

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

MEGAN HUNT,	)	Case No. CI23-5067
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO DISMISS
	)	
NEBRASKA FREEDOM	)	
COALITION, MALIA SHIRLEY,	)	
PATRICK PETERSON, and ROBERT	)	
ANTHONY,	)	
	)	
Defendants.	)	

COMES NOW the Defendant Nebraska Freedom Coalition and hereby moves to dismiss Plaintiff's Complaint as the Complaint fails to state a claim upon which relief can be granted.

Plaintiff is a public figure, who at all times relevant to the allegations in the Complaint was engaged in her role as a state legislator (Complaint ¶ 30), and was using her child's personal life in order to publicly oppose certain legislation then being debated on the floor of the Legislature (Complaint ¶ 16) even though she considers her personal family life to be "an intensely private matter" (Complaint ¶ 40). Defendant, a political action committee (Complaint ¶ 6), agrees that a public figure's personal family life is undeniably and intensely private, until such time as the public figure begins using private and personal family information as a way to influence public debate and legislation.

Because Plaintiff is a public figure and the context was one of legislative debate, Defendant's statements are a matter of public concern which pertain to a political matter. These are all relevant facts which are included in Plaintiff's Complaint, and they establish what the Plaintiff must plead in order to survive a Motion to Dismiss.

In *Moats v. Republican Party of Nebraska*, 281 Neb. 411, 421–22, 796 N.W.2d 584, 593–94 (2011), the Court held that when the plaintiff in a libel action is a public figure and the speech is a matter of public concern, the plaintiff must demonstrate “actual malice.” The court further held that there are two types of libel, words which are actionable per se, that is, in themselves, or they may be actionable per quod, that is, only on allegation and proof of the defamatory meaning of the words used and the existence of special damages. *Id.* at 422, 796 N.W.2d at 594. Whether a communication is libelous per se is a threshold question of law for the court. *Id.*

The *Moats* court also held that where a communication is “ambiguous or . . . meaningless unless explained, or . . . prima facie innocent, but capable of defamatory meaning, it [is per quod and it] is necessary to specially allege and prove the defamatory meaning of the words used, and to allege and prove special damages.” *Id.* (citing *Matheson v. Stork*, 239 Neb. 547, 553, 477 N.W.2d 156, 161 (1991)).

It is obvious that the Defendant was not calling the Plaintiff the male half of a bride and groom in a wedding ceremony, nor that she is some sort of a caretaker for horses or anything else which needs grooming or cleaning. Nor was the Defendant claiming that the Plaintiff was preparing a protégé to take over her position. There is

little debate that the Defendant was not using the word “groom” in those ways. However, there are other meanings to the word “groom”.

In the allegations of the Complaint, Plaintiff demonstrates that words such as “groomer” and “grooming” can be ambiguous or meaningless until explained and given context.

Plaintiff alleges that the Defendant “stated that Megan Hunt sexually groomed and abused her own thirteen-year-old child”, and “accused Hunt of serious crimes and attacked her status as a loving and caring mother” (Complaint ¶ 1). The Complaint later described Defendant’s statements as “accusing Hunt of serious crimes” again (Complaint ¶ 12), as allegations of sexual abuse (Complaint ¶ 16), as a “criminal definition of grooming... intended to lead to the sexual abuse of a child” (Complaint ¶25) and accused the Plaintiff of criminal conduct (Complaint ¶47).

An analogy is if the Plaintiff has been met with disagreement and asks, “are you calling me a liar?” The person who disagrees with the Plaintiff does not have to conclude that there have been lies, merely that there has been misinformation, a misunderstanding, or deficient information.

In the case at bar, the Defendant has called the Plaintiff a groomer, but it has not called her a criminal, a sexual abuser, or a person who wants to sexually abuse any child.

In spite of all these various ways of explaining what the Plaintiff thinks the Defendant meant, Plaintiff provides no evidence that the Defendant actually published such statements. By including Defendant’s much different definition of “grooming” in the Complaint,

the Plaintiff admits that the Defendant has not characterized the Plaintiff in such harsh ways. Plaintiff admits Defendant's intent as: "They are fighting to build relationships with children, build trust, keep pronouns/binding/etc. a secret from adults, and then exploit them" (Image under Complaint ¶25).

Plaintiff alleges that the communication is actionable per se, but in reading Plaintiff's Complaint, it is clear that the communications are, if actionable at all, actionable per quod. Further, the Plaintiff shows that the communications are not actionable at all, because of the definition clearly provided by the Defendant. Plaintiff's own Complaint shows that Plaintiff's characterization is foreign to the facts of this case.

In *Moats*, the court distinguished between accusing a public figure of a crime, which is per se libel, and merely accusing a public figure of making misleading statements in an affidavit, which is not an accusation of crime, and therefore, not per se libel: "A review of the language in these publications shows that the publications accused Moats of making misleading statements in an affidavit, not of making false statements in an affidavit. As such, the statements in publications Nos. 3 and 4 do not rise to the level of accusing Moats of committing any crime and therefore are not defamatory per se."

