COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

DENNY L. HARER, Plaintiff	:	NO. 18-1519
vs.	:	CIVIL ACTION - LAW
MUNCY SCHOOL DISTRICT, Defendant	:	*Defendant's* *Motion for Summary Judgment*

ORDER

AND NOW, following argument held August 4, 2020 on Defendant Muncy School District's Motion for Summary Judgment, the Court hereby issues the following ORDER.

Plaintiff Denny L. Harer ("Plaintiff") initiated this action on October 17, 2018 by the filing of a Complaint, which was followed by the filing of an Amended Complaint on August 7, 2019. The Amended Complaint raises a count of defamation against Defendant Muncy School District ("Defendant" or "District"). Defendant filed Preliminary Objections to dismiss the Amended Complaint for Plaintiff's failure to plead facts demonstrating malice, necessary to support a defamation claim. The Court denied the Preliminary Objections by Order dated December 4, 2019, and directed the parties to engage in discovery, indicating that Defendant might appropriately re-raise the issue on a motion for summary judgment following the close of discovery.

Within the Amended Complaint, Plaintiff alleges that Muncy School District superintendent Craig R. Skaluba ("Dr. Skaluba"), defamed Plaintiff at a school board meeting held on April 19, 2018, wherein it was decided that Plaintiff would not have his contract as District varsity wrestling coach renewed. Plaintiff avers that Dr. Skaluba, "with intent to injure Plaintiff and bring him into public scandal and disgrace, knowingly and maliciously, or with reckless disregard for the truth, or negligently and carelessly published a [sic] scandalous, defamatory, slanderous accusations detailing approximately eight different 'incidents' regarding Plaintiff's actions as wrestling coach of the Muncy School District Wrestling Team."[1] Such accusations include:

[1] Amended Complaint ¶ 30 (Aug. 7, 2019) ("Amended Complaint"). The Court notes that the Amended Complaint actually categorizes seven separate accusations.

1. In 2007, Plaintiff inaccurately recorded an individual's weight during a hydration test.
2. In 2009, Plaintiff was heard yelling expletives toward referees in a match.
3. In 2014, Plaintiff did not provided written notification to School Administrators to file attendance of athletes at a tournament.
4. In 2015, Plaintiff was in a confrontation with a Board Member at a local event.
5. In 2015, Plaintiff engaged in inappropriate coaching conduct, including the use of chewing tobacco on school property, allowed individuals not approved by Muncy School District Board of Directors to participate in organized wrestling activities, and used inappropriate comments related to slurs, innuendos, and other comments related to race, origin, gender, and/or sex.
6. In 2018, Plaintiff committed a violation of Board Policies and Procedures regarding coaching reputation.
7. Pursuant to Mr. Skaluba's internal investigation, Plaintiff was found not in compliance with PIAA Sports Medicine Guidelines prohibiting the use of saunas and sauna suits, and Plaintiff failed to report safe medical directivities regarding the 72-hour safe athlete protocol regarding hypohydration.[2]

On May 26, 2020, Defendant filed a Motion for Summary Judgment Pursuant to Pa.R.C.P. 1035.2. Defendant avers within the Motion for Summary Judgment that on March 9, 2020, Defendant served Plaintiff with written discovery, including nine (9) Requests for Admissions. Pursuant to Pa.R.C.P. 4014(b), Plaintiff was required to serve answers or objections to the Requests for Admissions within thirty (30) days, or accordingly all Requests would be deemed admitted.[3] Plaintiff has to date submitted neither answers nor objections to the Requests for Admissions, nor has Plaintiff requested an extension. Defendant asserts that in failing to respond, Plaintiff has admitted the following:

1. Plaintiff Denny L Harer inaccurately recorded individual weights during hydration test. In response to this, procedures were modified in 2007 to allow the school's nurse and athletic trainer to record individual weights during hydration testing.

[2] Amended Complaint ¶¶ 30-36.
[3] Pa.R.C.P. 4014(b) ("Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by the party's attorney[.]").

