IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

PATRICE J. WARD,	:	C.A. No. S12C-04-004 RFS
Plaintiff,	:	
v.	:	
MEAGAN BLAIR,	:	
Defendant.	:	

MEMORANDUM OPINION

UPON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - GRANTED

DATE SUBMITTED: April 8, 2013

DATE DECIDED: July 16, 2013

Patrice J. Ward, P.O. Box 71, Harbeson, DE 19951, Plaintiff *pro se.*

Jennifer C. Jauffret, Esquire and Lori A. Brewington, Esquire, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, DE 19801, Attorneys for Defendant.

Stokes, J.

Plaintiff Patrice Ward ("plaintiff" or "Ward") has filed an action against Meagan Blair ("defendant" or "Blair") alleging defamation, the making of a false written statement in violation of 11 *Del. C.* § 1233,[1] and some vague claims of violations of administrative rules. Plaintiff has moved to amend her complaint. Also pending is a motion for summary judgment.

Because plaintiff is *pro se*, the Court has examined all of her documents, without regard to whether they are in the proper format or procedurally proper, and has considered every assertion in all of her submissions to determine whether plaintiff, even if allowed to amend her complaint, has stated a claim for relief so that the matter may proceed.

Plaintiff, while impaired, drove to the liquor store with her children in her vehicle. Plaintiff was arrested for driving under the influence ("DUI"). Delaware Family Services ("DFS") took her children.

The DUI arrest resulted in plaintiff being placed on probation. She was required to complete the Delaware Evaluation and Referral Program ("DERP" or "DUI program") which Thresholds, Inc. ("Thresholds") administered. Until she completed that DUI program, she could not be discharged from probation nor could she obtain her driver's license.

In order to obtain reunification with her children, plaintiff had to undertake counseling and meet certain goals. Those goals were: to be employed; attend her children's doctors' appointments; complete a parenting class; have approved housing; pay all court costs, treatments

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[1] 11 *Del. C.* § 1233 provides:

> A person is guilty of making a false written statement when the person makes a false statement which the person knows to be false or does not believe to be true in a written instrument bearing a notice, authorized by law, to the effect that false statements therein are punishable.
>
> Making a false written statement is a Class A misdemeanor.

and fines; and satisfactorily complete the DUI program. Family Court held several hearings where various counselors reported to that court about plaintiff's progress. It was only when she met all the goals that Family Court would allow her children to return to her. A significant Family Court hearing date was October 4, 2011. Plaintiff maintains that she was on track to have her children returned to her at that hearing. She had completed counseling required by DFS at Brandywine Counseling & Community Service, Inc. ("BCCS") and she had reached all of the other goals but for completing the DUI program at Thresholds. As the Court notes later, the facts do not support this contention that she had reached all of her goals but for completing the DUI program.

The basis of plaintiff's complaint is that defendant defamed her with the staff at Thresholds. Thresholds then refused to discharge her successfully from the DUI program. Instead, it discharged her at risk. This discharge at risk resulted in her not receiving reunification with her children at the October 4, 2011, hearing; not obtaining her driver's license until she completed a more intensive program; and not obtaining a full-time job until she obtained her driver's license.

The pertinent players in this litigation are counselors with whom plaintiff dealt in connection with her various treatments and programs. Her DFS caseworker was Jennifer Rogers ("Rogers"). Her counselor at BCCS was Kristine Hutchison, MS, LPCI ("Hutchison"). From March 2010 through the time pertinent to this litigation, defendant was the liaison between DFS and BCCS. Plaintiff's counselor at Thresholds for the original DUI program was Emily Andres ("Andres"). Another Thresholds employee involved with plaintiff was Susan Harris ("Harris").

