DISTRICT COURT, GILPIN COUNTY, COLORADO 2960 Dory Hill Road, Suite 200 Black Hawk, Colorado 80422	DATE FILED: August 9, 2021 1:28 PM CASE NUMBER: 2020CV2
PATRICIA UNRUH, and **ROBERT UNRUH,** Plaintiffs, **v.** **STORM MEDIA, LLC,** **CHRIST THE KING COMMUNITY CHURCH,** **AARON STORMS,** **TOM DAVIDSON,** **HANNAH RAYNES,** **RYAN RAYNES,** **JOSH BLOOM,** **JACK VAN SON,** **GARY KING,** and **JEFF OLIVER,** Defendants.	▲ COURT USE ONLY ▲ **Case No. 2020CV2** **Division G**

ORDER RE: MOTIONS TO DISMISS

THIS MATTER comes before the Court on several motions to dismiss filed by all Defendants. Previous to this Order, the parties have fully briefed the motions and a hearing was held.

I.

1. The standards of review for Rule 12(b)(5) dismissal motions are summarized here because Plaintiffs are *pro se* and due to the special nature of claims and the dismissal motions. To be clear, a Rule 12(b)(5) motion contends the complaint, if the specific factual allegations are true, nonetheless fails to state a claim for relief under recognized Colorado law.

2. The historical standard for Rule 12(b)(5) challenges was that dismissal was viewed with such disfavor so that denials were common unless it appeared "to a certainty" or "beyond doubt" that plaintiff can prove "no set of facts" to entitle

them to relief. *See, e.g., Davidson v. Dill*, 503 P.2d 157 (Colo. 1972); *Bauer v. McCloskey*, 150 P.2d 861 (Colo. 1944). These standards are mostly cited by Plaintiffs. Recently, however, the Colorado Supreme Court softened the strict language against dismissal for various policy reasons, including the costs of modern litigation practice. *Warne v. Hall*, 373 P.3d 588, 593-594 (Colo. 2016). The current minimum pleading standard is that "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Id.* at 589-90 ((quoting U.S. Supreme Court precedent). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

3. For claims of defamation, a court's inquiry under Rule 12(b)(5) is more rigorous when analyzing pleadings using this new pleading standard. In the specific context of a motion to dismiss a defamation claim, "because the threat of protracted litigation could have a chilling effect on the constitutionally protected right of free speech, prompt resolution of defamation actions, by summary judgment or motion to dismiss, is appropriate." *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 138 F. Supp. 3d 1191, 1199 (D. Colo. 2015), *aff'd*, 861 F.3d 1081 (10th Cir. 2017); *see also Brown v. O'Bannon*, 84 F. Supp. 2d 1176, 1181 (D. Colo. 2000) (dismissal granted where alleged defamatory statement, considered in context in which it was made, could not support defamation claim as a matter of law).

4. In ruling on a motion to dismiss a defamation claim, "[w]hether a statement is defamatory," as well as "whether allegedly defamatory language is constitutionally protected opinion is a matter of law" to be determined by the Court. *Zueger v. Goss*, 343 P.3d 1028, 1034 (Colo. App. 2014); *Sall v. Barber*, 782 P.2d 1216, 1218 (Colo. App. 1989); *Bucher v. Roberts*, 595 P.2d 239, 241 (Colo. 1979) ("Whether a particular statement constitutes fact or opinion is a question of law."). Similarly, "the meaning of the allegedly defamatory words is a matter of law left to the court—not a factual allegation to which it must defer." *Fry v. Lee*,

408 P.3d 843, 849 (Colo. App. 2013)(news article stating plaintiff was "charged" with "plagiarism" was not defamatory).

5. And yet in this case, the Court's analysis still does not end there. A recently enacted statute raises the pleading standard even higher. If a complaint alleges a claim, such as defamation, arising from a Defendant's statements on a public issue, the Court must determine "there is a reasonable likelihood that the plaintiff will prevail on the claim." C.R.S. § 13-20-1101(3) (effective July 1, 2019). The Colorado legislature called this challenge a "special motion to dismiss." The Court is to evaluate all pleadings and "supporting and opposing affidavits stating facts" by any party in making its determination. The statute allows an immediate appeal of this Court's order either granting or denying dismissal. *Id.* 13-20-110(7). Further, in a significant departure from established law, a prevailing defendant may request attorney fee and cost reimbursement while a prevailing plaintiff is entitled to fee reimbursement only in special circumstances. *Id.* 13-20-110(4)(b).

