UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

J.G., **Plaintiff,** **v.** **C.M.,** **Defendant.**	No. 11-2887 (WJM) **OPINION**
C.M., **Third-Party Plaintiff,** **v.** **V.G., N.G., and Mary Jo Lynch,** **Third-Party Defendants.**	

WILLIAM J. MARTINI, U.S.D.J.:

Counterclaim Defendant J.G. and Third-Party Defendants N.G. and V.G. filed a motion for summary judgment, seeking an order to dismiss Third-Party Plaintiff C.M.'s claims against them. For the reasons set forth below, the motion is **GRANTED IN PART** and **DENIED IN PART**.

I. BACKGROUND

This case arises out of J.G.'s allegations that his older cousin, C.M., sexually abused him when J.G. was a minor. (Counterclaim Defendant's and Third-Party

Defendants' Statement of Material Facts ("Opposition SOF") at ¶ 1) C.M. filed a Counterclaim and added J.G.'s sister, N.G., and their mother, V.G., as Third-Party Defendants. (Opposition SOF at ¶ 2) C.M.'s Counterclaim and Third-Party Complaint ("C.M.'s Complaint") seeks damages for defamation, civil conspiracy, intentional and negligent infliction of emotional distress, and tortious interference with an economic advantage. (Opposition SOF at ¶ 2)

J.G. alleges that C.M. sexually abused him multiple times between 1995 and 1999, when J.G. was between the ages of seven and eleven. (Opposition SOF at ¶ 5; J.G.'s Amended Complaint at ¶ 5) The abuse occurred in the home where C.M. lived with his mother, the aunt of J.G. and N.G. C.M. alleges that J.G., N.G., and V.G. made an agreement to extort money from C.M. and defame him with false allegations of sexual abuse. (*See* C.M.'s Complaint at ¶ 40)

On December 7, 2009, J.G. called his mother, V.G., and told her that C.M. had sexually abused him. (C.M.'s Supplemental Statement of Facts ("C.M.'s SOF") at ¶ ¶ 9-10) N.G. learned of J.G.'s accusations against C.M. through V.G. and J.G. (C.M.'s SOF at ¶ ¶ 12-14) V.G. and a friend, Mary Jo Lynch, then made a series of threatening phone calls to C.M. telling him to stay away from J.G. and N.G. (C.M.'s SOF at ¶ ¶ 21-29) C.M. sent N.G. a message to ask her what was happening. (C.M.'s SOF at ¶ 30) In response, N.G. sent C.M. a Facebook message that said:

> You got your orders stop fu**ing contacting me or my brother you fu**ing freak. You know what you did to my brother. Only a real bitch would call their Grandmother! F**k you and your psycho pain addicted mother. We better not hear from either of you motherf**ers! You punk bitch who likes to touch little boys! F**k off!

(C.M.'s SOF at ¶ 31)[1]

C.M. alleges that J.G., N.G., and V.G. then told other family members that C.M. was a child molester. (C.M.'s SOF at ¶ ¶ 35-40)

V.G. and N.G. also drove together to the office of Dr. Stephanie Pope, one of C.M.'s friends, to inform her that C.M. had sexually abused J.G. (*See* C.M.'s SOF at ¶ ¶ 45-49) This occurred, according to Dr. Pope, in late February or Early March 2011. (Declaration of Andrew Macklin ("Macklin Decl.") Exhibit N)

[1] C.M.'s mother suffers from a severe peripheral neuropathy which requires the administration of various pain medications. (C.M.'s SOF at ¶ 34)