DFS referred plaintiff to BCCS and plaintiff began required counseling. On June 28,

2011, Hutchison entered a discharge summary which contains the following pertinent information. Plaintiff met with Hutchison for six individual sessions. Diagnostic impressions for plaintiff at the time of discharge were as follows. Axis 1: Alcohol Related Disorder NOS and Axis II: Personality Disorder NOS with Obsessive Compulsive, Histronic, Narcissistic and Paranoid Features. These diagnoses were based upon the report of the psychological evaluation by Dr. Joseph Zingaro dated June 10, 2010. This June 10, 2010 report states:

> Based on my clinical interview with Patrice, I believe that the diagnosis Alcohol Related Disorder NOS is a better fit than Alcohol Dependence. Patrice did not report that she has either increased dependence or tolerance for alcohol, however, the DUIs and driving an automobile while under the influence, particularly with a child present, is sufficient for the diagnosis of Alcohol Related Disorder NOS. The diagnosis Personality Disorder NOS is given because Patrice appears to have a number of features or traits from other personality disorders, but does not meet criterion for any one specific disorder.

Hutchison further stated in her June 28, 2011 discharge summary:

> [Plaintiff] had a difficult time understanding the problems she has had in regard to her alcohol use (3 DUI's). Although she acknowledged that she made a mistake while driving intoxicated with her children in the car, her ongoing tendency was to put the blame elsewhere. ***
>
> Unresolved issues: Use of alcohol to cope with stressful situations, emotional impact of having her children placed in foster care; learning effective communication skills.

On June 28, 2011, BCCS discharged plaintiff "with partial success" and deemed her prognosis to be "Guarded".

On July 5, 2011, plaintiff filed a consent form with DFS authorizing Thresholds to disclose to DFS plaintiff's participation in the DUI program. Although defendant has produced another release, also dated July 5, 2011, to BCCS which authorized Thresholds to disclose information to BCCS, plaintiff claims she did not sign this second release.

On August 9, 2011, plaintiff met with Andres for intake into the DUI program.

On August 11, 2011, defendant contacted Andres by telephone and presented herself as a DFS employee and liaison. Plaintiff maintains that defendant is not a State employee. The Court, however, finds otherwise as a matter of law.[2] DFS and BCCS entered into a contract so that BCCS could provide alcohol and drug treatment for DFS clients. The contract provides that DFS shall "[i]dentify a Contract Manager who shall be the primary liaison with [BCCS] on behalf of [DFS]."[3] The contract further provides: "Each PARTY shall designate, in writing, its authorized official representative to the other PARTY...."[4] DFS identified and hired its representative, and BCCS did the same. DFS's representative was defendant. DFS supervised defendant's daily work load. Defendant worked DFS hours. Her office was located in the DFS building. She had a State of Delaware employee badge and a key card to the DFS building. She had a State e-mail account. She had access to DFS records and entered her own client records in the DFS system. Defendant was provided a State-owned vehicle. Thus, defendant was a state employee working for and on behalf of DFS in an official capacity.[5]

Plaintiff's arguments that defendant was not a state employee are meritless.

During their telephone conversation on August 11, 2011, defendant discussed plaintiff with Andres. According to Andres' notes, defendant told Andres that plaintiff is "'extremely

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[2]The existence of an employer/employee relationship is an issue of law where no facts are in dispute. *Porter v. Pathfinder Services*, 683 A.2d 40, 42 (Del. 1996).

[3]Art. I, Section A.1.

[4]Art. I, Section C.1.

[5]*Fisher v. Townsends, Inc.*, 695 A.2d 53, 59 (Del. 1997).

difficult, non-complaint with every treatment, especially with groups.'" Defendant warned Andres to be careful with plaintiff and told Andres, "If I were to frustrate her or agitate her, she will act out in group and will attack me and others verbally." Finally, defendant told Andres that plaintiff "has received a psych eval and has been diagnosed with multiple personality disorders."

