

Joseph Pilchesky,

Plaintiff,

v.

Judy Gatelli, as President of Scranton City
Council; as Councilwoman; and, in her
Individual capacity,

Defendant,

v.

Joanne Pilchesky, John Doe, a/k/a 1 Musketeer,
John Doe, a/k/a 3blindrats, John Doe, a/k/a 666,
John Doe, a/k/a 1935, John Doe, a/k/a A man named
Jed, Jane Doe, a/k/a abbey, John Doe, a/k/a Adam,
John Doe, a/k/a Anti oppression, John Doe, a/k/a
Antisystemicmovements, John Doe, a/k/a aquamg,
John Doe, a/k/a atty skeletor, John Doe, a/k/a baron,
John Doe, a/k/a bigdaddy, John Doe, a/k/a Black
helicopters, John Doe, a/k/a Black Lung, John Doe,
a/k/a BoobyMcGoof, Jane Doe, a/k/a bo peep,
John Doe, a/k/a Brainwashed, John Doe, a/k/a Chris,
John Doe, a/k/a City Haul, John Doe, a/k/a clarks
summit luv nest, John Doe, a/k/a commoner,
John Doe, a/k/a Council rat, John Doe, a/k/a Crazy
Otto, John Doe, a/k/a Crony watcher, John Doe, a/k/a
cyberlion, John Doe, a/k/a DarthArt, John Doe, a/k/a
DeerParkerLumber, John Doe, a/k/a Deleware,
John Doe, a/k/a Dice Rolling 101, John Doe, a/k/a
Don't fear government, John Doe, a/k/a Eye for an
Eye, John Doe, a/k/a ezeddie, John Doe, a/k/a flower
child, John Doe, a/k/a Freedom is not free, John Doe,
a/k/a FRICKELLMOIE, Jane Doe, a/k/a Gatellis
blue dress, John Doe, a/k/a Gimme a break, Jane Doe,
Granma, John Doe, a/k/a Hammer, John Doe, a/k/a
Hitlers downfall, John Doe, a/k/a History writer,
John Doe, a/k/a Intelligent thinker, John Doe, a/k/a
insider, John Doe, a/k/a Irish Eyes are not Shining,
John Doe, a/k/a Isnt that lovely, John Doe, a/k/a
jimbu15, Jane Doe, a/k/a Judy, Jane Doe, a/k/a June
Cleaver, John Doe, a/k/a JustTheFacts, Jane Doe,
a/k/a Katie, John Doe, a/k/a Liberty is expensive,
Jane Doe, a/k/a Lipstick and lashes, John Doe, a/k/a

: IN THE COURT OF COMMON PLEAS
: OF LACKAWANNA COUNTY, PA

: CIVIL ACTION
: No. 2007-CV-1838

MARY F. RINALDI
LACKAWANNA COUNTY
2007 SEP 24 P 3:41
RECORDS OF JUDICIAL
RECORDS CIVIL DIVISION

Lobby cyst, John Doe, a/k/a methinks4myself, :
 John Doe, a/k/a Milo Ferlicker, John Doe, a/k/a :
 MistyMtTop, John Doe, a/k/a Money stalks, :
 John Doe, a/k/a Moving Forward, John Doe, a/k/a :
 Newsroom, Jane Doe, a/k/a newgirl, John Doe, a/k/a :
 Nobody, John Doe, a/k/a NoRepresentation, :
 Jane Doe, a/k/a NotADumbBlonde, Jane Doe, a/k/a :
 Once upon a secretary, John Doe, a/k/a Paul, :
 John Doe, a/k/a peewee, John Doe, a/k/a phoenix, :
 John Doe, a/k/a Pilcheskytics, John Doe, a/k/a :
 Logic, John Doe, a/k/a Political sex, John Doe, a/k/a :
 powertothepeople, John Doe, a/k/a Sacred Heart of :
 Elvis, Jane Doe, a/k/a Scranton Girl, Jane Doe, a/k/a :
 Stacy, John Doe, a/k/a The Judge, John Doe, a/k/a :
 The Mole, Jane Doe, a/k/a themom, John Doe, a/k/a :
 The next generation, John Doe, a/k/a Traditional :
 apathy, John Doe, a/k/a TwistedBrother, John Doe, :
 a/k/a Unionman, John Doe, a/k/a watch and ward, :
 John Doe, a/k/a/ Waterfalls, John Doe, a/k/a We are :
 so screwed, John Doe, a/k/a wildabeast, John Doe, :
 a/k/a Wolf pack, Jane Doe, a/k/a Working woman, :
 John Doe, a/k/a XraYspX, John Doe One, John Doe :
 Two, John Doe Three, John Doe Four, John Doe :
 Five, John Doe Six, John Doe Seven, John Doe :
 Eight, John Doe Nine, and John Doe Ten, :

