IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

WANDA KNIGHT,	:	
	:	
Plaintiff,	:	**CASE NO. 98 CVH 11 9262**
	:	
-v-	:	**JUDGE JENNIFER L. BRUNNER**
	:	
COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, et al.,	:	
	:	
Defendants.	:	

DECISION AND JUDGMENT ENTRY
DENYING IN PART AND GRANTING IN PART MOTION OF DEFENDANTS COLUMBUS EDUCATION ASSOCIATION AND RHONDA JOHNSON FOR SUMMARY JUDGMENT
FILED MAY 11, 2001

Decided this 4th day of June 2003.

BRUNNER, J.

This matter is before the Court on the motion of Defendants Columbus Education Association (hereinafter referred to as "CEA") and Rhonda Johnson, filed May 11, 2001, for summary judgment as to all counts asserted against them in Plaintiff Wanda Knight's Amended Complaint. The Court granted Plaintiff a series of extensions of time up to and including July 15, 2001 to respond to Defendants CEA's and Johnson's motion for summary judgment. The Court also permitted Defendants CEA and Johnson to reply on or before July 31, 2001. Plaintiff filed a response (memorandum contra) on July 18, 2001, and Defendants CEA and Johnson replied on July 31, 2001. On August 20, 2001, the Court granted Plaintiff's motion, filed August 2, 2001, to supplement her response to Defendants CEA's and Johnson's motion for

summary judgment with the original *signed* affidavit of Dr. Willie Glover (as the version attached to Plaintiff's response was unsigned).

On September 7, 2001, Defendants CEA and Johnson filed a motion to supplement their motion for summary judgment. Following a status conference with the Court and the parties on September 24, 2001, the Court, by journal entry filed September 27, 2001, granted Defendants' motion to supplement. Pursuant to the aforementioned September 27, 2001 order, Plaintiff filed a response to Defendants' motion to supplement on October 16, 2001, and Defendants CEA and Johnson replied on October 22, 2001.

The time for briefing has expired and the motion of Defendants CEA and Johnson for summary judgment is, therefore, considered submitted to the Court for decision pursuant to Loc. R. 21.01 and 57.01.

Procedural Considerations on Motions for Summary Judgment

Civ. R. 56 (C) provides, in relevant part:

> . . . Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor . . .

Thus, it should be noted at the outset that summary judgment under Civ. R. 56 is appropriate only when the movant demonstrates that (1) there is no

genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion which is adverse to the non-moving party, said party being entitled to have the evidence construed most strongly in its favor. *Tokles & Son, Inc. v. Midwestern Indem. Co.* (1992), 65 Ohio St. 3d 621, 629; *Bostic v. Connor* (1988), 37 Ohio St. 3d 144, 146.

Moreover, Civ. R. 56 (E) provides, in pertinent part:

> . . . [w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

The primary impetus behind the procedural device known as summary judgment is to enable a party to examine beyond the allegations in the pleadings and assess the offered proof so as to ascertain whether there is a genuine need for trial. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St. 2d 64, 66. Therefore, once the moving party has satisfied its initial burden, the non-moving party must set forth specific facts, using any such means as outlined in Civ. R. 56 (E), showing that there is a genuine issue for trial so as to avoid summary judgment. *Dresher v. Burt*, 75 Ohio St. 3d 280, 293, 1996-Ohio-107.

Facts of the Case

Upon the conceptualization and realization of an Africentric school aimed at providing students K-12 an education from an African worldview, Plaintiff

Wanda Knight was hired to be the principal of the newly created school. The claims against the Columbus Education Association and its Vice President, Rhonda Johnson, both defendants herein, concern a tense dispute involving the terms and conditions of employment among the teachers, administrators, and Plaintiff at the Africentric School (in the Columbus City School District) during the 1996-97 school year (the first year the Africentric School opened). As a result of the dispute, numerous grievances were filed, and a letter of concern was sent to Plaintiff from the Deputy Superintendent outlining the concerns of the staff members at the Africentric School.

At the end of the 1997-98 school year, the Africentric School was reconstituted, and Plaintiff was discharged from her position as principal of the Africentric School by the Columbus City School District Board of Education (also a defendant in this matter). Subsequently, Plaintiff was involuntarily reassigned to Maize Elementary School.

Plaintiff has specifically asserted claims of defamation and conspiracy to defame, tortious interference with contract, and intentional infliction of emotional distress against Defendants CEA and Johnson.