As noted earlier, plaintiff was required to finish her program with Thresholds before she could obtain her driver's license and before she could have her children returned to her. However, because of the Labor Day holiday, plaintiff could not have one of her sessions with Thresholds, and consequently, she would not be able to complete the DUI program before the October 4, 2011 Family Court hearing date. Plaintiff sought to remedy this problem as reflected in an addition to Andres' September 14, 2011 notes:

> Patrice asked if I consulted with my supervisor about her taking two group sessions in one week so she can finish the DUI treatment course before her next court date, October 4. I responded that I did consult with my supervisor and she will need to complete the program as designed. She became quite upset and called the DUI supervisor "tyranical" [sic] due to his unwillingness to make an exception for her. Patrice must complete DUI treatment, parenting classes, find an acceptable place to live, and be gainfully employed before DFS will place her three children back with her. She has completed the parenting classes, but has not found an acceptable place to live or employment after the swimming pools close in the next month or so.

On September 16, 2011, plaintiff's housing was approved. However, nothing establishes she had obtained employment other than with the swimming pools.

Andres' notes from September 21, 2011, record the following. Defendant had left a message with her stating that plaintiff had told DFS she had completed the DUI program when she had not. Later that day, defendant told Andres that plaintiff had not successfully completed treatment with BCCS and stated that "in her opinion" plaintiff is "incapable of insight."

At this point, Andres and Harris discussed Patrice's case. Harris explains what occurred thereafter in an affidavit filed on March 28, 2013:

> 2. Thresholds, Inc. did use information provided by Ms. Blair, **along with direct observation,** to determine Ms. Ward's discharge status from the DUI Treatment Program.
> 3. Ms. Blair requested that Thresholds, Inc. recommend a specific counseling agency for further treatment following Ms. Ward's discharge from our DUI treatment program. Ms. Blair stated she made this request because the specified counseling agency has the ability to perform 80 hour alcohol tests. This resulted in Thresholds doubting Ms. Ward's credibility regarding alcohol use. [Emphasis added.]

Andres' September 21, 2011, notes reflect Thresholds' discussions about how to tell plaintiff of its decision to discharge plaintiff at risk rather than successfully and Andres' later discussions with defendant.

> Today, I spoke to supervisor, Sue Harris, about Patrice and her case. She suggested I include a seasoned counselor in an individual session with me when I discuss with Patrice her need for longer term treatment. I spoke to counselor Kim Pizza and asked her to assist me with Patrice. Kim agreed and reviewed Patrice' 's [sic] file. Megan Blair returned my call and I informed her of Patrice' 's [sic] pending DAP [sic]. Meagan stated that Patrice had attended Brandywine for alcohol counseling and did not complete successfully soon before she came to Thresholds for DUI treatment. Brandywine treatment was a condition of her DFS case plan. Meagan stated that, in her opinion, and after extensive time working with Patrice, that Patrice is incapable of insight." ... I shared with Meagan **my** concern that Patrice may be driving on an expired Texas driver''s [sic] license [Emphasis added].[6]

DFS caseworker Rogers' notes from September 21, 2011, at 2:00 p.m. state:

> Patrice Ward will not be discharged successfully from Thresholds. Instead, she will be discharged DAR - discharged at risk. She did not successfully complete the program, and they are recommending long term treatment. She can complete the three groups she has left and discharge session should she choose, however; [sic] she will not qualify to get her license back.

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[6]This note establishes that Andres, and not defendant, raised the driving issue.

Andres' notes from September 22, 2011, state:

> I received a phone call from Meagan Blair, Drug and Alcohol Liaison with DFS. She requested to know how the session with Patrice went. I explained to Megan that Patrice was loud, combative, and uncooperative. Meagan recommended, and stated that DFS recommends, if Patrice acts out in group to call the police. Meagan continued to affirm that Patrice has acted the same in other situations. Meagan asked if Thresholds could recommend Patrice attend Kent Sussex Counseling for outpatient therapy due to their ability to test for alcohol intake with ETG-ETS testing; an 80-hour gas chromatography test.

