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STATE OF MINNESOTA
COUNTY OF ROSEAU

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

David Marvin,
Plaintiff,

vs.

Shana Lanctot; Matt Lanctot; Jeff Johnson; Patti Johnson; Coreen Lindquist; and Kristin Coauette Johnson,
Defendants.

Court File No. 68-CV-23-682

ORDER DENYING KRISTIN COAUETTE JOHNSON'S RULE 12 MOTION TO DISMISS

This matter came before the Court on February 26, 2024, upon Defendant Kristin Coauette Johnson's ("Coauette's[1]") motion to dismiss Counts 4 and 5 of the Complaint pursuant to Minn. R. Civ. P. 12.02(e) and Section 230 of the Communications Decency Act.

At the hearing the parties agreed that the pending motion applied only to Count 4 and not to Count 5.

Mr. Patrick O'Neill, Attorney at Law, appeared on behalf of Plaintiff. Mr. Vincent Ella and Ms. Jamie Brihones, Attorneys at Law, appeared on behalf of Defendant Kristin Coauette Johnson. Mr. Jacob Elrich, Attorney at Law, appeared on behalf of Defendants Shana Lanctot, Matt Lanctot, Jeff Johnson, Patti Johnson, and Coreen Lindquist.

The Court heard counsel's arguments, set a briefing schedule, and ultimately took this matter under advisement as of February 27, 2024.

The Court, having reviewed the file in its entirety including the pleadings and briefs, having heard the arguments and representations of counsel, and having considered the applicable law, now issues the following:

ORDER

1. Defendant Coauette's request to dismiss Count 4 for failure to state a claim upon which relief can be granted, under Minn. R. Civ. P. 12.02(e), is **DENIED.**

[1] To distinguish from Defendants Jeff Johnson and Patti Johnson, the Court refers to Defendant Kristin Coauette Johnson as "Coauette."

2. The previously scheduled Telephone Scheduling Conference remains on the calendar for **8:30 a.m. on September 18, 2024**. All other dates and deadlines remain as previously set by the Court.

3. The attached memorandum explaining the Court's decision is incorporated herein by reference.

BY THE COURT:

Rasmusson, Anne
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Hon. Anne M. Rasmusson
Judge of District Court

M E M O R A N D U M

Introduction

This is a defamation action. Plaintiff's Complaint alleges that Defendants published false and unfounded defamatory material against him. Counts 1 through 3 apply to the defendants other than Coauette, while Count 4 applies only to Coauette. Defendant Coauette moves to dismiss Count 4 for failure to state a claim upon which relief may be granted, pursuant to Minn. R. Civ. P. 12.02(e), claiming immunity under the Communications Decency Act of 1996, 47 U.S.C. § 230.

The Court analyzes Defendant Coauette's motion to dismiss below.

Summary of Facts

Plaintiff David Marvin commenced this defamation suit against Coauette and others after publication of certain statements on social media and elsewhere.

Plaintiff is the head coach of the Warroad High School Girls Hockey Team in Warroad, Minnesota. Defendants are all parents of either current or former Warroad girls' hockey team players.

Plaintiff alleged that on or about October 30, 2023, an open letter from "a group of Warroad Girls hockey team players and parents and community members"[2] was provided to news outlets and circulated on social media ("the October 30 Letter"). Plaintiff asserts the October 30 Letter contained false allegations accusing him of improper and illegal conduct that was later deemed unfounded. The October 30 Letter instructs readers to contact certain Defendants for "further information or statements from our parent/player group."[3]

Defendant Shana Lanctot published the October 30 Letter on her personal Facebook feed and also in a newly created Facebook group, "We Hear You 56763."[4]

That same day, Grand Forks Best Source interviewed Defendants Shana Lanctot and Coreen Lindquist regarding the assertions in the October 30 Letter. The letter was read in its entirety and Shana Lanctot, when prompted by the host, "singled out David Marvin as the subject of the letter" and stated that the October 30 Letter was intended to address "mistreatment of players by David Marvin."[5]

As to the issues presently before the Court, Plaintiff argues that Coauette engaged in two distinct defamatory acts.

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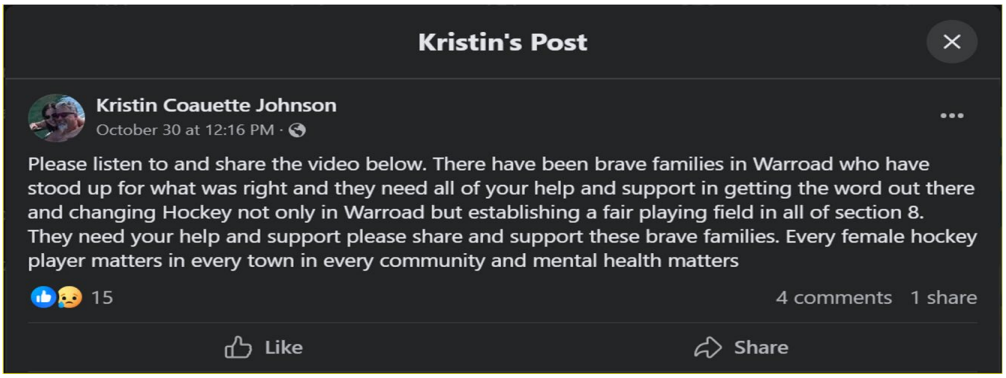
[2] Pl. Brief at 2; Compl. at para. 31.
[3] Pl. Brief at 2.
[4] Pl. Brief at 2; Compl. at para. 54. The Court notes that the zip code for Warroad, Minnesota is 56763.
[5] Id. at 3; Compl. at para. 34 – 35.

