

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DEBORAH COLOCINO,

Plaintiff

vs.

DALE SMITH, SR.,

Defendant

:

: No. 06-02669

:

:

: CIVIL ACTION – LAW

:

:

: Defendant’s Preliminary Objections

: to Plaintiff’s complaint

ORDER

AND NOW, this ___ day of March 2007, the Court DENIES

Defendant’s preliminary objections to Plaintiff’s complaint.

The Court notes that any claim of privilege is an affirmative defense, which must be pleaded as an affirmative defense in new matter and not raised as a demurrer in preliminary objections. See Pa.R.Civ.P. 1030.

At this stage of the proceedings, without knowing the full context of Defendant’s statements, the Court believes they could be capable of defamatory meaning. In determining whether a statement is defamatory, the Court must examine whether the communication “tends to harm the reputation of [the complaining party] as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” MacElree v. Philadelphia Newspapers, 544 Pa. 117, 124-125, 674 A.2d 1050, 1054 (Pa. 1990). Defendant’s statements could be construed as asserting that Plaintiff committed perjury and that she fired Defendant’s son to create a position for someone she knew, both of which, if false, could lower Plaintiff in the estimation of the community. See McDermott v. Biddle, 436 Pa.Super.

94, 647 A.3d 514 (1994), reversed on other grounds 544 Pa. 21, 674 A.2d 665 (Pa. 1996)(plaintiff claimed articles suggesting nepotism and/or favoritism in hiring practices defamatory); MacElree, supra (order granting preliminary objections claiming statement was not capable of defamatory meaning reversed where the charge that appellant was electioneering and was the David Duke of Chester County could be construed by a reasonable person as an accusation that appellant was abusing his power as the district attorney to further racism and his own political aspirations); Geyer v. Steinbronn, 531 Pa.Super. 536, 550, 506 A.2d 901, 909 (Pa.Super. 1986)(accusations of dishonesty capable of defamatory meaning).

Although paragraph 10 of Plaintiff's complaint contains a typographical error, the paragraph is meant to show that third persons were present to hear Defendant's alleged defamatory statements and defense counsel correctly determined that meaning. Therefore, the Court will not make Plaintiff file an amended pleading.

Defendant shall file an answer to Plaintiff's complaint within twenty (20) days of this Order.

By The Court,

Kenneth D. Brown, P.J.

cc: Michael Zicoello, Esquire
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Work file
Gary Weber, Esquire (Lycoming Reporter)