2. In 2009, Plaintiff Denny L. Harer was disqualified from a wrestling tournament for coaching misconduct. Written reports indicate Plaintiff Denny L. Harer was heard yelling expletives toward referees and received a one-match suspension and completion of 4-6 hours of NFHS coaching conduct course related to sportsmanship in response to this matter.
3. Plaintiff Denny L. Harer violated the PIAA practice requirement in 2011 by having members of the Muncy wrestling team participate in an open gym practice on Sunday, December 11, 2011.
4. Plaintiff Denny L. Harer did not provide notification to school administration related to his non-attendance at a wrestling tournament in December of 2014 and received a verbal warning in response to this matter.
5. Plaintiff Denny L. Harer confronted a board member at a local venue in 2015 and received a letter of reprimand and reevaluation of prior incidents.
6. In 2017, Plaintiff Denny L. Harer was notified of inappropriate coaching conduct as follows: using chewing tobacco on school property; using profanity during organized wrestling events; having individuals not approved by Muncy School District Board of Directors participating in organized wrestling activities; making inappropriate comments related to slurs and comments related to race, gender, ancestry, origin, or sex. Plaintiff Harer received a two-week suspension as a result of this.
7. In 2018, Plaintiff Denny L. Harer received a verbal warning for having one of his wrestler's [sic] live with him during the wrestling season. The director's solicitor indicated this was a liability issue for the district that needed to be addressed with the coach.
8. In 2018, an internal investigation of The Muncy School District Wrestling Program revealed the following: (a) The Muncy School District wrestling program was not in compliance with PIAA sports medicine guidelines which prohibit the use of saunas and sauna suits by athletes at all times, (b) The Muncy School District Wrestling Program failed to report pertinent information to administration related to student safety, health, and welfare and (c) The Muncy School District Wrestling Program failed to comply with medical directives received by the school district.
9. Plaintiff Denny L. Harer requested public meetings on his coaching tenure.[4]

[4] Defendant, Muncy School District's Motion for Summary Judgment Pursuant to Pa.R.C.P. 1035.2 ¶¶ 16-24 (May 26, 2020).

As Defendant notes within the Motion for Summary Judgment, a school district is a local agency for the purposes of the Political Subdivision Tort Claims Act ("PSTCA" or "Act"), and is therefore subject to governmental immunity. Under the Act, "no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person."[5] However, such immunity will not apply when the act of an employee that caused the injury "constituted a crime, actual fraud, actual malice or willful misconduct[.]"[6] Defendant notes that in the defamation context, the Pennsylvania Courts have held that actual malice requires a demonstration that the allegedly defamatory publication, "was made with knowledge of its falsity or a reckless disregard of whether it was false or not."[7] "Falsity is a necessary precondition to actual malice."[8] Even outside the context of a claim under the PSTCA, the Court notes that, "truth is a complete and absolute defense to a civil action for defamation."[9]

Defendant asserts that, as Plaintiff has admitted that the statements made by Dr. Skaluba at the August 19, 2018 school board meeting were true, no outstanding issues of material fact remain that would preclude this case's dismissal on summary judgment. Defendant further asserts that the Pennsylvania courts have held that cases may be properly dismissed based on admissions to requests for admissions.[10]

In Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment, Plaintiff's counsel concedes that Plaintiff has yet to respond to the March 9, 2020 Requests for Admissions, but asserts that summary judgment is too extreme a sanction for this failure to respond. Plaintiff argues that before granting a discovery sanction, a court must first balance the equities and consider whether these five factors weigh in favor of sanction: "(1) the nature and severity of the discovery violation; (2) the defaulting party's willfulness or bad faith; (3) prejudice to the opposing party; (4) the ability to cure the prejudice; and (5) the importance of the precluded evidence in light of

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[5] 42 Pa.C.S.A. § 8541.
[6] 42 Pa.C.S.A. § 8550
[7] *Goralski v. Pizzimenti*, 540 A.2d 595, 600 (Pa. Commw. 1988) (citations omitted).
[8] Sprague v. Porter, No. 100102930, 2013 WL 6143734, at *17 (Phila. Cty. Nov. 01, 2013) (citing *St. Amant v. Thompson*, 390 U.S. 727, 730 (1968)).
[9] *Pelagatti v. Cohen*, 536 A.2d 1337, 1345–46 (Pa. Super. 1987).
[10] *See Innovate, Inc. v. United Parcel Serv., Inc.*, 418 A.2d 720, 723–24 (Pa. Super. 1980).

the failure to comply."[11] Plaintiff argues that Defendant has not been significantly prejudiced by Defendant's failure to respond as discovery remains open, and that any prejudice could be easily remedied by the submission of a response. Further, Plaintiff asserts that his failure to respond was not in bad faith, but rather contends that the Requests were made at a point where the COVID pandemic had put the office of Plaintiff's counsel in "disarray," with staff reduced from three active counsel and a full-time legal assistant to just one counsel.