On April 26, 2011, V.G. sent a letter to State Senator Sandra Cunningham. (Def's SOF at ¶ 17; Certification of Michael Kassak, Esq., ("Kassak Cert.") Exhibit K) At the time, C.M. was Cunningham's Chief of Staff. (C.M.'s Complaint at ¶ 19) The letter told Cunningham that C.M. had sexually abused V.G.'s son. (Kassak Cert. Exhibit K) V.G. asked Cunningham to take "appropriate" action. (Kassak Cert. Exhibit K) As a result of V.G.'s accusations, Cunningham terminated C.M. (Macklin Decl. Exhibit C, Deposition of Sandra Cunningham at 58:2-8) C.M. was unemployed for approximately 10 months afterwards. (*See* Kassak Cert. Exhibit H, Deposition of C.M. at 12:9-14) C.M. eventually found a new job as the Executive Director of the Trenton Downtown Association. (Deposition of C.M. at 11:1-22) His new position pays $5,000 to $10,000 less than his position with Senator Cunningham. (Deposition of C.M. at 225:13-17) C.M. alleges that it will be difficult or impossible to reach his long-term aspiration of holding elected office because of the allegedly defamatory statements. (Deposition of C.M. at 226:24-228:11)

As a result of J.G.'s allegations, C.M. sought psychotherapy in June 2011. (*See* C.M.'s SOF at ¶ 77; Kassak Cert. Exhibit S, Deposition of Miriam Silverman, LSCW at 24:5-10) C.M.'s therapist conducted a mental health evaluation. (Deposition of Miriam Silverman at 28:15-22) His therapist diagnosed him with moderate-level Major Depressive Disorder. (C.M.'s SOF at ¶ 77-78) His therapist testified that he suffered from this condition as of March 2013. (C.M.'s SOF at ¶ 78)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56 provides for summary judgment "if the pleadings, the discovery [including, depositions, answers to interrogatories, and admissions on file] and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Turner v. Schering-Plough Corp*., 901 F.2d 335, 340 (3d Cir. 1990). A factual dispute is genuine if a reasonable jury could find for the non-moving party, and is material if it will affect the outcome of the trial under governing substantive law. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). The court considers all evidence and inferences drawn therefrom in the light most favorable to the non-moving party. *Andreoli v. Gates*, 482 F.3d 641, 647 (3d Cir. 2007).

III. DISCUSSION

A. Defamation

The statute of limitations on a defamation action is one year. N.J.S.A. 2A:14-3. C.M. concedes that the statute of limitations bars all but two instances of defamation described in his Complaint: the statements V.G. made to Stephanie Pope and the letter to Senator Cunningham. These statements were both made within a year of C.M.'s filing his Counterclaim and Third-Party Complaint.

The statements at issue suffice as evidence of defamation. A defamation claim has three elements: (1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault of the publisher. *Feggans v. Billington*, 291 N.J. Super. 382, 390-91 (App. Div. 1996). Plaintiff must also produce evidence of damages, unless the claim is slander *per se*. *Ward v. Zelikovsky*, 136 N.J. 516, 540 (1994).

A slander *per se* claim has the same elements as an ordinary defamation claim, except that the plaintiff can prove liability for slander *per se* without evidence of damages. *Ibid.* The damages in a slander *per se* claim are presumed. *Ibid.* There are four recognized categories of statements that qualify as slander *per se*. *Id.* at 526. These are statement that impute (1) commission of a crime, (2) contraction of a loathsome disease, (3) occupational incompetence or misconduct, and (4) unchastity of a woman. *Id.* at 526. The allegations against C.M., if true, would have made him guilty of at least a third degree sexual offense under Maryland law. *See* Md. Code Ann., Crim. Law § § 3-301, 3-307. Therefore, the statements in question fit into the category of slander *per se*. Evidence of damages is not required on this claim.

C.M. has presented evidence that V.G. intentionally made these false and defamatory statements to Sandra Cunningham and Stephanie Pope. The record lacks evidence that J.G. or N.G. made defamatory statements not barred by the statute of limitations. For these reasons, the defamation claims survive with respect to V.G. but not with respect to J.G. or N.G.

B. Negligent Infliction of Emotional Distress

The elements for a claim of negligent infliction of emotional distress are: "(1) the death or serious physical injury of another caused by defendant's negligence; (2) a marital or intimate, familial relationship between plaintiff and the injured person; (3) observation of the death or injury at the scene of the accident; and (4) resulting

severe emotional distress." *Portee v. Jaffee*, 84 N.J. 88, 101 (1980). C.M. has not produced evidence of a death or serious injury. Therefore, this claim is dismissed.