Application of Law

A. Defamation

Over the course of the Plaintiff's employment with the Columbus City Schools, she claims that the Defendants defamed her name. Defamation is "a false publication which injures a person's reputation." *Dale v. Ohio Civil Service Employees Assocation* (1991), 57 Ohio St. 3d 112, 117. To make a

prima facie case of defamation, the plaintiff must establish the following three elements: (1) the defendant's responsibility for the publication to a third person, (2) the third person's understanding of the defamatory meaning, and (3) the actionable character of the statement. *Hahn v. Kotten* (1975), 43 Ohio St. 2d. 237, 243. The determination of whether a statement is actionable is a matter of law for the court to decide, making it appropriate to examine the issue of defamation for summary judgment. *Yeager v. Local Union 20* (1983), 6 Ohio St. 3d 369, 372.

Based on a response to the Defendants' interrogatories and on statements identified in the motions and memoranda contra, the Plaintiff claimed that CEA and/or Johnson were responsible for nineteen (19) defamatory statements. (Exhibit 22 of Defendant's Motion for Summary Judgment, Plaintiff's Memorandum Contra p. 14–15, and Defendants Motion to Supplement their motion for summary judgment p. 4). The Defendants refute the Plaintiff's claims by stating three (3) defenses—truthfulness, opinion, and qualified privilege. In Ohio, a party may defend a defamation claim in three (3) ways.

First, a party may show that the statements are true, which axiomatically removes a statement from the definition of defamation. R.C. 2739.02 (Anderson 2002). Second, a party may assert that a statement is an opinion, not a statement of fact. *See Wampler v. Higgins*, 93 Ohio St. 3d 111, 124, 2001-Ohio-1293 (stating that Section 11, Article 1 of the Ohio Constitution "protects the sentiments uttered by '[e]very citizen' regardless of

that citizen's affiliation or nonaffiliation with the media"). Finally, a party may assert that a qualified privilege exists that protects the communication from a finding that it is defamatory. *A & B-Abell Elevator Company, Inc. v. Columbus/Central Ohio Building & Construction Trades Council*, 73 Ohio St. 3d 1, 7, 1995-Ohio-66.

1. Truth

The Defendants first claim that certain statements are not defamatory, because they are true or because they do not meet the elements of defamation. In Ohio, a statement's truth is a defense to a defamation claim. R.C. 2739.02. Besides the requirement that a statement be untrue, defamation necessitates that: (1) the defendant actually make the statement, (2) the third party to whom the statement is made understand the defamatory character of the statement, and (3) the statement injures one's reputation. *See Hahn*, 43 Ohio St. 2d at 243. Truthfulness serves as a valid defense for the following five (5) statements that the Plaintiff asserted to be defamatory:

> (1) "Thirteen of the eighteen school teachers had put in resumes for transfer. *Columbus Disptach*, Apr. 4, 1998 (Grossman, CEA representative);
>
> (2) "We have had difficulties with the school since it opened. The problem is that they do not have a core group of teachers or a curriculum, two essentials for an alternative program to start from day one. As a result we have had continuous grievances and problems—we do know that 13 staffers have submitted resumes to apply for other positions." *Columbus Alive*, Apr. 30, 1998 (Grossman);
>
> (3) "Over two-thirds (2/3) of teachers requested transfer out . . . clearly was a serious problem . . . Bring program back into proper focus." *Columbus Post*, May 6, 1998 (Grossman);

> (4) "Professional differences began after teachers began complaining about discipline and . . . TVs being stockpiled in storage." *Call and Post* (Johnson);
>
> (5) "The district has requested the teacher openings be posted again because – they have not had nearly the applicants they need." *Columbus Dispatch*, June 2, 1996 (unattributed).

The Defendants submitted evidence to support the truth of these statements, thus making them not defamatory. The Plaintiff failed to identify evidence to demonstrate a material issue of fact with regard to any of the statements which would operate to suggest their falsity. Additionally, aside from the evidence of truthfulness, some of the statements do not appear to meet other elements of required for a claim for defamation.

To demonstrate the truth of the first statement set forth above, the Defendants submit John Grossman's affidavit containing the statement that thirteen teachers requested transfer from the school (Exihibit 23 of Defendant's Motion for Summary Judgment, ¶ 3). The Plaintiff does not identify any evidence to counter that of the Defendants. Further, the statement is not actionable, because Plaintiff has offered nothing of particularity to tend to show how the statement injured the reputation of the Plaintiff. In addition, for defamation, a third party must understand the defamatory meaning of the statement. *See Hahn*, 43 Ohio St. 2d at 243. The above statement contains a comment about the state of the school, not the reputation or character of the Plaintiff. Therefore, the Plaintiff has failed to present any material facts showing the false character of the statement or that a third party would understand it to be defamatory against Plaintiff.

