

IN THE SUPERIOR COURT OF TWIGGS COUNTY
STATE OF GEORGIA

ANGELA DRIVER,

Plaintiff,

vs.

MARK FOGARTY,

Defendant.

Civil Action No. 2007-V-146-S

Twigg County State of Ge
Clerks Office Superior Court
2008 7 20 Deb.
2:00 PM
Twigg County Superior Court
Twigg County, GA

**AMENDMENT TO THE AMENDED AND RECAST
COMPLAINT FOR DAMAGES**

COMES NOW, Angela Driver, Plaintiff in the above-styled action, and files this Amended and Recast Complaint for Damages against Defendant Mark Fogarty ("Reverend Fogarty"), respectfully showing this Court as follows

1.

Plaintiff Angela Driver is a resident of Houston County, Georgia.

2.

Defendant Reverend Fogarty is a resident of Twiggs County, Georgia, and can be served with summons and a copy of this complaint at 10 Dolly Drive, Jeffersonville, Georgia 31044.

3.

Venue and jurisdiction are proper in this Court..

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FACTUAL ASSERTIONS

4.

Paragraph nos. 1- 3, set forth herein above, are incorporated and realleged as if fully set forth herein below.

5.

Defendant Reverend Fogarty is the pastor of First United Pentecostal Church ("Church") located in Warner Robins, Georgia.

6.

Plaintiff Angela Driver was formerly married to James Driver, however their divorce was final in April, 2006.

7.

Defendant's daughter, Carrie Fogarty, is currently married to James Driver.

8.

Prior to the marriage of Carrie Fogarty and James Driver in November 2006, a false and defamatory statement was made on July 25, 2006, by Defendant Reverend Fogarty to the congregation of the Church, which including stating: "So fornication covers things such as homosexuality, lesbianism, lust, exhibitionism, pornography, child abuse, harlotry, bestiality, prostitution, solicitation of sex and so forth; it covers all of these things. . . . I have personal knowledge, that I will not go into at this time; but I have personal knowledge that Angela has committed one of these acts (that constitutes fornication)."

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9.

In addition to the foregoing defamatory statement made by Defendant Reverend Fogarty, Reverend Fogarty made additional false and defamatory remarks during his speech and presentation to the Church on July 25, 2006.

10.

Those false and defamatory statements were made to the entire church congregation in attendance at a Tuesday evening church service. After the statements were made the Defendant announced that his daughter, Carrie Fogarty and James Driver were going to be romantically involved.

11.

Such false and defamatory statements were made in reference to the Plaintiff and were made maliciously with the knowledge that such statements were false. The statements were made and calculated to harm the Plaintiff and to justify Defendant's daughter's relationship with James Driver, who was previously divorced from Plaintiff, and to obtain the church congregation's approval of the relationship between James Driver and Reverend Fogarty's daughter.

12.

Congregation members have confirmed the defamatory statements made by the Defendant and an audio taped recording has been discovered which confirms the defamatory statements made by the Defendant.

13.

After discovering such statements were made, the Plaintiff sent a certified letter to Defendant Reverend Fogarty on November 15, 2006 asking for a retraction of the defamatory statements; however, the Defendant failed to respond.

14.

The Plaintiff further attempted to address this matter with the Georgia District Superintendent of the United Pentecostal Church International, Reverend H.E. Wheatly, in a meeting on November 20, 2006. Reverend Wheatly has made no efforts or attempts to resolve the issues in regards to the defamatory statements made by the Defendant or rectify the situation.

15.

On March 27, 2007, the undersigned sent a certified letter to Reverend Wheatly and the District Board Members of Georgia for the United Pentecostal Church International seeking an apology and retraction by Defendant Reverend Fogarty of said defamatory statement.

16.

However, a letter dated March 29, 2007 was received from Pamela Greenway, counsel for Defendant, denying the defamatory remarks and no apology or retraction was sent or received.

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COUNT I
SLANDER PER SE

17.

Paragraph nos. 1-16, set forth herein above, are incorporated and realleged as if fully set forth herein below.

18.

The statement announced to the Church congregation that, "So fornication covers things such as homosexuality, lesbianism, lust, exhibitionism, pornography, child abuse, harlotry, bestiality, prostitution, solicitation of sex and so forth; it covers all of these things. . . . I have personal knowledge, that I will not go into at this time; but I have personal knowledge that Angela has committed one of these acts (that constitutes fornication)," among other statements made at that time, were false, malicious and defamatory in nature.

19.

The term "fornication" is defined as "voluntary sexual intercourse between two unmarried persons." Such statement directly accuses the Plaintiff of committing adultery during her marriage to James Driver.

20.

Adultery is a crime under the laws of the State of Georgia, and thus this allegation is slanderous per se and continues to negatively impact the Plaintiff.

21.

Further, the term "fornication" imputes immorality to Plaintiff and thus is slander per se.

22.