C. Intentional Infliction of Emotional Distress

In order to prove a cause of action for intentional infliction of emotional distress, a plaintiff must prove that (1) the defendant's behavior was intentional or reckless behavior and was intended to produce emotional distress, (2) the defendant's behavior was 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 in a civilized community, (3) the defendant's behavior proximately caused the plaintiff's distress, and (4) that the emotional distress suffered by plaintiff was so severe that no reasonable person could be expected to endure it. *Ingraham v. Ortho-McNeil Pharm.*, 422 N.J. Super. 12, 19-20 (App. Div. 2011) (*citing Buckley v. Trenton Saving Fund Society*, 111 N.J. 355 (1988)). J.G., N.G., and V.G. argue that C.M. has failed to produce evidence of severe emotional distress or extreme and outrageous conduct. These arguments are not convincing.

1. Severe Emotional Distress

"Severe emotional distress is a severe and disabling emotional or mental condition which may be generally recognized and diagnosed by trained professionals." *Turner v. Wong*, 363 N.J. Super. 186, 200 (App. Div. 2003) (*citing Taylor v. Metzger*, 152 N.J. 490, 515 (1998)). "The emotional distress must be sufficiently substantial to result in either physical illness or serious psychological sequelae." *Id.* at 200 (*citing Aly v. Garcia*, 333 N.J. Super. 195, 204 (App. Div. 2000), *certif. denied*, 167 N.J. 87 (2001)).

In *Turner v. Wong*, the state court elaborated:

> Mere allegations of aggravation, embarrassment, an unspecified number of headaches, and loss of sleep, are insufficient as a matter of law to support a finding of severe mental distress that no reasonable person could be expected to endure. In *Aly, supra*, 333 N.J. Super. at 204-05, we held that it is not enough for the plaintiff to allege that he or she was "acutely upset" by the incident in question, especially where no medical assistance or counseling is sought. And in *Griffin v. Tops Appliance City, Inc.*, 337 N.J. Super. 15, 26 (App. Div. 2001), we found no cause of action where the plaintiff claimed merely that he felt terrible, that he was devastated, and that his whole personality changed

> as a result of the incident in question. He did not suffer from any headaches, he had no difficulty sleeping, he was not unable to perform his daily routine, and he did not seek medical assistance or present an expert medical opinion. *Ibid.*

363 N.J. Super. at 200-01.

C.M. did seek psychological counseling as a result of the allegedly false allegations against him. His therapist diagnosed him with moderate-level Major Depressive Disorder, a condition from which he continued to suffer for many months. This description of this emotional distress is sufficiently well-defined and clinical to meet the legal definition of "severe emotional distress."

2. Extreme and Outrageous Conduct

Extreme and outrageous 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 in a civilized community." *Buckley v. Trenton Saving Fund Soc.*, 111 N.J. 355, 366 (1988). "[T]he limited scope of the tort tolerates many kinds of unjust, unfair and unkind conduct." *Anderson v. DSM N.V.*, 589 F. Supp. 2d 528, 538 (D.N.J. 2008). In *McConnell v. State Farm Mut. Ins. Co.*, this court described the standard in some depth:

> Only where reasonable [persons] may differ is it for the jury, subject to the control of the court, to determine whether the conduct alleged in this case is sufficiently extreme and outrageous to warrant liability. *Cautilli v. G.A.F. Corp.*, 531 F. Supp. 71, 74 (E.D.Pa. 1982) (applying New Jersey law). The question is whether a jury could find defendant's conduct 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 in civilized society. Examples of conduct found to be extreme and outrageous by New Jersey courts include, when a physician, knowing it to be false, told parents their son was suffering from cancer; spreading a false rumor that plaintiff's son had hung himself; bringing a mob to plaintiff's door with a threat to lynch him if he did not leave town; and wrapping up a gory dead rat inside a loaf of bread for a sensitive person to open. *Hume v. Bayer*, 178 N.J. Super. 310, 315 (1981) (*citing* Prosser, Law of Torts § 12 at 50 (4th ed.1971)).