II.

6. Plaintiffs' Complaint and other pleadings tell a story of betrayal by friends and colleagues in a small community. The entire Gilpin County has only a few thousand residents. Patricia Unruh was a free-lance reporter (not an employee) for the local weekly newspaper, the *Weekly Register-Call* published by Defendant Storman Media. Occasionally she submitted an article on local events, especially about education. Patricia Unruh had also for several years followed the annual theatre production by the county high school. In a merger of these interests, Patricia Unruh would typically submit a "review" article of the play to the newspaper publisher but she was under no obligation to do so.

7. As noted in the Complaint, the annual play is a significant cultural event each year in this small community. Defendant Hannah Raynes is the school employee who is the "producer" and director of the annual theatre production. Hannah Raynes selects the play to perform each year. Her husband, defendant Ryan Raynes, is also employed by the school as the play's technical director. In 2019, Hannah Raynes chose the play "She Kills Monsters," which is a story about

lesbianism, bullying and fighting. The dialogue contains potentially offensive language.

8. Patricia Unruh attended the play. Previously, she attended a short play preview of one scene and wrote positively about the presentation. However, the entire play itself caused her distress. Plaintiffs' Complaint alleges that the story was "permeated with gratuitous…profanity, explicit and graphic sexual discussion, references to sexual organs, and lewd remarks about sexual acts." Beyond this content objection, Patricia Unruh believed the play was quite inappropriate for the stage of a K-12 school and for its students.

9. Patricia Unruh quietly decided, therefore, to not write a full review article for submission to the newspaper. In this case about speech, Patricia Unruh decided to be silent. By doing so, she wanted to avoid being unkind to the student performers and participants. Privately, she also wanted to avoid conflict if she wrote about her true opinions.

10. Defendants Raynes were very disappointed and frustrated about the omitted coverage of the play. In a letter to the newspaper editor, Ryan Raynes said the omission was "unnecessary, irresponsible and unjust." In her separate letter, Hannah Raynes was "incredibly heartbroken" and "baffled" by the decision. Other citizens also wrote letters to the newspaper complaining about "silencing the conversation" about this community event and more broadly the social issues in the play. The Complaint alleges that these letters were a coordinated series of attacks.

11. The newspaper decided to publish these letter complaints without editing. Unlike the other letters, the published letters by the Raynes specifically named plaintiff "Patti Unruh" or "Patty". Defendant Hannah Raynes said "I feel Patty is unethical in her role as a journalist of your paper" who did not know "the true meaning of the arts and understand the importance the theatre serves the students in Gilpin." Defendant Ryan Raynes accused Patti Unruh of personal bias and unacceptable beliefs because he claimed she said to someone "there was nothing positive to report."

12. Plaintiffs allege that Defendants Storm Media and Aaron Storms published these letters despite knowing they asserted "falsehoods." The falsehood was primarily the writers' assumption the Patricia Unruh had an obligation, perhaps as a newspaper employee, to write a play review. As a result, Plaintiff Patricia Unruh claims the newspaper and its publisher Aaron Storms created an "atmosphere of community shaming" that has the status of defamation *per se*, causing humiliation and emotional distress. After the criticism, the newspaper arranged for another reporter to submit a review article.

13. Defendant Aaron Storms and Plaintiff Robert Unruh were both board members at a local community church. In light of the ridicule against the newspaper and Patricia, Robert Unruh repeated requested the church "make a statement of Christian principle on the issues" presented in the play. Plaintiffs also blamed board member and publisher Storms for the public controversy, while Storms faulted Patricia Unruh's decision to not write an article.