The Plaintiff's effort to characterize Defendant's communications as allegations of criminal activity and as allegations of sexual abuse are obvious efforts to twist Defendant's words in order to shoehorn this case into a per se libel case.

In *Moats*, the Court also stated that “The U.S. Supreme Court has pointed out the ‘profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on ... public officials.’ We have similarly observed that the ‘First Amendment encourages robust political debate.”

As unpleasant and unfortunate as it is, political discussions often devolve into little more than childish tantrums. In *Moats*, the Court stated that “context is important to an analysis of whether a communication expresses a fact or an opinion: ‘[L]iterary, public, and social contexts are a major determinant of whether an ordinary reader would view an alleged defamatory statement as constituting fact or opinion.’ Specifically with respect to a public debate, one court has held that ‘where potentially defamatory statements are published in a public debate ... or in another setting in which the audience may anticipate efforts by the parties to persuade others of their positions by use of epithets, fiery rhetoric, or hyperbole, language which generally might be considered as statements of fact may well assume the character of statements of opinion.’ “ *Moats*, 281 Neb. at 426

In *Moats*, the Court also distinguished from statements alleging to be facts, or an opinion which implies that it is based on the allegation of undisclosed defamatory facts. Here, the Defendant made no allegation or hint of undisclosed facts or information. The Defendant simply responded to Plaintiff’s own statements in sharing its opinion that the Plaintiff was using her influence to exploit people

into supporting the ideology she espouses. *See Torain v. Liu*, 279 F. App'x 46, 46–47 (2d. Cir. 2008) (dismissing defamation claim based on statements that plaintiff was a “sick racist pedophile,” a “loser pedophile,” a “broadcaster pedophile,” and a “child predator,” because “in the overall context they were made . . . a reasonable listener could not have believed that the statements were intended to convey objective facts” or “to convey that [plaintiff] had committed acts of pedophilia); *Duyvejonck*, 2020 Iowa App. LEXIS 628, at \*2, 14 (granting summary judgment to defendant who made statement “I swear [plaintiff] is a pedophile” because, although generally defamatory per se, “the context of the entire statement is supportive of a finding” that defendant “was expressing a scatological subjective opinion” about the plaintiff).

Finally, the Plaintiff's reference to Neb. Rev. Stat. §79-879 is itself misleading because it only applies to school settings and the Complaint does not allege that Plaintiff is engaging in grooming in a school setting. Nor does the Complaint allege that Plaintiff is a school teacher.

Considering that the Plaintiff is a public figure and that this matter is in the political setting, it is settled law in Nebraska that in order to state a claim upon which relief can be granted, the Plaintiff must at least allege AND prove the following:

- (1) That the Defendant made a false and defamatory statement concerning the claimant;
  - a. In a political setting, opinions (including epithets, rhetoric, and hyperbole) were not defamatory (*Moats*);

- (2) It was an unprivileged publication to a third party;
- (3) The presence of fault amounting to at least negligence on the part of the publisher;
- (4) Either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication;
- (5) Actual malice - knowledge of falsity or reckless disregard for the truth, by clear and convincing evidence;
- (6) The meaning of the words; and
- (7) Special damages (with particularity).

*JB & Assocs., Inc. v. Nebraska Cancer Coal.*, 303 Neb. 855, 855, 932 N.W.2d 71 (2019) and *Moats Id.*

The Plaintiff has failed to allege all of the above, and therefore, this matter must be dismissed as a matter of law. Additionally, Plaintiff's Complaint appears to be filed as a thinly-disguised abuse of the litigation process for purposes of silencing citizen discussions on issues affecting the public well-being and as frivolous litigation. *Sand Livestock Sys., Inc. v. Svoboda*, 17 Neb. App. 28, 43, 756 N.W.2d 299, 313 (2008). Should this case not be dismissed, Defendant intends to file a counterclaim seeking damages including costs and attorney fees according to Neb. Rev. Stat. § 25-21,241 et seq.

WHEREFORE the Defendant prays that the Court dismiss this action, assessing all costs to the Plaintiff, and for such other and further relief as the Court deems just and equitable.

Dated this 5<sup>th</sup> day of July, 2023.

NEBRASKA FREEDOM  
COALITION - Defendant

By: /s/ Robert M. Sullivan  
Its Attorney

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# Certificate of Service

I hereby certify that on Thursday, July 06, 2023 I provided a true and correct copy of the Motion-Dismissal to the following:

Shirley,Malia, service method: First Class Mail

Hunt,Megan, represented by Adam Morfeld (Bar Number: 24950) service method:  
Electronic Service to adam.morfeld@nebraskaaction.com

Anthony,Robert, service method: First Class Mail

Peterson,Patrick, service method: First Class Mail

Signature: /s/ Sullivan,Robert,M, (Bar Number: 20793)