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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

James Richard Newlin,

Plaintiff,

vs.

Lakeside Pediatric & Adolescent  
Medicine, PLLC et al.,

Defendants.

Case No. 2:24-cv-539-AKB

**MEMORANDUM IN SUPPORT  
OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

I, James Newlin (Plaintiff), submit this memorandum in support of my Motion for Summary for Partial Summary Judgment (the "Motion") per Dist. Idaho Loc. Civ. R. 7.1(b)(1). The Motion should be granted as all factors are necessary

to show that the statements made by Defendants, as referenced in the Motion, are defamatory per se in each instance.

### **STANDARD OF REVIEW**

1. Pursuant to Fed. R. Civ. P. 56(c), summary judgment should be granted if the pleadings, depositions, and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. If this burden is met, the non-moving party must then set forth specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 371, 322-23 (1986).

2. A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court must view the evidence and draw all reasonable inferences in favor of the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

3. The non-moving party cannot rest on mere allegations or denials but must present concrete evidence supporting its claims. See *Anderson*, 477 U.S. at 256. Summary judgment is appropriate when the non-moving party fails to make a sufficient showing on an essential element of its case for which it bears the burden of proof. See *Celotex*, 477 U.S. at 322-23.

4. In a defamation action, a plaintiff must prove that the defendant: (1) communicated information concerning the plaintiff to others; (2) that the information was defamatory; and (3) that the plaintiff was damaged because of the communication. See *Gough v. Tribune-Journal Co.*, 73 Idaho 173, 177, 249 P.2d 192, 194 (1952) (quoting from *Clark v. Spokesman-Review*, 144 Idaho 427, 163 P.3d 216 (Idaho 2007)). "A defamatory statement is one that tends to harm a person's reputation, usually by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business." *Id.* (quoting *Defamatory*, Black's Law Dictionary 506 (10th ed. 2014)).

5. Statements that rise to the level of defamation per se do not require proving special damages. *Irish v. Hall*, 163 Idaho 603, 607, 416 P.3d 975, 979 (2018). Idaho law recognizes that defamatory utterances are actionable without allegation and proof of special damages if they fall within one of four categories: statements which impute to the plaintiff either: (1) a criminal offense; (2) a loathsome disease; (3) a matter incompatible with his trade, business, profession, or office; or (4) serious sexual misconduct. *Barlow v. International Harvester Co.*, 95 Idaho 881, 890, 522 P.2d 1102 (1974). In this case, Defendants have falsely accused me of the crime of child abuse and neglect.

6. Idaho Code § 16-1602(1)(a) states: "Abused" means any case in which a child has been the victim of: (a) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, head injury, soft tissue swelling,

failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence;

7. Idaho Code § 18-1501(1) “Injury to children” states: “(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.”

### **ARGUMENT**

8. In all statements made by Defendants (the Motion ¶ 1 to ¶ 7), they communicated defamatory information to a third party. In this case, Defendants’ statements fall squarely within the category of imputing a criminal offense, as Defendants falsely accused me of child abuse and/or neglect per Idaho Code § 18-1501 et seq. and Idaho Code § 16-1601 et seq. This renders all statements defamatory per se, therefore, allegation and proof of special damages need not be shown.

9. Maria's false accusations that I was intentionally causing KEN to be malnourished by putting her on a vegan diet fall squarely within the definition of child abuse under Idaho Code § 16-1602 and punishment under Idaho Code § 18-1501. Based on Maria's false allegations, I could have been immediately removed from the family home following Idaho Code § 16-1608(1)(b): "An alleged offender may be removed from the home of the victim of abuse or neglect by a peace officer without an order..." and I could have been charged under Idaho Code § 18-1501.

10. Maria's defamatory statements (refer to the Motion ¶ 1 to ¶ 5) to Prairie Family Medicine, Lakeside Pediatrics, and the Idaho Department of Health and welfare were defamatory per se, as she blamed me for KEN's malnourishment & "failure to thrive" diagnosis, which meet the definition of abuse per Idaho Code § 16-1602(1)(a).

11. Statements made by Lakeside Pediatrics (refer to the Motion ¶ 6 and ¶ 7) rise to the level of defamation per se: (1) statements were made to the Idaho Department of Health and Welfare; (2) the statements were defamatory as I was falsely accused of medical neglect of KEN, which by its nature would harm my reputation by subjecting me to public contempt, disgrace, or ridicule; (3) I was falsely accused of willfully refusing to allow KEN to have a hearing test and to have her tonsils and adenoids removed. Based on these defamatory statements I could have been charged under Idaho Code § 18-1501.

12. Lakeside Pediatrics erroneously asserted that my compliance with the 9/21/2023 Temporary Order was evidence that I was not allowing KEN to have the hearing test. Furthermore, a representative of Lakeside Pediatrics, Kayla Ellis, falsely attributed an improper motive to me, stating "...[Kayla] feels [James] is taking the court order for Lakeside Pediatrics to see KEN out of context." This deliberate misrepresentation of my actions constitutes contextomy and falsely accuses me of denying KEN necessary medical treatment.

13. Lakeside Pediatrics was grossly negligent in accusing me of medical child neglect. They acted with a severe lack of care, demonstrating a reckless disregard for the truth or falsity of their statements. Lakeside Pediatrics made no effort to investigate the truth of their accusations, notably, refusing to speak with me or consult medical records. The fact that Lakeside Pediatrics wholesale fabricated the claim that I was not allowing KEN to have her tonsils and adenoids removed—a treatment which KEN has *never* needed—shows the extent to which Lakeside Pediatrics was reckless in their accusations.

14. I called Lakeside Pediatrics on 10/6/2024 to get a referral for KEN to receive a hearing test. It was only days later (between 10/12/2023 and 10/30/2023) that Lakeside Pediatrics was interviewed by the IDHW and falsely claimed I was not allowing this care to take place. Lakeside Pediatrics was obviously aware I was attempting to take KEN for a hearing test, since this call had been only days prior to the interview by the IDHW. Lakeside Pediatrics clearly

knew about this phone call, yet still made the false statement that I was refusing to allow KEN to have a hearing test.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2024.

  
James Newlin