14. Thus, the conflict about play content and news reporting spread into Unruhs' and Storms' church, who all sought support and assistance from church membership and leadership. After failed efforts at reconciliation, the church board decided that Robert Unruh should be removed as a board member. After further weeks passed, the church board and pastor decided to remove Patricia and Robert Unruh (and their son) as members of the church. Ostensibly, this action was taken due to "threatening and divisive" behavior while attending services and also a few alleged unauthorized actions or statements by Unruhs on behalf of the church, all of which Plaintiffs also claim are false. To document this break, a letter was formally delivered to Unruhs explaining the formal board resolution and that they were "prohibited from entering the property of Christ the King Community Church – Black Hawk, effective immediately." The church forewarned a local deputy sheriff to avoid such trespassing.

III.

15. This community conflict has now landed in this Court. Plaintiffs lament the social insults to their lifestyle choices. For some defendants, Plaintiffs

tell a story of betrayal by friends and colleagues. For all defendants, Plaintiffs recite behavior that was unexpected, unkind and unjust.

16. For legal relief, Plaintiffs assert two claims for "defamation per se" and for "defamation" each separately against the "newspaper-related defendants" (Storman Media and Aaron Storms) and against the "church-related defendants" (Christ the King Community Church, Aaron Storms, Tom Davidson, Josh Bloom, Jack Van Son, Gary King and Jeff Oliver). A fifth claim is asserted against all defendants for "defamation per quod false light and defamation by implication."

a. The First Claim alleges the Newspaper Defendants "publicized defamatory statements" about Patricia Unruh including "person to person" discussions, the letters to the editor, and by organizing and recruiting a campaign of letter-writing.

b. The Second Claim alleges the Church Defendants "publicized defamatory statements" about plaintiff including "person to person" discussions, and in the community gossip, verbal and written.

c. The Third Claim against Newspaper Defendants and Fourth Claim against Church Defendants allege Plaintiffs are generally defamed by the same statements, explicit and implicit, and a campaign of defamation, verbal and written.

d. The Fifth Claim against that all Defendants have acted in concert to subject Plaintiffs "to false light and defamation by implication" through "the totality of the statements, misrepresentations or deceptive impressions" that are collectively defamation *per quod*.

17. The Court has viewed the Complaint with the understanding the Plaintiff are proceeding *pro se* without legal training. The properly formatted Complaint and other pleadings are well-written and eloquent, which is likely a result of journalist experience. Nonetheless, the Court must use specific legal requirements as an overlay for even articulate claims. After careful study, for example, the Court believes the Second, Fourth and Fifth Claims are all defamation *per quod* claims with different or overlapping defendants.

18. The Court understands that this case is at the dismissal stage of pleading, so the trial level of proof is not now required. As discussed further below, this Court must determine, however, if the alleged defamatory statements that require proof by clear and convincing evidence because they involve a matter of public concern. *McIntyre v. Jones*, 194 P.3d 519, 524 (Colo. App. 2008). The trial proof burden is not now irrelevant, therefore.

19. The Court also notes that in one or more places in the Complaint, Plaintiffs allege that certain defamatory conduct was negligent. "Proof that a defendant was negligent in ascertaining the truth of the statement is insufficient." *McIntyre*, 194 P.3d at 524. Negligence is not the correct level of culpability for defamation in Colorado in matters involving a public issue. *See Diversified Management, Inc. v. Denver Post, Inc.,* 652 P.2d 1103, 1109-10 (Colo. 1982)(reckless disregard applies rather than negligence).

20. Plaintiffs argue that C.R.S. § 13-20-1103 is irrelevant to their claims because they never sought to deprive anyone from their speech right to comment on an issue of public interest, such as writing an article or otherwise commenting on the play. Whether good policy or not, the statute's focus is broader however. The statute applies to any "cause of action" that "aris[es] from any act…in furtherance of the person's right of…free speech…in connection with a public issue…." Defamation is a cause of action that arises from the speech, written or oral. Thus, assuming the statements are not dismissible under the plausibility standard. the statute provides further protections for the claims here.

IV.

