

SUPERIOR COURT OF CALIFORNIA • COUNTY OF FRESNO Civil Unlimited Department, Central Division	Entered by:
TITLE OF CASE: Craig Harrison vs. The Roman Catholic Bishop of Fresno	
MINUTE ORDER	Case Number: 20CECG03495

Date: May 14, 2021

Re: Ruling on SLAPP Motion

Department: **403**

Judge/Temporary Judge: **Kristi Culver Kapetan**

Court Clerk: **Estela Alvarado**

Reporter/Tape: **Not Reported**

Contested

Appearing Parties:

Plaintiff: No Appearances

appearing on behalf of Plaintiff

Defendant: No Appearances

appearing on behalf of Defendant

Off Calendar

Set for _____ at _____ Dept _____ for _____

[X] Upon further review on this matter having been previously Taken Under Advisement on 04/29/2021; the Court now issues a Ruling.

[X] The Ruling on Defendants' Special Motion to Strike becomes the order of the Court. See attached signed copy dated 05/14/2021.

[X] Service by the clerk will constitute notice of the order.

Ruling

Re: **Harrison v. The Roman Catholic Bishop of Fresno et al.**
Superior Court Case No. 20CECG03495

Hearing Date: April 28, 2021 (Dept. 403)
If oral argument is timely requested, it will be heard Thursday, April 29, 2021 at 3:00 p.m., in Dept. 403

Motion: Defendants' Special Motion to Strike

Ruling:

Upon review and further consideration of all papers and arguments of counsel, the court finds no basis to deviate from its tentative ruling. Therefore, the tentative ruling is adopted without modification and the motion to strike the First Amended Complaint filed on May 19, 2020 is granted as set forth below. (Code Civ. Proc., § 425.16.)

Explanation:

A special motion to strike provides a procedural remedy to dismiss nonmeritorious litigation meant to chill the valid exercise of the constitutional rights to petition or engage in free speech. (Code Civ. Proc., §425.16, subd. (a); see *Martinez v. Metabolife Intern., Inc.* (2003) 113 Cal.App.4th 181, 186.)

The court engages in a two-step process in determining whether an action is subject to the anti-SLAPP statute: first, the court decides whether defendant has made a threshold showing that the challenged cause of action is one arising from protected activity, by demonstrating that the facts underlying plaintiff's complaint fit one of the categories set forth in section 425.16, subdivision (e); if the court finds that such a showing has been made, it then determines whether plaintiff has demonstrated a probability of prevailing on the claim. (Code Civ. Proc., §425.16; *Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 198.)

Plaintiff in this action alleges a single cause of action for defamation based on statements made by defendant Teresa Dominguez, Chancellor and Director of Communications for defendant The Roman Catholic Bishop of Fresno. Dominguez also served in a ministerial capacity assisting the Victim Assistance Coordinator.

This action emanates from allegations by numerous alleged victims of sexual abuse by plaintiff, a Catholic priest. Dominguez was quoted in an article detailing allegations against plaintiff as stating, after visiting an alleged victim referred to as AV, "I personally expressed my concern for him; told him that I believe him, and apologized for the pain this matter has caused him. I told him that I will support him and be an advocate for him in any way that I can." Plaintiff construes these statements by Dominguez as adoptions and republications of AV's allegations of sex abuse.

Dominguez explains that she and Cheryl Sarkisian (Fresno Diocesan Victim Assistance Coordinator) met with AV at his home after learning he was distraught about

allegations of sexual abuse against plaintiff, providing spiritual and emotional assistance. Dominguez describes AV as "very upset, crying, agitated and wanted to know if we believed him. As I was seriously concerned for AV's safety and well-being and in an attempt to provide further spiritual and emotional support, I personally expressed my concern for him, told him that I believed him, and I apologized for the pain the matter had caused him. I told AV that I will support him and he an advocate for him in any way that I can. We then prayed with AV, and this seemed to calm him. We encouraged him to get some sleep, and we left the house at approximately 11:15 am." (Dominguez Dec. ¶¶ 6, 7.)

An attorney for AV subsequently informed a reporter what Dominguez said. The reporter emailed Dominguez to verify what she said. Dominguez told the reporter what she told AV, and the statement was subsequently published in the article.