In Rogers' September 22, 2011 notes/email to the attorneys involved in the DFS proceedings, Rogers states in pertinent part:

> DFS was informed that Patrice Ward will not be discharged successfully from Thresholds as she has been reporting. Instead, she will be discharged DAR-discharged at risk. This means that she did not successfully complete the program, and they are recommending long term treatment. She can complete the three groups she has left and discharge session should she choose, however; [sic] she will not qualify to get her license back. As she will be discharged at risk, she does not meet the criteria for successful completion of substance abuse treatment per her case plan. As a result, until she enrolls in long term treatment per the recommendation of Thresholds and begins participating successfully/continuing to test negative DFS will not be able to support overnight visits or a trial home placement. DFS will continue to offer day visits on the weekends, with the understanding that Ms. Ward cannot transport the children during the visit.

In a note dated September 27, 2011, Andres stated:

> At the time of intake, Patrice did not disclose any mental health concerns. Meagan Blair ..., the Drug and Alcohol Liaison with Department of Family Services contacted me in reference to Patrice. Meagan stated that Patrice is "extremely difficult, non-compliant with every treatment, especially with groups." The Brandywine Counseling evaluation states she was diagnosed with traits of Histrionic Personality Disorder by their agency. Patrice has received a psych evaluation by Dr. Joseph Zingaro. He diagnosed Patrice with Alcohol Related Disorder, NOS, Personality Disorder NOS with Obsessive Compulsive, Histrionic, Narcissistic, and Paranoid Features.

Andres also stated in this September 27, 2011 note that plaintiff has stated she clearly does not have a problem with alcohol and that plaintiff is argumentative in groups. Andres then

wrote:

> DIAGNOSTIC SUMMARY: 305.00 Alcohol Abuse evidenced by a history of three DUIs, child endangerment, and recent unsuccessful addiction treatment at Brandywine. Client appears to be in the maintenance stage evidenced by disclosure of last use of alcohol 11/10/2010. Although Patrice has disclosed she has been abstinent since her most recent DUI, she appears to be in the pre-contemplation stage evidenced by her disclosure on her relapse prevention plan that she will return to drinking despite a history of three DUIs. Patrice is not engaged in AA meetings evidenced by her general negative remarks of those in recovery.

Plaintiff's children were not returned to her at the October 4, 2011 hearing. Even though plaintiff would not have completed the DUI program by that time, even though she did not have a job other than with the swimming pools, and even though none of her counselors considered her to have accepted her problems with alcohol, she maintains Family Court definitely would have given her children to her at that time.

The above-referenced affidavit of Thresholds' Harris explains events occurring after the October 4, 2011 hearing:

> 4. Following an October 4, 2011 conversation I had with Ms. Blair in the Family Court lobby, I decided there would be no further contact or correspondence between counselors at Thresholds, Inc., and Ms. Blair. Any further communication with Ms. Blair would be with me. I informed Ms. Blair of this decision. I made this decision because of concerns regarding Ms. Blair's use of confidential information.
> 5. Ms. Ward appealed her discharge at risk status with Thresholds, Inc., and with the Division of Substance Abuse and Mental Health. Both those appeals were denied.
> 6. Ms. Ward then began further treatment with Brandywine Counseling Community Services' counselor Kris Hutchison. I monitored Ms. Ward's progress in treatment from December, 2011 through February, 2012. This treatment included group and individual counseling sessions.

Another Family Court hearing was held on January 10, 2012 regarding placement of the children. The Family Court decision provides in pertinent part:

> Hutchison testified that it was at the December 27, 2011 meeting that mother seemed to realize for the first time that alcohol has an adverse affect on one's ability to function properly. Since that session, Ms. Hutchison testified mother has been more compliant. Ms. Hutchison further testified that mother will need to attend six weeks of classes and be reassessed to determine if any further counseling is required.
> ***
> Section 9 concerns family counseling. Mother is now meeting with the children ... in family counseling.
> At the conclusion of mother's case plan, she requested that the children be placed in her home immediately for a trial home placement. The Division and the OCA oppose the immediate transfer of the children to the mother for a trial home placement. The Division and OCA are primarily concerned with mother's yet completed substance abuse program.
> The children came into care because mother was arrested for Driving under the Influence after taking one or more of her children to a local liquor store. As previously stated, Ms. Hutchison of Brandywine Counseling testified that mother has just recently begun to understand the issues of drinking and driving. As Ms. Hutchison testified, "One DUI is a result of poor judgment, but three DUI's is something more."
> I am satisfied that based on the current record, it is not appropriate to begin an immediate trial home placement of these children.