Additional Defendants. :

**SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER
 JUDY GATELLI'S PETITION TO COMPEL DISCLOSURE
OF THE IDENTITY OF ADDITIONAL DEFENDANTS**

Petitioner, Judy Gatelli ("Gatelli"), by her undersigned counsel, hereby files this Supplemental Brief in Support of her Petition to Compel Disclosure of the Identity of Additional Defendants and in support thereof, states as follows:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On May 24, 2007, Gatelli filed a Petition to Compel Disclosure of the Identity of Additional Defendants ("Petition"). Pursuant to the briefing schedule issued by this Court, Gatelli filed a brief in support of her Petition on August 10, 2007. Now, Gatelli submits this

supplemental brief to address a recent decision of the Pennsylvania Supreme Court, Weaver v. Lancaster Newspapers, Inc., et al., 426 A.2d 899, 2007 Pa. LEXIS 1365 (2007), which substantially impacts Gatelli's Petition.

ISSUES AND SUGGESTED ANSWERS

- 1) Whether or not subsequent publications should be considered relevant to the determination of actual malice in the initial publication after a party is put on notice of a lawsuit?

SUGGESTED ANSWER: Yes.

- 2) Whether or not a summary judgment standard should be used to dispose of public figure defamation cases?

SUGGESTED ANSWER: No.

ARGUMENT

- 1) **Subsequent Publications Must Be Considered Relevant to the Determination of Actual Malice in the Initial Publication After a Party is Put on Notice of a Lawsuit.**

Earlier this year, the Pennsylvania Supreme Court determined that the republication of a statement, after a defendant receives a complaint alleging the statement is defamatory, is relevant to the presence of malice in the initial publication. Weaver, supra at *18, 19. The Pennsylvania Supreme Court relied on its earlier decision in O'Donnell v. Philadelphia Record, Co., 356 Pa. 307, 51 A.2d 775 (Pa. 1947), in ultimately determining that subsequent acts of republication must be considered alongside any other evidence of malice. Weaver, supra at *14.

Significantly, in O'Donnell, the plaintiff had been the subject of a newspaper editorial in which the defendant newspaper opined that O'Donnell is a "Naziphile."¹ O'Donnell, supra at 776-777. The defendant newspaper republished the libelous opinion after the plaintiff initiated

¹ In a litany of Posts by Pilchesky and the Additional Defendants, Gatelli is referred to as, inter alia, "Nazi", "Nazi dyke", "Nazi Gatelli" and "Nazi villain".

the litigation, and it was this republication that was considered relevant to the actual malice inquiry. Id. at 779. Similarly, in Weaver, the defendant newspaper published a letter to the editor accusing the plaintiff police officer of rape and destruction of evidence. Weaver, supra at *3. Three months after plaintiff filed the initial defamation complaint, defendant newspaper allowed the letter to the editor to be reprinted on a website. Id. at 3, 4. This republication, like the republication in O'Donnell, was ultimately considered relevant to the actual malice inquiry. Id. at 18.