21. Plaintiffs are private individuals and not public figures. Plaintiffs claim that the article writing decisions by Patricia Unruh, and her employment status with the newspaper, were not a public issue, interest or concern. She further argues that her reputation and fitness as a journalist were defamed.

22. The question of whether a matter is of public concern, interest or issue is one of law. *McIntyre*, 194 P.3d at 525. The Court determines, as conceded by the Complaint, that the annual school play was a matter of public

concern or interest. The letters to the editor did not criticize, for example, the quality of her journalism work product. Ironically because she was a respected journalist, her decision to not write an article became a matter of public concern as part of a larger concern, *i.e.,* why did a respected reporter for a respected county newspaper not publish a review article on the county school's annual theatre production?

23. This is not a case where false facts about Plaintiffs were reported in a news article by the Newspaper Defendants. Rather, opinion statements were made by others and were published in the editorial section pages reserved as a public forum. Typically, as here, readers submit by letter their reactions to news stories or their commentaries on news coverage. In this case, the letters were commenting on the lack of news coverage by community members. The comments were harsh criticism of the newspaper in general and also Plaintiff Patricia Unruh specifically by Defendant Raynes.

24. In a subsequent issue, the "Letters to the Editor" page published a lengthy response by Patricia Unruh. The newspaper also published other response letters by supporters including an explanation by publisher Storms. The remarkable letter by Storms cited its policy for publication with also hindsight regret. Defendants Storms also "hoped" that the complainers "are ashamed of your hurtful behavior" and for "a better reaction the next time there is a controversial issue that needs to be addressed." Overall, the Court finds the letters published by the newspaper in this fashion were expressions of opinion, not false statements of fact. *Sall v. Barber*, 782 P.2d 1216, 1219 (Colo. App. 1989) (opinions in letters to editor).

25. Plaintiffs contend that these opinion statements are actionable, however, because they were based on the false assumption that Plaintiff Patricia Unruh was employed by the newspaper. When a statement is actionable not from the opinion itself but from the false assertion of underlying facts, that false assertion must be actionable as defamatory. *Id.* at 1219; *Burns v. McGraw-Hill Broadcasting Co, Inc.,* 659 P.2d 1351, 1360 (Colo. 1983) (opinions are actionable if they imply existence of an "undisclosed defamatory factual predicate"). Here,

there is nothing defamatory about the false assumption that Patricia Unruh was an employee of the newspaper.

26. To be clear, the statements that Plaintiff Patricia Unruh was "unethical" and biased, who holds "unacceptable beliefs" and who "does not know the true meaning of the arts" is ridicule and hurtful name-calling. These are not false statements of fact as required by defamation law but are opinions. For example, the Court will not hold a trial on ideas of journalistic ethics or who knows the true meaning of the arts, or whether it was more unfair to students to publish a critical article or not to publish any article. Rather, all these statements are opinions that can not be proven as false as required for defamation.

V.

27. With regard to the Church Defendants, the Court determines that the issues regarding leadership and membership in a local church are not a matter of public concern or public interest. *See, e.g., McIntyre*, 194 P.3d at 526-27 (governance of homeowner association).

28. The Rule 12(b)(5) dismissal issue is similar, however, with regard to the defamatory nature of the alleged statements. The Complaint focuses on (and attaches) a letter by the Church Defendants to Plaintiffs that was "published" in whole or in part to other persons in the church community. The Complaint vaguely asserts the statements and accusations "were made known (published) to the community including by the overt act of banning the Unruhs from the church, accompanied by accusations as to why." The Complaint generally alleges a "gossip campaign" by the Church Defendants, and that a local sheriff knew enough about Plaintiffs' church membership termination to warn about trespassing on church property.

29. As a matter of law, the Court finds no statement by a Church Defendants, either oral or written in the letter, rises to the level of defamation. The Complaint alleges that the Church Defendants said Plaintiffs "engaged in threatening behavior" and "did not cooperate with church discipline." Without reference to an actual crime, the letter claims Plaintiffs did something "illegal" ---

which even the Complaint concedes is "not clarified." Finally, the Complaint alleges the Church Defendants told unnamed others that Plaintiff Robert Unruh was "dangerous." While each such statement is likely hurtful to Plaintiffs, a legal claim of defamation requires more.