Family Court scheduled its next hearing for April 3, 2012.

Once plaintiff completed the substance abuse treatment program in February, 2012, DFS returned her children to her. She was formally granted custody of them at the April 3, 2012, hearing.

Plaintiff asserts a claim for making a false written statement in violation of 11 *Del. C.* § 1233. That is a meritless claim because defendant did not write anything. Defendant's statements were oral only. Thus, there is no basis for asserting any violation of 11 *Del. C.* § 1233, even if plaintiff established she could base a private cause of action on that statute, a step she has not even attempted to undertake.

Plaintiff also makes an unclear assertion regarding a violation of some administrative

rules and of 24 *Del. C.*, ch. 30.,which pertains to mental health and chemical dependency professionals. The claim fails because it is not clear and in any case, plaintiff has made no effort to show how any violation of that statute provides a private cause of action.[7]

Thus, plaintiff's only possibly viable claim is one for defamation. Defendant has moved for summary judgment.[8]

The standard for summary judgment is well-established in Delaware. This Court will grant summary judgment only when no material issues of fact exist and the moving party is entitled to judgment as a matter of law.[9] The moving party bears the burden of establishing the non-existence of material issues of fact.[10] Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.[11] The Court must view the facts in a light most favorable to the non-moving party.[12] Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.[13] If, after viewing the

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[7]Plaintiff has produced documentation showing proceedings within the administrative context are occurring.

[8]Initially, the filing was one to dismiss. However, because the parties have submitted affidavits, it has become one for summary judgment. Super. Ct. Civ. R. 12(c).

[9]*Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).

[10]*Id.* at 680.

[11]*Id.* at 681.

[12]*Id.* at 680.

[13] Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

evidence in the light most favorable to the non-moving party, the Court finds no genuine issues of material fact exist, then summary judgment is appropriate.[14] If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is inappropriate.[15]

Set forth below is the general law which is applicable to a defamation claim and which will provide the framework for examining plaintiff's assertions of defamation.

> Defamation generally is understood as a false publication calculated to bring one into disrepute. It includes the idea of calumny, aspersion by lying. The foundation of the action is that damage has resulted from a wrong done to reputation. [Citations omitted.][16]

"[P]laintiff's standing in the community must be 'grievously fractured.'"[17] In other words, "[t]he plaintiffs' reputation in the entire community must be affected."[18] The harm to his or her reputation lowers her "in the estimation of the community" or it deters "third persons from associating or dealing with him."[19]

The case of *Spence v. Funk*[20] provides a fairly detailed explanation of the law on

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[14]*New Castle County Council v. State*, 698 A.2d 401, 404 (Del. Super. 1996), *aff'd*, 688 A.2d 888 (Del. 1997).

[15]*Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

[16]*Snavely v. Booth*, 176 A. 649, 654 (Del. Super. 1935).

[17]*Q-Tone Broadcasting, Co. v. Musicradio of Maryland, Inc.* 1994 WL 555391, *4 (Del. Super. Aug. 22, 1994).

[18]*Id.*

[19]*Harrison v. Hodgson Vocational Technical High School*, 2007 WL 3112479, *2 (Del. Super. Oct. 3, 2007)

[20]396 A.2d 967 (Del. 1978).

defamation.