In so ruling, the Pennsylvania Supreme Court, in Weaver, relied on the Restatement (second) of Tort § 580A which provides that “republication of a statement after the defendant has been notified that the plaintiff contends is false and defamatory may be treated as reckless disregard.” See also, Weaver, supra at *16. The Restatement further recognizes that a state might constitutionally treat a deliberate refusal to retract a clearly false defamatory statement as meeting the knowledge-or-reckless-disregard standard even though the conduct occurred subsequent to the publication. Restatement (second) of Tort § 580A, copy cmt. D (2006). See also, Weaver, supra at *17. Similarly, republications and refusals to retract are subsequent acts used to demonstrate a previous state of mind. Weaver at *17. Finally, the United States Supreme Court held that the existence of malice may be shown in any way including, but not limited to, prior or subsequent defamations, subsequent statements of defendants and circumstances indicating the existence of ill will, hostility or reckless disregard of a plaintiff’s rights. Herbert v. Lands, 441 U.S. 153 (1979) (Affirmed in part, reversed in part on other grounds by 781 F.2d 298 (2d. Cir. 1986)).

Instantly, Pilchesky and the Additional Defendants maligned and otherwise disparaged Gatelli on Dohertydeceit.com after the Joinder Complaint and Petition were filed, i.e., after the

parties were put on notice of the claims against them ("Subsequent Posts"). A representative sampling of those Subsequent Posts must be set forth herein to place Gatelli's supplemental argument in the appropriate context. For illustrative purposes only, those Subsequent Posts -- certain of which Pilchesky authored, certain of which Pilchesky edited, and all of which Pilchesky claimed responsibility -- include but are not limited to the following:²

- Yipee, I made the list. What happens now? Does this mean that my free speech was not privileged? My opinions were threats? Wow. Does this mean Fat ass Judy Gatelli determines for us what free speech is? I don't think so, you fat-assed, no good, Doherty blowjob, crony-ridden piece of ****. Come and get me. Hey, Joe, give them anything you want on me.

I'D LOVE TO BE IN COURT WITH THAT POLITICAL WHORE.

LOVE IT!

Jane Doe, a/k/a Gatellis blue dress (5/24/07).

- Just when you thought Judy Gatelli was the world's biggest asshole, she shows up as the world's dumbest, biggest asshole. And where was the whore of all whores tonight? She was a no-show once again. Too afraid of questions? You can't make this crap up, she goes down in history as the ugliest woman to ever take council and the most dysfunction moran to ever be president.

John Doe, a/k/a 1 Musketeer (5/24/07).

- I kinda hope that BUTCH does win her lawsuit, that way she can give the money she wins to her family instead of stealing off the taxpayers as Councilwoman in order to get jobs for her politically INBRED family.

Emotional distress? Judy is trying to sue for emotional distress that Joe P et. al. caused her. How is it possible for a court to determine whether or not Judy suffered emotional distress from Joe? Butch was crazy long before Joe started to fight corrupt politicians. If anything, she is more stable now since the Dr. and

² Significantly, the Subsequent Posts identified herein were submitted in response to a specific topic on the Dohertydeceit.com message board entitled: "This is your life, Judy Gatelli, and it's open season on your character."

hubby are paying ever closer attention to her med levels.³

John Doe, a/k/a Antisytemicmovements (5/24/07).

- Mr. Reihner, you made my day. I would have been very upset if you didn't pick me. Was it something I said about Gatelli being a corrupt, lying, two-faced, thieving, law breaking, under-handed, lowlife, dirtbag, scumbag, lice infested, backstabbing, donkey-brained, Hitlerish, crony, foul mouthed, dyke-looking, pompous jackass, sell out, infidel, rude, ignorant, crass, mental midget, windbag, anti-constitutional, hypocritical betrayer? Just wondering.

John Doe, a/k/a City Haul (5/24/07).

- aaaaa. Judy is a disgrace of a councilwoman who should resign TODAY.

bbbbbb. Due to Judy's mental incapacity, and her inability to make sound and rationale judgments, I feel that Judy should be forced to resign as Councilwoman.

ccccc. I believe her mental incapacity should prevent her from working with children at a school. I feel that they are under grave danger while under the care of one crazy Judy Gatelli.

- ddddd. I'm not certain she is a woman. Her gender is ambiguous.

John Doe, a/k/a Antisytemicmovements (5/25/07).

- Here's my little contribution to Judas' lawsuit. I guess Atty, Rino thought I said something wrong...Prostitution is the oldest occupation. And I'm not talking about sex. (an analogy nit wit and show me where I'm talking specifically about Judas). Come and get it Atty. DObee. Hey Joe, maybe we should SHED a little light on our new Atty. Friend?