The statement announced to the church congregation on July 25, 2006 accused Angela Driver of homosexuality, lesbianism, lust, exhibitionism, pornography, child abuse, harlotry, bestiality, prostitution, and solicitation of sex; some of these allegations are crimes under the laws of the State of Georgia, and thus the allegations are slanderous per se.

23.

The Defendant's accusation and defamatory statements about Angela Driver were false and significantly injured the name and reputation of Angela Driver.

24.

By means of the publication of the false and malicious statements, Plaintiff's good name, reputation, and credit have been significantly injured, and she has been exposed to public contempt and ridicule.

25.

Defendant's actions constitute slander per se, and as such, Plaintiff is entitled to general damages in an amount to be determined by the enlightened conscience of an impartial jury.

COUNT II
SLANDER

26.

Paragraph nos. 1-23, set forth herein above, are incorporated and realleged as if fully set forth herein below.

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27.

The statements announced to the Church congregation on July 25, 2006 referenced herein were false, malicious and defamatory in nature.

28.

The term "fornication" is defined as "voluntary sexual intercourse between two unmarried persons." Such statement directly accuses the Plaintiff of committing adultery during her marriage to James Driver.

29.

The term "fornication" imputes immorality to Plaintiff and thus is slander.

30.

The statement announced to the church congregation on July 25, 2006 accused Angela Driver of homosexuality, lesbianism, lust, exhibitionism, pornography, child abuse, harlotry, bestiality, prostitution, and solicitation of sex; some of these allegations are crimes under the laws of the State of Georgia and thus the allegations are slanderous.

31.

The Defendant's accusation and defamatory statements about Angela Driver were false and significantly injured the name and reputation of Angela Driver.

32.

By means of the publication of the false and malicious statements, Plaintiff's good name, reputation, and credit has been significantly injured, and she has been exposed to public contempt and ridicule.

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33.

Defendant's actions constitute slander, and as such, Plaintiff is entitled to special damages. Plaintiff has incurred medical expenses which exceed \$300.00 (and will continue to increase) for counseling and will continue to incur expenses for counseling and prescription medication in the future as a result of anxiety, depression and emotional distress from Rev. Fogarty's statements. Plaintiff is further entitled to such additional special damages as shown by the evidence at trial and general damages in an amount to be determined by the enlightened conscience of an impartial jury.

COUNT III
PUNITIVE DAMAGES

34.

Paragraph nos. 1- 29, set forth herein above, are incorporated and realleged as if fully set forth herein below.

35.

On November 15, 2006 and March 27, 2007, Plaintiff requested Defendant to make an apology and retract in front of the Church congregat on the defamatory statements made by Defendant Reverend Fogarty on July 25, 2006.

36.

No response and/or action was taken by the Defendant Reverend Fogarty to said letter dated November 15, 2006 from the Plaintiff. Furthermore, in a letter dated March 29, 2007, in response to the March 27, 2007 letter from the Plaintiff's attorney, Defendant has refused any such apology and retraction.

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37.

Defendant's tortious conduct coupled with Defendant's refusal to attempt to rectify and remedy the damages caused to Plaintiff evidence such willful, malicious, wanton and oppressive conduct on the part of Defendant as to warrant an award of punitive damages.

38.

Defendant's conduct demonstrates a specific intent to cause harm to Plaintiff Angela Driver and thus there is no limit on the amount of punitive damages to be awarded by a jury.

39.

As such, Plaintiff is entitled to punitive damages in an amount to be determined by the enlightened conscience of an impartial jury.

COUNT IV

ATTORNEY'S FEES AND EXPENSES OF LITIGATION

40.

Paragraph nos. 1- 35, set forth herein above, are incorporated and realleged as if fully set forth herein below.

41.

Because of Defendant's false and malicious statements and the Defendant's bad faith, stubborn litigiousness and having caused the Plaintiff unnecessary trouble and expense, Plaintiff has been required to file this lawsuit and accordingly has incurred expenses of litigation, including reasonable attorney's fees, for which Plaintiff is entitled to be reimbursed by Defendant.

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WHEREFORE, Plaintiff prays:

- (a) That process and summons issue against Defendant;
- (b) For a trial by a jury;
- (c) That judgment be entered against Defendant in that amount which will fairly and adequately compensate Plaintiff for her damages;
- (d) That Plaintiff be awarded punitive damages;
- (e) That Plaintiff be awarded her expenses of litigation including reasonable attorney's fees;
- (f) That Plaintiff be awarded all costs of court; and
- (g) That Plaintiff have such other relief as may be just and proper under the facts and circumstances of this case.

Respectfully submitted this 8th day of October, 2008.

John Flanders Kennedy
 JOHN FLANDERS KENNEDY (CKB)
 State Bar No. 414830

Christina K. Brosche
 CHRISTINA K. BROSCHE
 State Bar No. 153050
 Attorneys for Plaintiffs

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