> The law of defamation is a reflection of society's attempt to accommodate two important but often conflicting policies: on one hand, the policy of protecting a person in the enjoyment of his good name and reputation and, on the other, the policy of encouraging freedom of expression.
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> In this general context, "defamation" is, according to Prosser:
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> > "... that which tends to injure 'reputation' in the popular sense; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him."
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> ... The Restatement of the Law Torts s 559 has adopted a similar but somewhat shorter definition:
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> > "A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." [Citations omitted.][21]
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> Later, the Court states:
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> *** [D]efamation consists of the "twin torts" of libel and slander. ... In shortest terms, libel is written defamation and slander is oral defamation. ... [I]n general, the scope of liability is greater for libel, and the pleading requirements for libel are less strict. ...
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> ***
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> Preliminarily, we note that, for pleading purposes, slander is treated the same way by almost all American jurisdictions. Briefly, the general rule is that oral defamation is not actionable without special damages. But there are four categories of defamation, commonly called slander Per se, which are actionable without proof of special damages. In broad terms, these are statements which: (1) malign one in a trade, business or profession, (2) impute a crime, (3) imply that one has a loathsome disease, or (4) impute unchasity to a woman. [Citations omitted.][22]

In this case, we are dealing with slander and not libel. Defendant's statements were oral.

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[21] *Spence v. Funk*, 396 A.2d at 969.

[22] *Id.* at 970.

The fact they were later written down does not render them to be libelous. The statements, also, are not slander per se because they do not fall into any of the four categories which constitute slander per se.[23]

In order to be actionable, plaintiff must assert proof of special damages.[24] The action shall not go forward unless the special damage(s) "actually and naturally result[...] from the alleged defamatory publication."[25] Special harm must occur and it must be measured in money with "approximate exactness" and the loss must be occasioned by the conduct of third parties in response to the alleged defamation.[26] Emotional distress and/or mental anguish are not special harm.[27] In other words, mere loss of reputation is not sufficient; there must also be harm of a pecuniary nature which directly results from the defamation.

The courts of this state disfavor libel and slander.[28] Thus, "[w]here the alleged wrong is not actionable per se, the allegations of the complaint are viewed with special care if challenged by a defense motion to dismiss or a motion for summary judgment."[29] The Court's role is "to

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[23]The loathsome disease must be an infectious one. *Frederico v. Tambascio*, 2003 WL 23112288, *10 (CCP May 12, 2003).

[24]*Spence v. Funk*, 396 A.2d at 971; *Danias v. Fakis*, 261 A.2d 529, 531 (Del. Super. 1969).

[25]*Snavely v. Booth*, 176 A. 649, 656 (Del. Super. 1935).

[26]*Danias v. Fakis,*, 261 A.2d at 532.

[27]*Id.*.

[28]*Id.*

[29]*Id.*

determine whether a statement is capable of bearing a defamatory meaning."[30] A plaintiff is presumed to have stated her defamation claim in its best light and "[i]n determining whether words are defamatory, the Court must take their plain and natural meaning and understand them as would a person of average intelligence and perception."[31]

I now examine the statements defendant made.[32] Because the Court determines whether a communication is capable of bearing a particular meaning, and whether that meaning is defamatory, it deems plaintiff's characterizations of the statements to be irrelevant.

Andres' notes from August 11, 2011 reflect defendant made several statements regarding plaintiff.

* Plaintiff "has received a psych eval and has been diagnosed with multiple personality disorders."

The "psych eval" is a reference to Dr. Zingaro's June 10, 2011 report. Andres received the report on August 17, 2011. The report contains the actual diagnoses of Alcohol Related Disorder NOS and Personality Disorder NOS with Obsessive Compulsive, Histronic, Narcissistic and Paranoid Features. As of September 14, 2011, when Andres had the correct mental health diagnosis of plaintiff, Andres concluded that plaintiff was on track to be discharged successfully

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[30]*Drainer v. O'Donnell*, 1995 WL 338700, *2 (Del. Super. July 28, 1995), *app. dism.*, 667 A.2d 1318 (Del. 1995). *Accord Read v. Carpenter*, 1995 WL 945544, *4 (Del. Super. June 8, 1995), *rearg. den.*, 1995 WL 945548 (Del. Super. June 23, 1995), *aff'd*, 670 A.2d 1340 (Del. 1995).