61 F. Supp. 2d 356, 363 (D.N.J. 1999).

In the version of the facts most favorable to C.M., J.G., N.G., and V.G. falsely accused C.M. of sexual abuse and told this same lie to C.M.'s friends, family, and employer. Reasonable minds could find such behavior is extreme and outrageous.

C.M. has produced evidence of all four elements of intentional infliction of emotional distress. Therefore, this count of C.M.'s Complaint survives summary judgment.

D. Tortious Interference with an Economic Advantage

There are four requirements for maintaining an action for tortious interference with an economic advantage. *MacDougall v. Weichert*, 144 N.J. 380, 404 (1996) (*citing Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739 (1989)). The plaintiff must show evidence that (1) plaintiff had a prospective economic or contractual relationship, (2) defendant acted intentionally or with malice, (3) the interference caused the loss of the prospective gain, and (4) the loss caused damage. *Id.* at 404.

V.G. argues that her statements did not result in the loss of C.M.'s job. Some of Senator Cunningham's deposition testimony directly contradicts V.G.'s argument. Cunningham stated:

> [B]ecause I am a public official, because [C.M.] is a public official, these charges I had hoped that he could remedy it within the 30 day period or soon after
>
> [. . .]
>
> You know, when you are an elected official the one thing you cannot do is have any kind of negativity looming over your head. I am well-respected in my area and I'm very proud of the work we've managed to do. And I did not want, it would be very difficult to explain if one of our local politicians, because if you are aware of Hudson County politics, it can be a little treacherous. This is not something that we'd want to subject [C.M.] to or me to. I'm hoping, I'm sure we were all hoping that it would work out quickly, and if it was going to be long-term it would be better for [C.M.], as well as for our office, to separate and for him to remedy the situation.

(Deposition of Sandra Cunningham at 58:2-24)

Cunningham's testimony is clear evidence that V.G.'s letter played a causal role in the loss of C.M.'s job. The job he found to replace his position with Senator Cunningham pays less. C.M. has thus met his burden of producing evidence sufficient to prove tortious interference with an economic advantage against V.G.

J.G. and N.G. argue that there is no evidence that they participated in any act that caused interference with C.M.'s employment. C.M. does not dispute that J.G. and N.G. had no direct contact with Senator Cunningham. For this reason, the court will dismiss the tortious interference with an economic advantage claim against J.G. and N.G.

E. Civil Conspiracy

A civil conspiracy is "a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another and an overt act that results in damage." *Morgan v. Union Cnty. Bd. of Chosen Freeholders*, 268 N.J. Super. 337, 364 (App. Div. 1993). In order to prove the existence of such a conspiracy, a plaintiff need not provide direct evidence of the agreement between the conspirators. *Ibid.* "The gist of the claim is not the unlawful agreement, but the underlying wrong which, absent the conspiracy, would give a right of action." *Ibid.* "[T]he question whether an agreement exists should not be taken from the jury in a civil conspiracy case so long as there is a possibility that the jury can infer from the circumstances [that the alleged conspirators] had a meeting of the minds and thus reached an understanding to achieve the conspiracy's objectives." *Id.* at 365.

J.G., V.G., and N.G. argue that there was no direct evidence of an agreement. C.M. has produced circumstantial evidence that J.G., N.G., and V.G. all worked together in order to inflict emotional distress on C.M., interfere with his career, and defame him with false allegations of sexual abuse. According to C.M., J.G.'s story of sexual abuse is false. J.G. consulted with N.G. and V.G. about the sexual abuse. Then N.G. and V.G. took acts in furtherance of a scheme to defame C.M. and interfere with his career based on J.G.'s false story. This is sufficient circumstantial evidence from which a jury could conclude that three minds agreed to harm C.M.

IV. CONCLUSION

For the reasons set forth above, the motion for summary judgment filed by J.G., N.G., and V.G. is granted in part and denied in part. The following claims only may proceed to trial:

1.) Defamation against V.G. only
2.) Intentional Infliction of Emotional Distress
3.) Tortious Interference with an Economic Advantage against V.G. only
4.) Civil Conspiracy

All other claims are hereby dismissed. An appropriate order follows.

/s/ William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

Date: April 23, 2014