Prong 1: Whether Plaintiff's Action Arises From Defendants' Constitutionally Protected Speech

The moving party first has the burden of showing that the action against it arises from the exercise of free speech rights and/or right to petition. (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658.) A protected activity is "any act" that is completed "in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue." (Code Civ. Proc., § 425.16, subd. (b)(1).)

Here, the relevant provision of section 425.16 is subdivision (a)(4): "any other conduct in furtherance of the exercise of the constitutional right of petition or free speech, in connection with an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e).)

The FAC is clearly based on an act arising from defendants' exercise of their right to free speech. Plaintiff seems to argue that the statements were not made in connection with an issue of public interest. The court disagrees.

In *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, the court of appeal concluded that communications about an alleged inappropriate relationship between adults and a 16-year-old girl were subject to a special motion to strike. In *Terry*, the plaintiffs were church youth group leaders who allegedly had an inappropriate relationship with an underage member of the youth group. The church investigated and produced a report that concluded that the plaintiffs had exhibited gross misconduct. (*Id.* at p. 1542.) The report and its conclusions were discussed at a closed church meeting, and then subsequently at two meetings with parents of youth group members. (*Id.* at p. 1543.) Plaintiffs sued the church for defamation, alleging that it published a false report that plaintiffs were sexual predators. (*Id.* at pp. 1538–1539.) The trial court granted an anti-SLAPP motion, and the plaintiffs appealed.

The Court of Appeal affirmed, explaining that the anti-SLAPP statute applies to even private communications, so long as they concern a public issue. (*Terry, supra*, 131 Cal.App.4th at p. 1546.) The court declined the plaintiffs' invitation to characterize the case as involving a purely private relationship between themselves and the girl, instead

concluding that it concerned a public issue — i.e., "the societal interest in protecting a substantial number of children from predators." (*Id.* at p. 1547.)

The court also noted that to be a "public" issue within the meaning of the anti-SLAPP statute, an issue need not be of interest to the public at large. Instead, it is enough if the issue is of interest to " 'a limited, but definable portion of the public (a private group, organization, or community)' " and the constitutionally protected activity " 'occur[s] in the context of an ongoing controversy, dispute, or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance.' [Citation.]" (*Terry, supra*, 131 Cal.App.4th at p. 1549.)

The Supreme Court has stated, "within the framework of section 425.16, subdivision (e)(4), a court must consider the context as well the content of a statement in determining whether that statement furthers the exercise of constitutional speech rights in connection with a matter of public interest." (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 149.) First, we ask what "public issue or [] issue of public interest" the speech in question implicates—a question we answer by looking to the content of the speech. (§ 425.16, subd. (e)(4).) Second, we ask what functional relationship exists between the speech and the public conversation about some matter of public interest. It is at the latter stage that context proves useful." (*FilmOn.com Inc., supra*, 7 Cal.5th at pp. 149-150.)

Dominguez's statements were clearly a matter of public interest, evidenced by the reporter's inquiry about them and subsequent publication in a news story. "[S]candals involving the Catholic clergy ... are matters of public import." (*Snyder v. Phelps* (2011) 562 U.S. 443, 454 [analyzing the difference between private and public speech]; see also *M.G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623, 629 [anti-SLAPP statute applicable because "the general topic of child molestation" is "an issue which... is significant and of public interest."].) Moreover, the way those in positions of authority treat and respond to allegations of abuse has become a matter of public concern, especially in light of the "me too" movement.

Plaintiff contends that the defamatory statements are not functionally related to a public controversy about a matter of public interest. He contends that "the speech does not implicate any public issue. The speech recites defamatory allegations from many years ago against Msgr. Craig Harrison. Most of the defendants allegations were already investigated and discredited in 2004."