In response to Plaintiff's arguments, the Court notes that any matter admitted by failure to timely respond to a request for admissions, "is conclusively established unless the court on motion permits withdrawal or amendment of the admission."[12] The Court notes that Plaintiff has not petitioned the Court to withdraw or amend the admissions.[13] Further, to date Plaintiff has failed to serve any response to the Requests for Admissions and has at no point provided that a response is being prepared along with an anticipated date of delivery. Had Plaintiff controverted the allegations in the Request for Admissions through even an untimely service of responses, the Court would be disinclined to enter summary judgment.[14] However, the failure of Plaintiff's counsel to take any proactive measures to address Defendant's Request for Admissions in over five (5) months, even though such Request for Admissions are not extensive and go to the very heart of Plaintiff's defamation claim, is indefensible, even taking into account the complications resulting from the Coronavirus pandemic.

Pursuant to the foregoing, the Court determines that by failing to respond to Defendant's March 9, 2020 Requests for Admissions, that Requests are deemed admitted. Finding that Plaintiff has admitted that the statements made by Dr. Skaluba at the school board meeting held April 19, 2018 were true, the Court determines that this

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[11] *Croydon Plastics Co. v. Lower Bucks Cooling & Heating*, 698 A.2d 625, 629 (Pa. Super. 1997) (citations omitted).
[12] Pa.R.C.P. 4014(d) (emphasis added).
[13] *See Stimmler v. Chestnut Hill Hosp.*, 981 A.2d 145, 160 n. 18 (Pa. 2009) ("[W]e emphasize that we do not condone non-compliance with the Rules of Civil Procedure nor do we posit or suggest that any court should have stepped into counsel's shoes to make a motion to withdraw 'deemed' admissions. We fully acknowledge that under appropriate circumstances, deemed admissions may support a grant of summary judgment.").
[14] Dwight v. Girard Med. Ctr., 623 A.2d 913, 916 (Pa. Commw. 1993) (holding that the trial court erred in deeming admitted defendant's request for admissions when plaintiff had submitted answers to the requests, albeit those answers were untimely filed).

vitiates Plaintiff's defamation claim. Therefore, Plaintiff's Motion for Summary Judgment is GRANTED. This case is DISMISSED WITH PREJUDICE.

The Court notes that Plaintiff's Amended Complaint raises a count of defamation not just against Muncy School District, but also raises separate counts against District employees Craig R. Skaluba and Scott McClean individually.[15] However, this Court's Order of July 10, 2019 ruling on Preliminary Objections to the initial Complaint dismissed Dr. Skaluba and Mr. McClean as parties, holding that a suit against a state official in his or her individual capacity is not a suit against the official but is rather a suit against the official's office. Plaintiff's inclusion of Dr. Skaluba and Mr. McClean as parties within the Amended Complaint was therefore in error, as the Court had already ruled that the District was the only proper Defendant to this action. In granting Defendant Muncy School Districts' Motion for Summary Judgment, the Court affirms that this action is dismissed in its entirety.

IT IS SO ORDERED this 18th day of August 2020.

BY THE COURT,

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Eric R. Linhardt, Judge

ERL/crp
cc:
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[15] While the defamation count against Dr. Skaluba involves the same set of facts as the claim against the District, the claim against Mr. McClean, a member of the Muncy School Board since 2012, refers to a separate incident occurring on or about May 25, 2018, where Mr. McClean purportedly responded to a question outside of the Weis supermarket in Muncy by loudly and falsely proclaiming that Plaintiff had hospitalized a student, and had then allowed that student to return to practice within 24 hours.