To rebut the defamatory character of the second statement set forth above, the Defendants submit evidence that difficulties were a reality in the Africentric school. The Affadavit of John Grossman contains the statement that the school had had problems since its inception. (Defendant's Exhibit 23, ¶ 3). Also, the Defendants submitted evidence of grievances having been filed against the Plaintiff. (Defendant's Exhibits 4–5, 7–11). Finally, the Defendants show that neither a core group of teachers nor a curriculum was in place, and present teachers' letters of complaint and their requests for transfer. (Defendant's Exhibits 12, 14). Even if one of the comments in statement two is untrue, the defamation claim fails, because the statement does not appear to meet the definition of defamation. The comments seem directed toward the Africentric program, and they are not specific to the Plaintiff. The statements do not suggest that the Plaintiff is to blame for the problems, and the Plaintiff has not shown any evidence that contributes to a contrary inference. Therefore, a third person would not understand the defamatory quality of the statement, which means that the statement cannot injure the Plaintiff's reputation.

As for the third statement, the Defendant presents evidence that thirteen (13) of eighteen (18) teachers who taught at the school requested a transfer (*See* Affadavit of John Grossman, exhibit 23 ¶ 3). The Plaintiff does not show that any contrary evidence exists, and therefore, there is no issue of material fact as to this statement—it is to be taken by this court as a true statement and one that, again, does not specifically point to the Plaintiff. Summary

judgment is appropriate as to this third statement claimed to be defamatory by Plaintiff.

Regarding the fourth statement as to professional differences and stockpiling of televisions, the Defendants introduce a letter signed by thirteen (13) teachers at the Africentric school complaining about the lack of access to televisions, the conflicts with the principal, and communication difficulties. (Defendant's Exhib. 12). Also, during the Plaintiff's deposition, she admitted to the existence of differences regarding discipline of the students (Exhibit 3, Knight Depo., p. 821–822) and that a dispute existed between the Plaintiff and the teachers over the implementation of the Africentric Philosophy. The court cannot find that there is an issue of material fact that would subject the alleged falsity of this statement to a trial on the merits of this allegation.

Finally, the fifth statement has not been attributed to any of the Defendants. Neither the interrogatories, nor the Plaintiff's deposition in which she discussed the statement, reveal the identity of the speaker. A defamation claim requires that a statement be attributed to a defendant. *See Hahn,* 43 Ohio St. 2d at 243. Since the Plaintiff has failed to identify the source of the statement, her claim for defamation as to this statement cannot survive summary judgment.

Accordingly, the Plaintiff has failed to identify genuine issues of material fact that could lead to any other conclusion but that the previous five (5) statements are not defamatory.

2. Opinion

Besides rebutting a claim of defamation by showing the statement's truth or by establishing that the definition of defamation is not met, a defendant may defend itself by asserting that the statement was one of opinion, not fact. *See Wampler,* 93 Ohio St. 3d at 117. The Ohio Constitution provides in pertinent part that, "[e]very citizen may freely speak, write, and publish his *sentiments* on all subjects, being responsible for the abuse of the right" (emphasis added). Ohio Const. Art. 1 § 11. These sentiments or opinions are therefore protected in Ohio, regardless of whether they are spoken by or in the media. *See Wampler*, 93 Ohio St. 3d at 121–22. In the Defendants' memorandum in support of their motion for summary judgment, they argue that ten (10) statements are opinions. This court, however, finds only the following three (3) statements to be expressions of the speakers' opinions and to be therefore deemed not defamatory:

(1) "Program is not working." (John Grossman, Rick Logan, and Rhonda Johnson);

(2) "Principal doesn't know what she is doing." (Rick Logan);

(3) "[P]rincipal wasn't responsive to questions." *The Other Paper,* May 7–13 (Johnson).

To determine whether a statement is an opinion, the Ohio Supreme court has created a totality of circumstances test, in which a court must utilize the following four (4) elements as determinants: (1) the specific language; (2) the statement's verifiability; (3) "the general context of the statement"; and (4) "the

broader context in which the statement occurred." *Id.*; *Scott v. News-Herald* (1986), 25 Ohio St. 3d 243, 250.

If a statement does not "give rise to clear, factual implications" or is not "well-defined," it is not deemed to be specific, which the totality of circumstances test requires. *Wampler*, 93 Ohio St. 3d at 128. The above three (3) statements are nonspecific because they do not allege facts about the Plaintiff's competence nor refer to a specific situation. For example, the quote from *The Other Paper* does not specify to which questions the principal did not respond. Further, whether or not an answer to a question is nonresponsive is a matter of opinion, with the meaning of the question being best known to the person asking it, and the perception of its meaning being best known to the person attempting to answer it. The court readily acknowledges that whether an answer to a question is responsive is largely a matter of opinion. The nature of the statement makes it virtually incapable of being deemed defamatory. Also, the three (3) statements in question are not "objectively capable of proof or disproof," which is the second element of the totality of circumstances test. *Id.* at 129. Their lack of specificity makes it impossible to rely on evidence that could prove or rebut the claims asserted in each of them.