John Doe, a/k/a bo peep (5/27/07).

- So "miranda" perhaps you meant to ask your question of the broad with the big mouth who pushed, cheated intimidated and abused her power to get whatever she wanted.

Jane Doe, a/k/a Katie (6/8/07).

The Subsequent Posts are certainly defamatory and otherwise malicious. The existence of malice may be shown in any way including, but not limited to, prior or subsequent

³ This Post also evidences the intent to cause Gatelli severe emotional distress.

defamations, subsequent statements of defendants and circumstances indicating the existence of ill will, hostility or reckless disregard of a party's rights. (Emphasis Added.) Herbert, supra at 164. The Subsequent Posts certainly evidence the ill will, hostility and reckless disregard of Pilchesky and the above-referenced Additional Defendants. Moreover, their deliberate republications and taunting are a far cry from a retraction, and as previously stated, a deliberate refusal to retract a defamatory statement meets the knowledge-or-reckless-disregard standard. Restatement (second) of Tort § 580A. If this Court were to apply the above rationale to the facts in the instant matter, it would be compelled to consider the Subsequent Posts alongside all other relevant evidence in accordance with Weaver, and ultimately find that Gatelli has established prima facie claims for, inter alia, defamation entitling her to discover the identities of the Additional Defendants.

2) **Summary Judgment Standard Should Not be Utilized to Dispose of Public Figure Defamation Cases.**

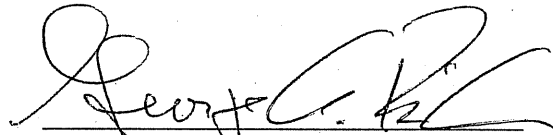
In Weaver, the Pennsylvania Supreme Court also refused to utilize the summary judgment standard in making a determination of actual malice in a public figure defamation case. Weaver, supra at *21. Proof of actual malice calls a party's state of mind into question and does not readily lend itself to summary disposition. Weaver, supra at *21 (citing Hutchinson v. Proxmire, 443 U.S. 111 (1979)). In Hutchinson, the Supreme Court expressed its doubts generally about the use of summary judgment to dispose of public figure defamation cases. Hutchinson, at 120. In Weaver, the Pennsylvania Supreme Court relied on the rationale in Hutchinson, and ultimately reversed the ruling of the trial and appellate courts which granted summary judgment against the defamation plaintiff. Even though Gatelli is able to present sufficient evidence of actual malice in the instant case as previously outlined herein, Weaver makes it clear that she is not required to prove same at this early discovery phase and otherwise

meet a stringent summary judgment standard.

CONCLUSION

In conclusion, based upon the foregoing analysis and the persuasive reasoning contained in the foregoing case law, this Court must compel disclosure of the identities of the Additional Defendants. The Subsequent Posts are clearly defamatory, and were made after Pilchesky and Additional Defendants were put on notice of the claims against them. Consequently, the Subsequent Posts must be considered malicious. Moreover, Gatelli has satisfactorily stated cognizable claims for defamation, civil conspiracy and intentional infliction of emotional distress, and has further demonstrated that the identities are directly related to her claims and fundamentally necessary to secure relief. Consequently, Gatelli has satisfied the criteria entitling her to an order compelling the disclosure of the identities of the Additional Defendants.

WHEREFORE, Petitioner Judy Gatelli respectfully requests that this Court grant Gatelli's Petition and order the disclosure of the identities of the Additional Defendants.



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Dated: September 24, 2007

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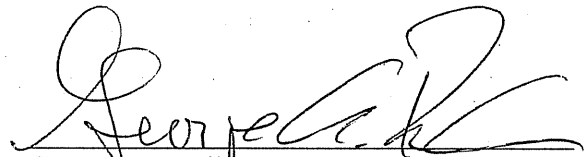
CERTIFICATE OF SERVICE

I, GEORGE A. REIHNER, hereby certify that on this day a true and correct copy of the foregoing Supplemental Brief in Support of Gatelli's Petition to Compel Disclosure of Identities of Additional Defendants was served upon counsel of record by first class mail, postage prepaid as follows:

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Dated: September 24, 2007