

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-00029

JOHN T. REY
CLERK, CIRCUIT COURT
FAIRFAX COUNTY, VA

2022 MAR 11 AM 11:24

FILED
MOTION'S DOCKET

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AS TO DEFENDANT'S ANTI-SLAPP IMMUNITY**

As a matter of law, Ms. Heard is not entitled to immunity from Mr. Depp's claim for defamation under Virginia's anti-SLAPP statute, and her defense on that basis can and should be resolved in Mr. Depp's favor on summary judgment. Ms. Heard has not been named in this action for making a statement on a matter of public concern, and her liability is not "solely" (or at all) based on a statement of public concern. Quite the contrary. Ms. Heard has been named in this action based on the *defamatory implication* that she is a victim of domestic abuse and sexual violence at the hands of Mr. Depp. It is that defamatory implication of wrongful conduct that forms the basis of Mr. Depp's claims in this action. And because that defamatory implication relates solely to the personal grievances between the parties and does not rise to the level of a matter of public concern with broader implications for society beyond the two litigants in this action, Virginia's anti-SLAPP statute is not applicable.

I. Summary of Relevant Facts and Allegations

Mr. Depp's claims in this action are predicated on the defamatory implications about Mr. Depp in Ms. Heard's Op-Ed in *The Washington Post* – *i.e.*, the claim that Ms. Heard is an abuse victim who suffered domestic abuse and sexual violence. *See, e.g.*, Mr. Depp's Complaint at ¶ 1-2 (“[t]he op-ed depended on the central premise that Ms. Heard was a domestic abuse victim and that Mr. Depp perpetrated domestic violence against her”). As such, the defamation claim at issue relates to the events of the parties' personal relationship, and the truthfulness or falsity of Ms. Heard's statements about abuse that allegedly occurred in the privacy of that relationship and marriage. Of note, Ms. Heard's statements did not occur in isolation, but were a revival of prior statements and actions she had taken, including her conduct in walking into Court in front of the press in 2016, supposedly with bruises on her face from Mr. Depp, and accusing Mr. Depp of domestic violence and abuse in court filings and in the press. That history is alleged in Mr. Depp's Complaint. *See, e.g.*, Complaint at ¶ 2 (“the op-ed plainly was about... Ms. Heard's purported

victimization after she publicly accused [Mr. Depp] of domestic abuse in 2016, when she appeared in court with an apparently battered face”). Ms. Heard openly acknowledges and does not dispute this history. *See, e.g.*, Ms. Heard’s Counterclaim at ¶ 5 (“[o]n May 27, 2016, Ms. Heard walked into California state court with bruises on her face”).

II. Virginia’s anti-SLAPP Statute

By its clear and explicit terms, Virginia’s anti-SLAPP provides immunity from liability *only* when a claim for defamation is based *solely* on a statement regarding matters of public concern. *See*, Va. Code § 8.01-223.2: “[a] person shall be immune from civil liability for... a claim of defamation based *solely* on statements (i) regarding matters of public concern that would be protected under the First Amendment to the United States Constitution made by that person that are communicated to a third party....” (Emphasis added). For Ms. Heard to be able to take advantage of the statute, then, she must establish that she has been sued based *solely* on a statement regarding a matter of public concern that is thereby entitled to protection under the First Amendment.

III. Ms. Heard Is Not Entitled to Rely on Virginia’s anti-SLAPP Statute

Here, the Court need not reach the factual question of whether Ms. Heard acted with malice in falsely accusing Mr. Depp of abusing her (which she necessarily did), because the statute is inapplicable to Mr. Depp’s claims against Ms. Heard as a matter of law, for the reasons set forth below.

First, Mr. Depp is not seeking to hold Ms. Heard liable for any assertion that could be construed as a statement of public concern, but rather for a defamatory implication about the private events (or nonevents) of her relationship with Mr. Depp. That is, Ms. Heard’s potential liability for defamation arises solely out of the defamatory implication of her words that Mr. Depp

abused her. Courts have recognized repeatedly that liability for defamation may rest on “defamatory innuendo,” which “is no more protected by the First Amendment than is defamatory speech expressed by any other means.” *Pendleton v. Newsome*, 290 Va. 162, 174 (2015). In such a case of defamation by implication, liability is obviously and necessarily ***based on the defamatory innuendo***, and not on any other meaning that could be derived from the words at issue. *Id.* Thus, for instance, in *Pendleton*, the Virginia Supreme Court explained that even a literally true statement that might otherwise be protected by the First Amendment is actionable where it contains a defamatory innuendo, and allowed a case to proceed based on the defamatory meaning of the words when read in context. The Court noted that “[b]ecause defamatory speech falls outside the protection of the First Amendment, a First Amendment analysis is inapposite in a case in which a plaintiff must allege and ultimately prove that the defendant intended his words to express a defamatory innuendo, that the words actually did so, and that the plaintiff was actually defamed thereby.” *Id.* In other words, the proper focus of the Court’s inquiry is on the defamatory innuendo about the individual plaintiff, ***not*** on any other meaning that might be ascribed to the words at issue. Here, as in *Pendleton*, Ms. Heard has been sued for the defamatory innuendo of her words. *Pendleton, supra*, at 172 (“[i]n this context, it is clear that any defamatory implication... was aimed directly at [the plaintiff]”). And here, as in *Pendleton*, that defamatory implication is not entitled to protection under the First Amendment. *Id.* at 173 (“defendants also argue that their statements were protected by the First Amendment. Again, that position may be sound in if the statements were read out of context, but a defamatory innuendo is no more protected by the First Amendment than is defamatory speech expressed by any other means”).