[31]*Martin v. Widener University School of Law*, 1992 WL 153540, *6 (Del. Super. June 17, 1992), *app. dism.*, 612 A.2d 158, 1992 WL 219195 (Del. Aug. 7, 1992) (TABLE).

[32]For summary judgment purposes, I assume that defendant did make the statements as asserted.

if she remained abstinent, attended all group and individual meetings in the DUI treatment program, and submitted a reasonable and acceptable relapse prevention plan. Any misstatement on August 11, 2011, regarding plaintiff's mental health diagnosis had been corrected and Andres deemed plaintiff to be on track for a successful discharge. Stated another way, when Andres considered plaintiff to be on track to complete the DUI program successfully, Andres was aware of plaintiff's actual mental health diagnosis. The misstatement of her diagnosis did not cause plaintiff to be discharged at risk. Even if defendant did state that plaintiff had multiple personality disorders, that statement did not result in any harm to plaintiff. Any claims plaintiff makes based upon this statement regarding her mental health diagnosis are meritless and the Court will not consider any assertions or arguments based upon the mental health statement.

I now return to defendant's statements. Defendant made two other statements reflected in the August 11, 2011 notes:

* Plaintiff is "'extremely difficult, non-complaint with every treatment, especially with groups.'"

* Defendant warned Andres to be careful with plaintiff. "If I were to frustrate her or agitate her, she will act out in group and will attack me and others verbally."

Plaintiff notes that she had not participated in any group sessions with BCCS; thus, defendant made untrue statements.

Defendant made a number of statements on September 21, 2011, which plaintiff alleges were defamatory.[33] These statements are set forth below.

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[33]The statement about plaintiff driving on an expired license was not one defendant made; thus, the Court does not consider it.

* Defendant falsely told Andres that plaintiff had told DFS that she had completed the DUI treatment program.

* Defendant told Andres that plaintiff had not successfully completed BCCS's alcohol treatment program.

* Defendant told Andres that plaintiff was "incapable of insight."

* Defendant affirmed that plaintiff had acted "loud, combative, and uncooperative" in other situations, just as she had acted with Andres on September 21, 2011.

*Defendant recommended Andres call the police if plaintiff acted badly.

*Defendant recommended plaintiff be required to undergo more extensive alcohol testing, which implied she might be using alcohol during the time she was in treatment.

Plaintiff maintains these statements depict her as a criminal. As noted earlier, the Court decides what the statements mean. These statements do not depict plaintiff as a criminal.

I conclude that defendant's statements make it appear that defendant had spent time with plaintiff and was very familiar with her personality and her substance abuse issues. I further conclude the statements depict plaintiff as being untruthful about her past substance abuse treatment, difficult to treat, difficult to deal with because of her aggressive behavior, lacking insight into her substance abuse issue, and as having a serious problem with alcohol which required more extensive treatment than she had gotten to date.

Plaintiff maintains that defendant's purposefully untruthful statements caused Thresholds to discharge her at risk. The results of the discharge at risk were twofold. First, plaintiff did not receive her children on October 4, 2011, as she expected. That outcome meant she was charged with foster care child support from October, 2011 through April, 2012 in the amount of

$1,620.00. Second, she did not receive her driver's license in October, 2011 because she did not complete the DUI program at that time. This inability to complete the DUI program at that time resulted in delayed employment and loss of income. She was unable to drive to look for work as an accountant, office manager or pool manager. She did start working as a drivers' helper with UPS starting in late December. However, because she had to attend additional sessions, she could not secure a full-time job until February 2012. Plaintiff also maintains she lost her storage unit because she was not working and could not pay for it. She seeks reimbursements in the amount of $15,000 for replaceable items and $20,000 for irreplaceable items.

