COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARK PHILLIPS and CHAD RILEY *Plaintiffs* vs.

MARK LUSK, Defendant

<u>ORDER</u>

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: No. 19-0027

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LYCOMING COUNTY

AND NOW, this 20th day of July, 2019, after argument held on Defendant's Preliminary Objections to Plaintiffs' Amended Complaint, it is hereby ORDERED and DIRECTED as follows:

- This Court concurs with Defendant Lusk's reliance on *Doe v. Franklin County*, 174
 A.3d 593, 603 (Pa. 2017), in which the Pennsylvania Supreme Court held that a
 County Sheriff is a high public official. As such, Defendant Lusk is protected from
 lawsuits arising in the course of his official duties and within the scope of his
 authority as Sheriff. The statements allegedly made by Defendant Lusk were made in
 the course of his duties and within the scope of his authority; Plaintiff's defamation
 claim is barred by high public official immunity and Defendant's first Preliminary
 Objection is hereby SUSTAINED. Plaintiffs may file an amended pleading within
 thirty (30) days of the date of this Order.
- 2. In accordance with *Beckman v. Dunn*, 419 A.2d 583, 587 (Pa. Super. 1980), Defendant Lusk has shown that the alleged statements involve a recognized interest of the public as they were made in the course of Defendant Lusk's duty to oversee the constables and within the scope of his authority as Sheriff. Accordingly, Defendant's second Preliminary Objection is hereby SUSTAINED. Plaintiffs may file an amended pleading within thirty (30) days of the date of this Order.
- 3. Plaintiffs Riley and Phillips have failed to assert facts which would satisfy the requisite statutory burden of proof in a claim for defamation as set out in 42 Pa.C.S.A. §8343(a). Having already established that Defendant Mark Lusk has high public official immunity, Plaintiffs Riley and Phillips must also establish a malicious element to Defendant Lusk's alleged statements. Plaintiffs have not done so in the



matter at bar. Accordingly, Defendant's third Preliminary Objection is hereby SUSTAINED. Plaintiffs may file an amended pleading within thirty (30) days of the date of this Order.

- 4. As to Plaintiffs' claim for damages arising from warrants and transports from the Sheriff's office, Plaintiffs have failed to plead sufficient facts which would support the notion that Defendant Lusk's alleged statements materially affected the Plaintiffs' work assignments. Moreover, Plaintiff has failed to establish why they should be entitled to damages as a result of Defendant Lusk's decision, in his capacity as Lycoming County Sheriff, not to use Plaintiff Riley and Phillips for warrants or transports. Accordingly, Defendant's fourth Preliminary Objection is hereby SUSTAINED. Plaintiff may file an amended pleading within thirty (30) days of the date of this Order.
- As Plaintiffs Chad Riley and Mark Phillips have already been directed to file a more specific pleading, Defendant Lusk's remaining Preliminary Objections in the alternative are rendered moot.

BY THE COURT,

nior Judge, Specially Presiding

cc: Mary Kilgus, Esquire J. Michael Wiley, Esquire