

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

AYNSLEY ANNE STARBUCK, and
THOMAS STARBUCK,

Plaintiffs,

v.

JAYSEN CHRISTOPHER MCCLEARY

Defendant.

Case No. 05771 LACL 143177

**ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

In its September 15, 2020, Ruling on Plaintiffs' Motion for Summary Judgment, the Court held that it could not rule on the Motion without first determining if the "litigation privilege" applied to the statements at issue. The Court also held that it could not make that determination based on the existing record. The Court provided Defendant Jaysen McCleary with 30 days to "submit a brief outlining how each allegedly defamatory statement is privileged." The Court further stated:

Defendant is advised that if he does not file such a brief, the Court will find that Defendant has not met his burden and will rule that the litigation privilege does not apply to the statements.

Defendant's deadline to submit the required brief was October 15, 2020. No such brief was filed.¹ Accordingly, consistent with the Court's September 15, 2020, Ruling, the Court finds that the litigation privilege does not apply to the statements at issue.

As noted in the Court's earlier Ruling, Defendant did not file any Resistance to the Motion for Summary Judgment. The Motion was properly supported by affidavits and a

¹ On October 13, 2020, Defendant did file a Motion to Reconsider. That Motion was denied by separate Order on November 2, 2020. The Motion to Reconsider did not make any request for an extension of the deadline to file the brief regarding litigation privilege.

Statement of Undisputed Material Facts. Thus, there is no dispute that the statements were made and are defamatory. The only thing that prevented a ruling in Plaintiffs' favor at the time of the Court's earlier Order was Defendant's oral assertion of litigation privilege at the hearing on the Motion for Summary Judgment.² Because the Court now holds that litigation privilege does not apply to the statements at issue, Plaintiffs' Motion for Summary Judgment is GRANTED.

The Court notes that the Motion for Summary Judgment was only with respect to the issue of liability. Accordingly, a jury trial is still needed to determine damages. The jury trial scheduled to begin on June 7, 2021, shall remain on the calendar, but shall deal with damages only.

IT IS SO ORDERED.

² Although the Motion for Summary Judgment was filed on March 19, 2020, the hearing was not held until August 28, 2020. The hearing was originally set for May 8, 2020, but was continued to June 19, 2020, in light of the pandemic and Defendant's request that the hearing be reported. The June hearing date was canceled in light of Defendant's Motion to Recuse filed June 18, 2020. The Motion to Recuse was denied by the Court on August 4, 2020.



State of Iowa Courts

Type: OTHER ORDER

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So Ordered

A handwritten signature in blue ink that reads 'David Nelmark'. The signature is fluid and cursive, with a large initial 'D'.

David Nelmark, District Judge
Fifth Judicial District of Iowa