawatskys have failed to adduce sufficient proof of actual malice upon which to find the Newspaper Defendants liable for defamation. The Court's absence of actual malice finding is fatal to the Krawatskys' conspiracy to commit intentional infliction of emotional distress claims. The Krawatskys have failed to identify evidence of extreme and outrageous conduct sufficient to support their conspiracy to commit intentional infliction of emotional distress claims. For this reason, the Newspaper Defendants are entitled to summary judgment as a matter of law on the conspiracy to commit intentional infliction of emotional distress claims.[48]

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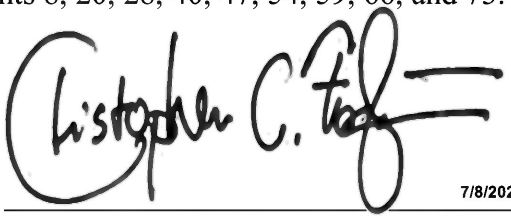
[48] Ms. Krawatsky's conspiracy claims also fail because the undisputed material facts show that none of the allegedly tortious conduct was directed at her; the allegedly defamatory statements are not "of and concerning" Ms. Krawatsky. The Newspaper Defendants are entitled to summary judgment as a matter of law on Ms. Krawatsky's conspiracy claims.

Conclusion

For the reasons stated in this Opinion, the Court on March 8, 2022 granted the Newspaper Defendants' Summary Judgment Motion.[49] Summary judgment was granted in favor of Hannah Dreyfus and against Plaintiffs Steven and Shira Krawatsky as to Counts 7, 19, 27, 39, 46, 53, 58, 65, and 72. Summary judgment was granted in favor of The Jewish Week, Inc. and against Plaintiffs Steven and Shira Krawatsky as to Counts 8, 20, 28, 40, 47, 54, 59, 66, and 73.



Hon. Christopher C. Fogleman
Associate Judge
Circuit Court for Montgomery County, Maryland

July 8, 2022

[49] Order Granting Hannah Dreyfus's and Jewish Week, Inc.'s Summary Judgment Motion (Entered 03/10/2022).