30. As noted in the previous section, the communications are not false statements of fact as a matter of law. Rather, they are vague conclusions characterizing Plaintiffs' behavior. This Court will not hold a defamation trial that debates whether Plaintiff Robert Unruh's undescribed actions were, in the opinions of some, dangerous or threatening or not cooperative.

31. Further, assuming for the sake of argument that each these conclusions was false, these statements are not defamatory under the law. The words used must be unmistakably be recognized as injurious. *Lininger v. Knight*, 226 P.2d 809, 813 (Colo. 1951). The Court finds that such statements, although derogatory, do not rise to the level required for a defamation claim. *See Fort v. Hold*, 508 P.2d 792, 794 (Colo. App. 1973) (not defamation *per se* for statements that plaintiff was "committed to insane asylum" and committed various crimes); *Sall v. Barber*, 782 P.2d 1216. (Colo. App. 1989) (no defamation for labeling plaintiff as "skunk" and "bigot"); *Brown v. O'Bannon*, 84 F.Supp.2d 1176, 1181 (D. Colo. 2000) (no defamation for statements that plaintiff was "suicidal").

32. In addition, with regard to the Second, Fourth and Fifth Claims, a complaint must plead special damages directly resulting from the statements to satisfy all specific elements of defamation per quod (or "by implication" as alleged). *Lind v. O'Reilly*, 636 P.2d 1319, 1321 (Colo. App. 1981). The Complaint does not allege any special monetary damages attributable to the statements. *Bernstein v. Dun & Bradstreet, Inc.*, 368 P.2d 780, 782 (Colo. 1962) (dismissal is proper remedy for no special damages). There cannot be a lost wages claim because Patricia Unruh was under no obligation to write articles for the newspaper and, therefore, the newspaper is under no obligation to hire her as a reporter since the event. The volunteered time and items given to the church over two decades are gifts. Any claimed damages for a car purchase or travel expenses to a new job and church are not the direct result of the alleged defamatory statements, but the

church expulsion and Plaintiff's Patricia Unruh's decision to not write for the newspaper. Claims for "loss of fellowship" and similar emotional damages are not special damages. *Brown v. Barnes*, 296 P.2d 739, 741 (Colo. 1956).

VI.

33. People may behave badly in a person's view, but not all bad behavior has a legal remedy. The Complaint does not ask, for example, to overrule the church expulsion.

34. Further, as attempted in the Complaint and by Plaintiffs' dismissal briefs, this Court cannot also enlighten citizens to understand some higher truth neglected in hurtful statements. This Court is not an arbiter of friendships. Group associations may be broken for all wrong reasons or for no reason. A Gilpin County citizen may spend hundreds of hours in an organization or on a public project that may never be rewarded --- or acknowledged in a newspaper review article. A group of people may organize a letter-writing campaign to organizations, newspapers, or employers to increase pressure or attention on their viewpoints. Even hate speech is still free speech.

35. The tort of defamation does not allow a trial on which party is more intolerant in their beliefs, as presented here. Defendants Raynes ridicule a journalist for intolerance in her personal beliefs that resulted in no review article, while the journalist response accuse those and other defendants as intolerant for choices in her religious beliefs and to stay silent. And all this clash started with a play that has a subject of intolerance on lifestyles.

36. As concluded above, the Complaint's alleged statements do not present a plausible claim of defamation under Colorado law pursuant to the standards of Rule 12(b)(5) discussed at the outset. This Order does not find that Plaintiffs' factual allegations were frivolous or groundless. This Order does not

vindicate any behavior by any party against another. The Motions to Dismiss are GRANTED and Plaintiffs' Complaint is DISMISSED. And, with no legal authority whatsoever, the Court further orders the Plaintiffs and Defendants to "be kind."

IT IS SO ORDERED.

DATED: August 9, 2021.

BY THE COURT:

Todd L. Vriesman
District Court Judge