To determine whether a statement's general context renders it opinion or fact, the third prong of the totality of circumstances test allows the language surrounding the claimed defamatory language to be examined. *Wampler*, 93 Ohio St. at 130. Since neither party provided evidence of the general context, the court cannot specifically examine the statements using an analysis

according to this prong of the four-part test. However, this Court's inability to examine the immediate context of the language does not invalidate a defense that the statements are opinion. *See id.* at 126 (stating that the totality of circumstances test "'is not a bright-line test [and] . . . can only be used as a compass to show general direction and not a map to set rigid boundaries'")(quoting *Vail v. Plain Dealer Publishing Co.*, 72 Ohio St.3d 279, at 282, 1995-Ohio-187). Therefore, this court will proceed to the fourth and final prong of the test—the broader social context of the dispute.

The social context in which the statements occurred suggests that they are opinions. The evidence presented by both parties shows that there was tension between the teachers (and thus their union) and the Plaintiff over discipline and teaching philosophy. In such a conflict, the court takes judicial notice that matters concerning the education of children, especially where there are disagreements, generally result in strong opinions among all parties involved. Moreover, the first two (2) prongs of the test are so strongly in Defendants' favor that the latter two (2) prongs bear less importance to the legal analysis. As a result, the above three (3) statements are considered by the court to be opinion and are therefore protected from Plaintiff's defamation claims.

3. Qualified Privileges

While eight (8) statements cannot be considered defamatory, this Court finds that the following eleven (11) statements, when taking the evidence in a

light most favorable to the Plaintiff, may be subject to proof by Plaintiff that they are defamatory in character:

(1) Administrator is terrible, bad, ineffective, etc., (Logan and Johnson);

(2) Principal is not certified to be a principal, (Johnson);

(3) Wanda should have never been hired for this position—this program needs an experienced administrator, not a new one, (Johnson);

(4) Principal does not know how to handle discipline (Johnson);

(5) Principal is not supportive of her teachers (Johnson);

(6) Principal retaliates against her staff, (Johnson);

(7) Principal shows favoritism among her staff members, (Johnson);

(8) Students and teachers are leaving the school because of the principal; (Johnson)

(9) That woman destroyed the school (John Grossman);

(10) Principal is a Jehovah's Witness (Johnson); and

(11) The woman got the job because she was sleeping with Dr. Lawrence Mixon (Rick Logan).

To establish a *prima facie* case of defamation, a plaintiff must show (1) the defendant's responsibility for the false publication to a third person, (2) the third person's understanding of the defamatory meaning, and (3) the actionable character of the statement. *Hahn*, 43 Ohio St. 2d. at 243. In the present case, the Plaintiff first alleges the statements to be false, which the Defendants have not shown by sufficient evidence to be otherwise. Second, the Defendants do not dispute that they spoke the words. Third, the party to whom the

comments were spoken would recognize the statements to be critical of the Plaintiff. Finally, these statements are actionable, because they may be injurious to the Plaintiff's reputation.

While the Defendants do not present evidence to rebut the *prima facie* case, the Defendants do contend that they are not liable for these statements, because they are protected by a qualified privilege. Specifically, the Defendants argue that one of two (2) qualified privileges cover these eleven (11) remaining statements: 1) the privilege of speaking during a labor dispute, and (2) the privilege of discharging a public or private duty. To counter this assertion, the Plaintiff contends that statements disparaging the principal's reputation are "actionable *per se.*" (Memorandum Contra p. 15). However, the Plaintiff's argument fails to consider how the defamation analysis changes when a qualified privilege is argued.

Before considering whether qualified privileges exist for these eleven (11) statements, it should be noted that the determination of whether a qualified privilege exists is a question of law, thus making its consideration appropriate for summary judgment. *A & B-Abell Elevator Company, Inc.*, 73 Ohio St. 3d. at 8. In general, a qualified privilege exists when a defendant's interest in making a statement is based on "publication in a reasonable manner and for a proper purpose." *Hahn*, 43 Ohio St. 2d at 243. Therefore, the elements of a qualified privilege are: (1) speaking in good faith, (2) upholding an interest, (3) limiting a statement's scope to the interest being upheld, (4) speaking during a proper

occasion, and (5) publishing in a proper manner to the proper parties. *Id.* at 245.

a. Labor Dispute

The Defendants first claim that a qualified privilege exists because they were made in the context of a labor dispute. Statements spoken during the course of a public-sector labor dispute are protected against defamation actions. *See Dale*, 57 Ohio St. 3d at 116-17. The Ohio Supreme Court defines a labor dispute as:

> "*any* controversy over *the terms and conditions of employment* or the representation of employees for collective bargaining purposes, regardless of whether the disputants stand in relation of employer and employee, and regardless of whether the dispute is subject to the jurisdiction of the National Labor Relations Board, the State Employment Relations Board, or some other administrative agency."

