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STATE OF MISSOURI)
) ss. Court Document Not an Official Court Document
COUNTY OF SCOTLAND)
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Document **IN THE CIRCUIT COURT OF SCOTLAND COUNTY, MISSOURI** (an Official

RANDALL TOBLER, MD,,)
)
PLAINTIFF,)
)
vs.) CASE NUMBER 23SE-CC00015
)
SCOTLAND COUNTY MEMORIAL)
HOSPITAL DISTRICT)
)
And)
)
ACHIM HOYAL,)
)
DEFENDANTS.)

Scotland County Circuit Court
Filed
DEC 14 2023
Memphis, Missouri
Julie Monroe, Circuit Clerk

JUDGMENT

Now on this 6th day of December, 2023, the date set for the hearing of the Defendants' motion to dismiss the Plaintiff's Petition. The Plaintiff, Randall Tobler, MD appears in person and with his attorney Lowell D. Pearson and the Defendants appear by their attorneys Robert Ryan Harding, Eric Packel, Adam Hirtz, Megan Harper and Andrew David Kinghorn.. The cause is called by the Court, the parties announce ready and argument is heard and the case is submitted and taken under advisement by the Court.

Now on this 12th day of December, 2023 the Court duly informed does find as follows:

1. That it has jurisdiction of the parties and subject matter of the action.
2. This is second motion to dismiss argument conducted in this case, where the Defendants are seeking an order of dismissal on Counts II, (defamation). Count III, (civil conspiracy) and Count IV (tortious interference with

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business expectancy). Back on September 11, 2023 the Court granted the Defendants' motion to dismiss but allowed the Plaintiff 30 days to amend. After having 30 days to amend the Plaintiff elected to make no changes to Counts III and IV and as such those Counts are dismissed by the Court with prejudice on the same basis as the September 11, 2023 ruling, which said docket entry is incorporated herein by this reference as if fully set out herein.

3. The Plaintiff in its response to Defendant's motion to dismiss acknowledged that the sole issue before the Court was whether Plaintiff's petition Count II defamation should be dismissed for failure to state a claim.

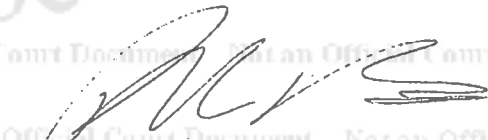
4. The elements of a claim for defamation are 1) publication, 2) of a defamatory statement, 3) that identifies the plaintiff, 4) that is false, 5) that is published with the requisite degree of fault, and 6) damages the plaintiff's reputation. *Farrow v St. Francis Med, Ctr*, 407 S.W.3d 579, 598-99 (Mo. banc 2013). The real issue presented here is the element of publication, which is simply the communication of a defamatory matter to a third person. *Blake v May Dep't Stores Co.* 882 S.W.2d 688, 690 (Mo. App. E.D. 1994). Plaintiff in his First Amended petition seeks to establish the element of publication from the Defendant Scotland County Hospitals board of director meetings, claiming Defendant Hoyal in numerous board meetings from August 15, 2022 through August 18, 2022 claimed that Plaintiff had embezzled money through the SCH day care and pharmacy and committed Stark Law violations. The Plaintiff claims these statements were false, and upon information and belief claims that Defendant Hoyal also falsely claimed outside of Board meetings that Dr. Tobler "embezzled" money from the hospital and committed Stark Law violations. The Plaintiff also claims that Hoyal's false and defamatory viewpoints were adopted by Fulk and Webber. Plaintiff also claims that Fulk was overheard outside of a Board meeting telling a CEO of another local hospital that fraud and embezzlement were going on at SCH. Plaintiff next claims that rumors regarding Dr. Randy Tobler embezzling \$16 million from the hospital have been published in the Missouri Independent. Plaintiff claiming those rumors started with the false defamatory and slanderous statements of Hoyal, Fulk and Weber's repeated endorsement and agreement with those statement.

5. Missouri has applied intra-corporate immunity to defamation claims regarding certain business communications. *Blake v May Dep't Stores Co.* 882 S.W.3d 688 at 690 (Mo. App. E.D. 1994). Specifically, the rule applies to communications between officers of the same corporation and in the due and regular course of the corporate business, or between different offices of the same corporation. *Hellensen v Knaus Truck Lines, Inc.* 370 S.W.2d 341, 344 (Mo. 1963). In the context of a business, repetition of a defamatory statement will not constitute publication when the business is merely communicating with itself.

Id. Blake, and Perez v. Boatmens Nat'l Bank, 788 S.W.2d 296, 300 (Mo. App. E.D. 1990). Thus, whatever was discussed at the Board meetings between the Board members as a matter of law will not constitute publication of the defamatory statements. The Plaintiff next claims that publication occurred by Hoyal also falsely claiming outside of board meetings that Dr. Tobler embezzled money from the hospital and committed Stark law violations but the allegation fails to establish to what third-party that this publication was made. The Plaintiff next claims that publication occurred by Fulk being overheard outside of a Board meeting telling a CEO of another local hospital that "Fraud and Embezzlement" were going on at SCH. This claim of publication also fails since the Plaintiff was not identified in this communication. *Id. Farrow at 598-99*. The last effort to allege publication in the Plaintiff's First Amended Petition is the claim that rumors regarding Dr. Randy Tobler embezzling \$16million from the hospital have been published in the Missouri Independent. This claim of publication must also fail since there is no allegation as to whom issued this false rumor for publication other than a vague reference to slanderous statements of Hoyal and Funk and Weber's repeated endorsement and agreement with those statements. No where in the First Amended petition is there an allegation that the Board, Hoyal, Funk or Weber caused this false press release to be issued. As such the claim of Defamation must fail.

WHEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that That Defendants' motion to dismissed for failure to state a cause of action as to Count II defamation is sustained. Count II is dismissed without prejudice for failure to state a cause of action. Counts III civil conspiracy and Count IV tortious interference with business expectancy are dismissed with prejudice for failure to state of a cause of action.

SO ORDERED: November 16, 2023



Judge Rick Roberts
Presiding Circuit Judge
First Judicial Circuit Court
State of Missouri