The defamatory implication Ms. Heard made ***about Mr. Depp*** in the Op-Ed is not “regarding matters of public concern” because it pertains only to what allegedly occurred in her

private, domestic relationship with Mr. Depp. As generally analyzed by courts, a matter of public concern is one which relates to a “matter of political, social, or other concern to the community” as opposed to a matter of only “personal interest.” *Connick v. Myers*, 461 U.S. 138, 146 (1983). Newsworthiness alone is not enough, and references to particular private grievances generally do not rise to the level of matters of public concern. *Brammer-Hoelter v. Twin Peaks Charter Academy*, 492 F.3d 1192, 1205 (10th Cir. 2007) (noting the lack of public concern with respect to a statement that “merely deals with personal disputes and grievances unrelated to the public’s interest” and explaining that “speech that airs grievances of a purely personal nature typically does not involve matters of public concern”).

Simply stated, Mr. Depp is not suing Ms. Heard for making statements about society in general. Rather, he is suing her for publicly naming *him* as an abuser, and forever tarnishing his good name – an act that, coming from an ex-spouse, is fundamentally *personal* in nature. Only if the defamatory innuendo at issue were regarding a matter of public concern could Ms. Heard credibly seek to rely on the anti-SLAPP statute. Regardless of its ultimate outcome, the nature and basis of Mr. Depp’s allegations preclude application of the anti-SLAPP statute, since a claim that a particular individual was abusive in a domestic relationship is, simply, not a matter of public concern. As in *Pendleton*, this is a case about defamatory innuendo targeting a single person.

Second, Ms. Heard’s attempt to take advantage of the anti-SLAPP statute also fails because her liability arises out of a course of conduct that is broader and older than the Op-Ed, much of which manifestly did not consist of statements of public concern. The anti-SLAPP statute only applies when a claim for defamation is brought “solely” based on a statement regarding matters of public concern. But here, Ms. Heard’s liability arises out of a course of conduct that culminated in her *revival* of her abuse allegations in the Op-Ed. Mr. Depp’s claim for defamation is not

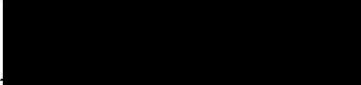
“solely” based on the contents of the Op-Ed – it is also based on other conduct of Ms. Heard, such as her actions when, on “May 27, 2016, Ms. Heard walked into California state court with bruises on her face” in full view of the press to obtain a domestic violence restraining order (a fact that she specifically alleged in her own Counterclaim) (Counterclaim at ¶ 5).

Ms. Heard’s prior conduct in seeking a domestic violence restraining order and parading in front of cameras with supposed bruises on her face – marks which two sets of police officers testified did not exist – cannot be construed as anything other than acts that are fundamentally personal in nature, focused on a personal dispute between Mr. Depp and Ms. Heard at the bitter end of their marriage. *See, e.g., Jones v. Union County, TN*, 296 F.3d 417, 426 (6th Cir. 2002) (commenting that while combatting domestic violence might generally be a matter of public concern, a particular instance of seeking protection from an abusive spouse “was far more a matter of private interest than public concern”). Thus, Ms. Heard’s Op-Ed did not occur as an isolated event, but occurred in the context of that prior conduct and Ms. Heard’s prior allegations. As such, Ms. Heard may not simply rely on a mechanical argument that if the Op-Ed touches on matters of public concern, she is automatically entitled to employ the anti-SLAPP statute. Mr. Depp’s claim for defamation is not based “solely” on the Op-Ed read in isolation, but rather the Op-Ed in its full context. *See, e.g., Smithfield Foods, Inc. v. United Food and Commercial Workers International*, 593 F.Supp.2d 840, 847 (noting that the omitted section of the above statute, which protects from liability “based solely on statements made... at a public hearing,” was not applicable when the conduct at issue “involves far more than statements made ‘solely’ at public hearings”).

IV. Conclusion

For the foregoing reasons, the Court should grant Mr. Depp’s motion and find that Ms. Heard is not entitled to anti-SLAPP immunity.

Respectfully submitted,


Benjamin G. Chew (VSB #29113)
BROWN RUDNICK LLP
601 Thirteenth Street NW, Suite 600
Washington, DC 20005
Tel.: (202) 536-1785
Fax: (617) 289-0717
bchew@brownrudnick.com

Leo J. Presiado (*pro hac vice*)
Camille M. Vasquez (*pro hac vice*)
Samuel A. Moniz (*pro hac vice*)
BROWN RUDNICK LLP
2211 Michelson Drive
Irvine, CA 92612
Tel.: (949) 752-7100
Fax: (949) 252-1514
cvasquez@brownrudnick.com

*Counsel for Plaintiff and
Counterclaim Defendant John C. Depp, II*

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