Id. at 116 (emphasis added). As a matter of law, the court determines whether a labor dispute exists, making this a proper issue for summary judgment. *Yeager*, 6 Ohio St. 3d at 371. The Defendants contend that the situation involved a labor dispute because it arose out of the terms and conditions of employment. To make this showing, the Defendants cite evidence of a letter by teachers with thirty-seven (37) concerns about the Plaintiff's administration of the Africentric school and of seven (7) grievance reports filed concerning the Plaintiff. Further, the Defendants point to the Plaintiff's deposition where she admits that the dispute was over the conditions, administration, and business of the Africentric school.

The Plaintiff, in her memorandum contra (entitled "Reply") counters with two (2) arguments. First, she claims that no qualified privilege exists, because some of the statements were not made to the proper parties, urging that newspapers are not the proper parties. However, this Court has previously determined that those statements that were made by the Defendants to newspaper reporters were not defamatory, and this renders Plaintiff's argument moot on this point. As for the other statements, no evidence is presented by Plaintiff that the statements were not made to the proper parties. Second, the Plaintiff characterizes the dispute between the teachers and the Plaintiff as one over teaching methods and the "growing pains" of a new school. She states that the dispute arose from the teachers' lack of intellectual capacity to understand how to incorporate the Africentric Philosophy into the classroom and from personality conflicts.

While the two parties characterize the dispute in different terminology, this difference seems one of semantics, not substance. Evidence points to the fact that the dispute is over the terms and conditions of employment. Differences over how to teach children, how to maintain discipline among students, and how to administer the daily operations of a school relate to the conditions of employment. An environment where disciplining students is a problem has an effect on the conditions of a teacher's employment. Also, disagreements regarding the proper teaching style encompass a term and condition of employment, because the teachers are being asked to alter their teaching styles. Evidence that this was a labor dispute can further be seen by

the CEA's actions. The union filed grievances on behalf of the teachers, which were not summarily ignored by the School District. (Exhibs. 4–5, 7–11).

Because the Ohio Supreme Court created a broad definition of a labor dispute in *Dale,* and because the problems between the parties concerned conditions of employment, this court finds that a labor dispute existed. Accordingly, the eleven (11) statements were made in the context of a labor dispute, affording them and their makers qualified privilege protection.

Though protected by a qualified privilege, the Plaintiff can maintain a defamation claim by demonstrating that defamatory statements were made with actual malice. *Dale*, 57 Ohio St. 3d at paragraph two of the syllabus. Actual malice is "defined as acting with knowledge that ". . . statements are false or acting with reckless disregard as to their truth or falsity." *A & B-Abell Elevator Company, Inc.*, 73 Ohio St. 3d. at 11 (quoting *Jacobs v. Frank* (1991), 60 Ohio St. 3d 111 (paragraph two of the syllabus)). In labor disputes, the policy of Ohio law "requires that participants be allowed considerable latitude for the 'bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations, and distortions' which often characterize labor disputes." *Dale*, 57 Ohio St. 3d at 116 (quoting *Linn v. United Plant Guard Workers* (1966), 383 U.S. 53, 58).

Negativity and unfriendliness are therefore associated with labor disputes, meaning that the majority of the defamatory statements in this case remain privileged. Principals, who are members of a school district's administration, cannot expect a teachers' union to speak kindly of them when

the two of them are in conflict. Further, the Plaintiff presents no evidence that the statements were made with knowledge of their falsity or with reckless disregard of their falsity. Instead, the Plaintiff simply refers to the general existence of malice. Such a claim by itself cannot support a claim that actual malice exists. Therefore, nine (9) of eleven (11) statements will not support a defamation claim.

However, the character of the last two statements on the list—she's a Jehovah's witness and she's sleeping with Larry Mixon—suggest evidence of actual malice. First, these two (2) statements have no relationship with the Plaintiff's job performance or any dispute with the teachers. Second, while the fact that someone may be a follower of a certain religion may not be *per se* injurious to one's reputation, those persons to whom it was made may deem it to be that way, in part based on the context in which it was made. The fact that both statements lacked any basis in fact suggests that these false statements, if not knowingly made, may have been at least recklessly made. The Defendants have not offered evidence of reasonable bases for making these false statements. Viewing the evidence in a light most favorable to the Plaintiff, the utterance of these statements presents a material issue of fact as to whether actual malice existed in the making of these statements.

b. Duty to Represent the Teachers

Assuming *arguendo* that, even if the conflict between the Plaintiff and the Defendants did not constitute a labor dispute, the first nine (9) statements set forth above are protected by another qualified privilege—a duty to conduct

one's affairs. Defamatory comments become privileged if they are "fairly made by [people] in the discharge of some public or private duty, whether legal or moral, or in the conduct of [their] own affairs, in matters where [their] interest[s were] concerned." *Id.* at 244. As the labor union representing the School District's teachers, the CEA has a duty to protect its members' interests. (Defendant's Exhib. 1, Johnson Aff. ¶¶ 2, 3).