That is not true; Dominguez did not recite any allegations from anyone. Defendants satisfy the *FilmOn.com* two part inquiry. Here, Dominguez had visited a very distraught individual who alleged that he had been sexually abused by plaintiff. He was distraught about other allegations of sexual abuse by plaintiff that were coming out. While Dominguez was providing spiritual and emotional assistance to AV, he asked if Dominguez believed him. In response, Dominguez told AV "I believed him, and I apologized for the pain the matter had caused him. I told AV that I will support him and he an advocate for him in any way that I can." AV's attorney told a reporter what AV had said, and in the context of an article about the sex abuse allegations against plaintiff, the reporter asked Dominguez to verify what she said to AV. Under the circumstances,

considering the context and the content under *FilmOn.com*, the court finds that the statements were made in connection with a matter of public interest.

Prong 2: Probability of Success

A plaintiff's complaint need only be shown to have "minimal merit". (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 279; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, 95.) The plaintiff must show that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. (*Navellier, supra*, 29 Cal.4th at 88-89.) In considering this issue, the court looks at the " 'pleadings, and supporting and opposing affidavits ... upon which the liability or defense is based.' " (*Soukup, supra*, 39 Cal.4th at p. 269.)

Once the first prong is met, the burden is on the plaintiff. "The fact [defendants] also ma[k]e arguments directed toward the second probability-of-prevailing prong does not relieve [the plaintiff] of its own statutory burden, that is, to make a prima facie showing of facts which would, if proved at trial, support a judgment in plaintiffs favor." (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1239.)

Defendants start by addressing the ministerial exception, and also contend that plaintiff is a public figure and cannot make a showing of actual malice. The court will not address these two issues because plaintiff fails to show that he can establish the elements of a defamation claim – specifically, a provably false statement of fact.

"Defamation 'involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.' (5 Witkin, *Summary of Cal. Law* (10th ed. 2005) Torts, § 529, p. 782.)" (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970.)

Defamation is the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or that causes special damage. (*Gilbert [v. Sykes]* (2007) 147 Cal.App.4th 13,] 27, 53 Cal.Rptr.3d 752.) Thus, to state a defamation claim, the plaintiff must present evidence of a statement of fact that is provably false. (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 809, 119 Cal.Rptr.2d 108 (*Seelig*.) False statements that accuse the plaintiff of criminal conduct are defamatory on their face. (*Weinberg, supra*, 110 Cal.App.4th at p. 1135, 2 Cal.Rptr.3d 385.)

However, statements cannot form the basis of a defamation action if they cannot be reasonably interpreted as stating actual facts about an individual. Thus, rhetorical hyperbole, vigorous epithets, lusty and imaginative expressions of contempt and language used in a loose, figurative sense will not support a defamation action. (*Seelig, supra*, 97 Cal.App.4th at p. 809, 119 Cal.Rptr.2d 108.) (*Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 486.)

Plaintiff contends that Dominguez clearly defamed him by adopting, endorsing and espousing the charges of sexual misconduct and child abuse by stating:

- "I personally expressed my concern for him"(the victim)
- "Told him that I believe him"
- "and apologized for the pain this matter has caused him"
- "I told him that I will support him and be an advocate for him in any way that I can."

Plaintiff contends that with these statements Dominguez adopted and endorsed AV's claims that plaintiff is a child molester and abuser and that she falsely accused him of child abuse. This is incorrect.

The statements lack context. Dominguez never stated what specifically AV said that she believed. The article published on 5/19/19 by KQED, which reported Dominguez's above statements, never identified what Dominguez was stating she believed. There is no indication that at the meeting AV detailed or even made any allegations against plaintiff. There is no clarity at all about what Dominguez was saying she believed.

Plaintiff seems to argue that with her statements Dominguez republished AV's accusations. One may be held liable for republishing a defamatory statement. (*Khawar v. Globe Intern., Inc.* (1998) 19 Cal.4th 254, 268.)

Dominguez did not republish AV's accusations. The only republication was by KQED, which republished word for word Dominguez's statement as to what she said to AV. Plaintiff produces no authority providing or supporting the contention that saying "I believe you" constitutes an adoption or republication of all any and all accusations made by that person, especially in a context where the "I believe you" is not in reference to any particular factual statement.

The essential element of defamation is the publication of a false statement of fact. (*Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal.3d 596, 600.)