Plaintiff has failed to state a claim for defamation.

First, defendant's statements, no matter how unprofessional, improper, or untruthful they were, did not constitute defamation.[34] Defendant made them to a counselor within the context of substance abuse treatment. They were made either to require plaintiff to engage in further counseling for substance abuse or to prevent her from obtaining her children at that time. Defendant did not make the statements in order to lower plaintiff's reputation in the community at large or to prevent Andres from dealing with plaintiff.[35] The law of defamation does not cover every negative statement made, and it does not cover the statements defendant made regarding plaintiff. Plaintiff does not have a claim for defamation.

The complaint also fails because plaintiff has not alleged the required special damages.[36]

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[34]*Q-Tone Broadcasting Co. v. Musicradio of Maryland, Inc.*, 1994 WL 555391, at *4; *Spence v. Funk*, 396 A.2d at 969-70; *Snavely v. Booth*, 176 A. at 654.

[35]*Harrison v. Hodgson Vocational Technical High School*, 2007 WL 3112479, at *2.

[36]*Spence v. Funk,* 396 A.2d at 971; *Danias v. Fakis,* 261 A.2d at 531; *Snavely v. Booth*, 176 A. at 656.

The damages in a defamation case are pecuniary ones which a plaintiff incurs as a direct result of the defamation. In particular, the damages must result from the conduct of third parties in response to the alleged defamation.[37] A situation where such pecuniary damage might occur would be where an employer fired the defamed person or refused to hire the defamed person because the employer had heard the defamation. Another example would be where a professional lost business because customers refused to deal with the professional after hearing the defamation. Here, the only pecuniary damages plaintiff asserts (not being able to obtain a full-time job because of not being able to drive and having to attend counseling sessions; having to pay for foster care; losses of property because she was not paying her storage fees because she was not fully employed) are indirect results of any statements defendant made. These damages are not the natural result of defamation; they are not the result of the conduct of third parties in response to the alleged defamation. Obviously, since the statements are not defamatory, it follows that plaintiff cannot show the required special damages.

Even if the Court ruled that plaintiff had stated a claim for defamation, plaintiff cannot establish she would have received her children on October 4, 2011. It is pure speculation that Family Court would have ordered her children returned to her on October 4, 2011 or soon thereafter. Plaintiff had not completed the DUI program by that date, and completion thereof was a requirement of her case plan. Plaintiff also did not have a job, other than life guarding, and that job was about to end. Furthermore, the treatment providers expressed concerns about plaintiff's "recovery". BCCS's discharge of plaintiff was not a resounding endorsement of plaintiff's "recovery". Instead, that discharge noted plaintiff had a difficult time understanding the problems

[37] *Danias v. Fakis,* 261 A.2d at 532.

she had in regard to her alcohol use and her ongoing tendency was to put the blame elsewhere. Furthermore, Andres noted on September 27, 2011, that plaintiff showed indications of relapse as plaintiff herself disclosed that she will return to drinking despite a history of three DUIs. In fact, it was not until the January 10, 2012, hearing before Family Court where it was noted that plaintiff recently had shown insight into her problems with alcohol. Even then, because more counseling was deemed required, Family Court did not allow for the children to be reunited with plaintiff. It is entirely speculative what Family Court would have done on October 4, 2011, because as of that date, plaintiff had not met all of her goals and had not satisfied her treatment providers that she recognized her alcohol problems so that she would not put her children at risk again. She cannot establish that Family Court would have returned her children to her on October 4, 2011 or at any time before her next hearing.

The law does not provide a cause of action for every wrong done. This is one of those cases where no cause of action exists which may be pursued in a court of law.[38] Thus, the Court dismisses plaintiff's action with prejudice.

IT IS SO ORDERED.

[38]The Court's conclusion that plaintiff does not have a claim which she can pursue against defendant renders the immunity defense, and issues raised therefrom, moot.