Both the Defendant and Plaintiff present evidence implying that the statements were made in the course of CEA agents carrying out their duties to represent the teachers. Many statements occurred in conversations between the CEA and the teachers it represented. Also, excerpts of the Plaintiff's deposition indicate that many of the statements were made in venues in which the CEA's representatives were speaking on behalf of the teachers for proper purposes. (Exhibit 3, pages 759–60, 65–66). Further, since the statements have been attributed to the Defendants and the statements pertain to the Plaintiff's role at the Africentric and Maize Elementary schools, the statements were made while the Defendants were discharging their duty as representatives of its teacher members, and therefore being made to a proper party and in a proper manner.

The evidence also demonstrates that many members of the staff at the Africentric school were dissatisfied with the Plaintiff's performance. The CEA responded to teacher complaints about the Plaintiff, which included making good-faith statements concerning the teachers' situations at the schools where the Plaintiff was principal. As the teachers' representatives, the CEA was

upholding an interest of improving the teacher's working conditions at the school, which included addressing conflict between the staff and its administrator. Also, the CEA and its agents, in carrying out their responsibilities to their members in an adversarial setting, made harsh statements about the Plaintiff to zealously advocate their members' positions, acting as their representatives. The Plaintiff should not expect the teacher's union to avoid making such statements or to make flattering comments about the administration, especially when its members disagree with the position of the administration and have sought redress of their grievances with their union. Therefore, this court finds that the first nine (9) statements, which are limited to the principal's role in the schools, were made in the discharge of the Defendants' private duty to represent the teachers. Accordingly, these statements, though they may be defamatory, are qualifiedly privileged.

Though a qualified privilege exists, the Plaintiff can maintain her defamation claim by showing that statements were made with actual malice. *A & B-Abell Elevator Company, Inc.*, 73 Ohio St. 3d at 10. As mentioned in the discussion of the existence of a labor dispute, the Plaintiff presents no issue of material fact concerning the existence of actual malice as to the nine (9) statements in question. Instead, the Plaintiff merely claims that the Defendants' statements involved "malicious defamation" without offering any evidence that the statements were made with the knowledge that they were false or with reckless disregard of whether they were false. Accordingly, using

this additional analysis, the first nine (9) statements are protected by a qualified privilege.

To complete the examination of the eleven (11) statements using this additional analysis, while nine (9) statements have protection under the qualified privilege of a carrying out a duty, the remaining two (2) statements cannot be considered as anything but falling outside of this duty:

(1) Principal is a Jehovah's Witness (Johnson); and
(2) The woman got the job because she was sleeping with Dr. Lawrence Mixon (attributed to Rick Logan).

A teachers' union representative's duties, and therefore statements made in carrying out those duties, relate to conflicts with administrators or the employer. It is a rare situation where such duties could be deemed to relate to the need to make statements about the personal life of a principal, especially when they are shown to be false. A person's religion constitutionally has no relevance to her job performance for a public employer, even in the context of a labor dispute or grievance, unless such a grievance would stem from an allegation of unconstitutional establishment of religion by a government entity and specifically by that school administrator. There is no evidence of this. Therefore, a statement about the Plaintiff being a Jehovah's Witness, when taken in a light most favorable to Plaintiff, would negate protection by the qualified privilege to act according to a duty, and thus, making this issue one for trial.

Nor would the qualified privilege apply to a statement about the Plaintiff's alleged sex life for obvious reasons, unless sexual harassment were the issue,

which it is not here. While the Defendants deny that Rick Logan made the statement about the Plaintiff sleeping with Lawrence Mixon (Logan Depo. 17), the Plaintiff's deposition presents evidence that other individuals heard Rick Logan of the CEA utter these words. (Knight Depo. 771–72). As a result, this is a disputed factual matter for the fact-finder to resolve at a trial on this issue.

Accordingly, the court DENIES summary judgment for two (2) of the nineteen (19) statements but GRANTS summary judgment for the seventeen (17) others as set forth herein.