The reason for the rule, well stated by the high court, is that "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 339-340 [41 L.Ed.2d 789, 805, 94 S.Ct. 2997], fn. omitted; see also *In re Blaney* (1947) 30 Cal.2d 643, 649 [184 P.2d 892].) In this context courts apply the Constitution by carefully distinguishing between statements of opinion and fact, treating the one as constitutionally protected and imposing on the other civil liability for its abuse.

(*Gregory, supra*, 17 Cal.3d at pp. 600-601.)

[I]t is a question of law for the court whether a challenged statement is reasonably susceptible of an interpretation which implies a **provably false assertion of actual fact**. If that question is answered in the affirmative, the

jury may be called upon to determine whether such an interpretation was in fact conveyed."

(*Kuhn v. Bower* (1991) 232 Cal.App.3d 1599, 1608, emphasis added.)

In determining whether a statement is actionable fact or nonactionable opinion, *Baker* instructed courts to use a " 'totality of the circumstances' " test. (*Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 260.) Under the totality of the circumstances test, "[f]irst, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense.... [¶] Next, the context in which the statement was made must be considered." (*Id.* at pp. 260–261.)

"Where the language of the statement is 'cautiously phrased in terms of apparency,' the statement is less likely to be reasonably understood as a statement of fact rather than opinion. [Citation.]" (*Baker, supra*, 42 Cal.3d at pp. 260–261, fn. omitted; accord, *John Doe 2 v. Superior Court, supra*, 1 Cal.App.5th at pp. 1306, 1320 [finding statement that "I do not like people perpetuating what I consider bad business practices" not actionable because the "I do not like" language "underscores [the defendant's] intention to communicate a personal opinion rather [than] imply an objective and defamatory accusation of fact"].)

In *Baker*, the court considered a statement by a television reviewer that " '**[m]y impression** is that the executive producer ..., who is also vice president in charge of programs ..., told his writer/producer ..., "We've got a hot potato here—let's pour on titillating innuendo and as much bare flesh as we can get away with. Viewers will eat it up!" ' " (*Baker, supra*, 42 Cal.3d at p. 258, emphasis added.) In finding that the review stated a non-defamatory opinion, the court found, "The statement begins with the phrase '[m]y impression is' The dictionary meaning of 'impression' is '**belief**' or 'view' or 'opinion.' (American Heritage Dict. of the English Language (1970) pp. 661 & 921.) When one states a view in terms of an 'impression,' the listener or reader is on notice that the maker is not vouching for its accuracy. A reasonable person would understand that a statement of opinion rather than of fact was to follow." (*Baker, supra*, 42 Cal.3d at pp. 261–262, emphasis added; see also *Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal.3d 596, 599 [finding statements by employer in labor dispute referring to union leaders' " 'apparent self-interests' " and stating that " '[a]pparently' " there were internal politics causing the leaders to seek personal gain and political prestige were non-actionable statements of opinion]; *Carr v. Warden* (1984) 159 Cal.App.3d 1166, 1168, 1170 [finding statement to newspaper reporter that " '**I think** someone is being bought on the Planning Commission' " was " ' "cautiously phrased in terms of apparency," ' " and not actionable].)

As far as context, the article detailed the allegations made by AV, and then published Dominguez's statement. But that is not the relevant context. Dominguez made the statements at issue during a visit to AV, who was in crisis, with Dominguez expressing great concern for his well-being. There is no indication that at that meeting AV recounted to Dominguez his allegations of sexual abuse by plaintiff. There are no actual factual assertions stated by Dominguez as to anyone, including plaintiff.

And even if we assume that Dominguez's statement that she believed AV was in context of allegations of sexual abuse by plaintiff, under *Baker* the statement that she

believes AV (the equivalent of giving her "impression") is a statement of opinion rather than of fact.

Plaintiff does not show that Dominguez's statements to the reporter, which were republished in an article by KQED, constitute actionable defamation.

It is so ordered.

Issued By: SK. Tapetan on 05/14/2021
(Judge's initials) (Date)

<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Craig Harrison vs. The Roman Catholic Bishop of Fresno</p>	
<p style="text-align: center;">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 20CECG03495</p>

I certify that I am not a party to this cause and that a true copy of the:

[Minute Order & Ruling, dated 5/14/21]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 05/14/2021

Clerk, by _____,



E. Alvarado

Deputy

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