B. Conspiracy to Defame

Related to her claim of defamation, the Plaintiff asserts in her complaint that the Defendants conspired to defame her. Civil conspiracy exists if "there is a malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages." *Lefort v. Century 21-Maitland Realty Co.* (1987), 32 Ohio St. 3d 121, 126. The Defendants claim that, since they made their statements lawfully, they are protected from this conspiracy of defamation claim. Since this court finds the majority of the statements either fail to meet the definition of defamation or are exempt from liability for defamation, the claim for conspiracy to defame fails as to the seventeen (17) statements previously found to be exempt from Plaintiff's defamation claim.

However, since two (2) statements remain as issues for trial, these statements may establish a basis for a conspiracy to defame. While the fact of a conspiracy's existence is a question for the fact-finder, the issue of its

presence will not reach the fact-finder when there is no proof to establish a conspiracy as a matter of law. *Id.* The Plaintiff fails to argue or present evidence in her memorandum contra that the Defendants conspired to defame her. Without presenting any evidence of conspiracy, the court is left in a position, even in viewing the evidence in a light most favorable to Plaintiff, to deny Plaintiff's claim for defamation to conspire. Accordingly, this court GRANTS summary judgment to the Defendants on the issue of conspiracy to defame.

C. Tortious Interference with a Contract

The Plaintiff asserts that the Defendants' actions resulted in the tortious interference with her contract with the Columbus School Board in that Defendants' actions are alleged to have influenced the Board not to renew her contract. Tortious interference with a contract occurs when "[o]ne . . . intentionally and improperly interferes with the performance of a contract . . . between another and a third person by inducing or otherwise causing the third person not to perform the contract." *Kenty v. Transamercia Premium Insurance Co.*, 72 Ohio St. 3d 415, 419, 1995-Ohio-61. To establish this claim, the plaintiff must prove the following five factors: (1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional attainment of the contract's breach, (4) a lack of justification for the wrongdoer's actions, and (5) the existence of damages. *Id.*

While the Defendants concede that the first two elements of the test have been established, they argue that the Plaintiff cannot meet two of the

remaining three. First, they present depositions of Columbus School Board members who claimed not to have discussed the Plaintiff's position with the Defendants. They claim this nullifies the third element, because the two members of the School Board did not take the CEA's position into consideration when they voted not to renew the Plaintiff's contract. Second, to demonstrate that the fourth element is not met, the Defendants argue that a qualified privilege disqualifies the tortious interference claim. By failing to meet these two elements, the Defendants assert that the Plaintiff cannot claim tortious interference of contract.

Since the Defendants only dispute the third and fourth elements of tortious interference of contract, the court will focus on these two arguments. A plaintiff's failure to demonstrate evidence of a defendant's intentional attainment of breach of contract would render a claim for tortious interfence of contract invalid since this is one of the elements that comprises a tortious interference claim. In the instant case, the Plaintiff submits evidence that the Defendants' goal was solely to oust the principal from the Africentric school and from Maize Elementary.

A party can interfere with a contract when it is justified or has a duty to do so. *See A & B-Abell Elevator Company*, 73 Ohio St. 3d at 15 (stating that derivative actions to a defamation claim cannot stand when a qualified privilege exists and no actual malice is shown). Though the Defendants may have had qualified privileges to speak certain words because of their relationship to the teachers/members involved (or the existence of a labor dispute), the Plaintiff

presents evidence that some of the actions extended beyond the duty to represent teachers in the dispute with administration (or beyond what is necessary in a labor dispute). The Plaintiff submits the deposition testimony of Linda Paynther in which the deponent observed a desire by the Defendants to rid the Africentric School of its principal. Also, others have observed harsh tactics by the union when a principal does not act in the teachers' best interests. (Moss Depo, p. 14). Further, the record demonstrates instances of teachers inundating the Plaintiff with pupil discipline complaints ("190s"), which the Plaintiff claims is evidence of the Defendants' attempt to remove the Plaintiff from the Africentric school, thus interfering with her contract to be principal at the schools.

According to deposition testimony, the normal number of 190s submitted to principals is approximately ten (10) per year while the Plaintiff received about forty (40) per week in her capacity as principal at the Africentric school and Maize elementary. This evidence demonstrates that an issue of material fact exists over whether such actions were justified.

The evidence in the preceding paragraph creates a genuine issue of material fact as to Plaintiff's claims that the Defendants intentionally interfered with her contract. Though the Defendants submit depositions by two school board members that they were not contacted by the CEA specifically regarding the Plaintiff, this evidence leaves pregnant the question of whether the five (5) remaining Board members were contacted. Further, the lack of direct contact does not necessarily mean that the Defendants actions did not sway the School

Board. Direct contact with the School Board is but one method of creating a negative opinion of the Plaintiff and interfering with the contract.

When viewed in a light most favorable to the Plaintiff, the evidence suggests that the Defendants may have encouraged an atmosphere whereby the Plaintiff lost her authority and ability to lead as a result of the excessive number of 190s filed and by focusing its representative resources on removing the Plaintiff from her position. The evidence of a campaign to discredit the Plaintiff for the purpose of removing her from Columbus schools suggests that the evidence could be construed to find the Defendants interfered with the Board's decision to renew her contract.

Accordingly, examining the evidence in a light most favorable to the nonmovant, the court finds that there is an issue of material fact concerning whether the elements for a claim of tortious interference of contract exists. Since reasonable minds cannot come to but one conclusion, the court DENIES summary judgment on the issue of tortious interference of contract.

D. Intentional Infliction of Emotional Distress

The Plaintiff's final charge is that the Defendants were responsible for the intentional infliction of emotional distress. Intentional infliction of emotional distress occurs when "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another." *Yeager*, 6 Ohio St. 3d at 374. The Ohio Supreme Court further clarified the intentional infliction of emotional distress standard by stating that conduct must be:

> "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious, and utterly intolerable . . . [such that it] would arouse [an average member of the community's] resentment against the actor, and lead him to exclaim, 'Outrageous!'"

Id. at 375 (quoting Restatement (Second) of Torts § 46 cmt. d (1965)). The Defendants assert in their motion for summary judgment that the Plaintiff cannot meet the components of this definition. Most significantly, the Defendants argue that the Plaintiff cannot demonstrate that the Defendants actions were so outrageous in character to go beyond decency so as to become unendurable. In fact the Defendants argue that certain occupations require a party to tolerate criticism because these occupations carry with them the expectation of criticism.

The Plaintiff offers evidence of emotional distress such as weight loss and rapid heartbeat. Further evidence of a disturbed mental state emanates from the Plaintiff's psychiatrist's affidavit, in which he claims her work environment is "exacerbating her stress and anxiety." (Glover Affidavit).

However, the mere presence of mental distress is not enough to meet the standard for intentional infliction of emotional distress, for it must be (1) intentionally caused by (2) "extreme and outrageous conduct." *Yeager*, 6 Ohio St. 3d at 374. Further, certain situations are "naturally fraught with antagonism and emotion where a person must be expected to endure the resultant antagonism and mental anguish." *Stepien v. Franklin* (1988), 39 Ohio App. 3d 47, 51.

As an administrator in the Columbus school system and in a program using new and nontraditional teaching principles, the Plaintiff should have expected criticism and disagreement from her staff and from the teacher's union, especially in implementing a new and untested program in the Columbus School District. The conduct of the Defendants, therefore, cannot be characterized as extreme and outrageous, because most of the criticisms and activities involved the Plaintiff's role as a principal. The Plaintiff makes no assertion of specific situations where the Defendants' conduct would be viewed as outside the bounds of decency. Instead, the Defendants actions were focused on removing the principal from the Columbus School District. Further, the Plaintiff presents no evidence that the Defendants intentionally acted to cause emotional distress. Accordingly, the Defendants' motion for summary judgment on the issue of intentional infliction of emotional distress is granted.

Conclusion

To summarize, the Defendants motion for summary judgment is DENIED in part and GRANTED in part. The motion is GRANTED as to three (3) separate issues. First, with regard to seventeen (17) of the nineteen statements that the Plaintiff claimed to be defamatory, this court GRANTS summary judgment because the statements (1) do not meet the definition of defamation, (2) are in the form of an opinion, or (3) are covered by a qualified privilege. Second, the motion for summary judgment is GRANTED regarding the claim of conspiracy to defame. Finally, the motion is GRANTED on the issue of

intentional infliction of emotional distress. This court grants summary judgment for Defendants on the last two issues because, as a matter of law, the Plaintiff failed to present evidence tending to show a material issue of fact as to elements of both claims. The court notes that it provided Plaintiff with every opportunity to supplement and respond as needed in her pleadings on this issue.

While three (3) of the claims for summary judgment have been granted, two other claims for summary judgment are DENIED. First, this court DENIES the summary judgment claim for two (2) defamatory statements, because the Defendants did not meet their burden of proof and/or the Plaintiff demonstrated the existence of a material issue of fact. Second, summary judgment is DENIED with regard to the issue of tortious interference with contract, as the Plaintiff established the existence of a material issues of fact such that like minds could come to more than one conclusion on the issue.

Accordingly, the Court DENIES IN PART and GRANTS IN PART the Defendants' motion for summary judgment filed on May 11, 2001. Pursuant to Loc. R. 25.01, counsel for the Plaintiff and Defendants shall jointly prepare and circulate an appropriate judgment entry that reflects this decision. The judgment entry shall be entitled:

JUDGEMENT ENTRY
DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
FILED MAY 11, 2001

IT IS SO ORDERED.

____
JENNIFER L. BRUNNER, JUDGE

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