First, Coauette's October 30, 2023 Facebook post, which included a link to the Grand Forks Best Source interview. Coauette provided the following commentary on the video:



Second, Coauette's October 31, 2023 post where she republished the complete October 30 Letter on her Facebook page with the caption, "what a brave parent group to come forward."

In his Complaint, Plaintiff further alleged that Coauette "communicated similar oral statements to third parties and other written statements and/or social media posts regarding Marvin" or made "direct statements, including but not limited to the social media posts…inferring or directly accusing Marvin of sexual harassment, mistreatment, and abuse" that will be discovered during the discovery process. The Court does not address these allegations as Plaintiff does not allege specific facts/statements regarding these communications.

Analysis

Defendant Coauette moved to dismiss the claim against her pursuant to Minn. R. Civ. P. 12.02(e), asserting that Plaintiff's claims are barred by the Communications Decency Act of 1996, 47 U.S.C. §§ 230(c)(1) and 230(e)(3), commonly referred to as "Section 230."

I. Dismissals Pursuant to Rule 12.02(e)

An action may be dismissed for failure to state a claim upon which relief can be granted. Minn. R. Civ. P. 12.02(e); Martens v. Minnesota Min. & Mfg. Co., 616 N.W.2d 732, 739 (Minn. 2000) ("A Rule 12.02(e) motion raises the single question of whether the complaint states a claim upon which relief can be granted") (citing Royal Realty Co. v. Levin, 69 N.W.2d 667, 670 (1955)).

"[I]t is immaterial whether or not the plaintiff can prove the facts alleged and [appellate courts] will not uphold a Rule 12.02(e) dismissal 'if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief

demanded.'" Id. at 739–40 (quoting Northern States Power Co. v. Franklin, 122 N.W.2d 26, 29 (1963)). See also Halva v. Minnesota State Colleges & Universities, 953 N.W.2d 496, 500 (Minn. 2021) ("a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.").

In ruling on a motion to dismiss, a district court must "accept all facts alleged in the complaint as true and construe all reasonable inferences in favor of the non-moving party." Halva, 953 N.W.2d at 500.

It is well-established law in Minnesota that a plaintiff must plead defamation claims with specificity. Moreno v. Crookston Times Printing Co., 610 N.W.2d 321, 326 (Minn. 2000) ("Minnesota law has generally required that in defamation suits, the defamatory matter be set out verbatim."). Failure to set forth the particulars of the alleged defamatory statements can lead to dismissal. Stead-Bowers v. Langley, 636 N.W.2d 334, 342 (Minn. Ct. App. 2001) (citing American Book Co. v. Kingdom Publishing Co., 73 N.W. 1089, 1090 (1898)).

II. Section 230 and the Republication Doctrine

The Federal Communications Decency Act of 1996 ("CDA" or "Section 230") states, in pertinent parts, as follows:

> "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1).
>
> "Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." Id. § 230(e)(3).
>
> "'[I]nformation content provider' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." Id. § 230(f)(3).

Minnesota has long recognized the republication doctrine, which provides that "a speaker may be liable for repeating the defamatory statements of another." Larson v. Gannett Co., Inc., 940 N.W.2d 120, 131 (Minn. 2020); Church of Scientology of Minn. v. Minn. State Med. Ass'n Found., 264 N.W.2d 152, 156 (Minn. 1978).

Coauette asserts that she cannot be sued for defamation for republication of information on the internet based on Section 230. Specifically Coauette argues that Section 230 supersedes the common law republication doctrine with respect to statements made on the internet. This issue is a matter of first impression in Minnesota.

III. Caselaw Supporting Claims of Immunity

Coauette argues that although this is a matter of first impression in Minnesota, other jurisdictions have concluded that individuals reposting content online cannot be held liable for defamation due to the protections afforded by Section 230.

In Barrett v. Rosenthal, 146 P.3d 510, (Cal. 2006), two physicians sued Rosenthal for defamation after she posted an article written by a third party on the websites of two newsgroups. Rosenthal brought a motion to dismiss, arguing that she was immune under Section 230. The California Supreme Court agreed, noting, "[a] user who actively selects and posts material based on its content fits well within the traditional role of 'publisher.' Congress has exempted that role from liability." Id. at 529. That court further held: "there is no basis for deriving a special meaning for the term 'user' in section 230(c)(1), or any operative distinction between 'active' and 'passive' Internet use. By declaring that no 'user' may be treated as a 'publisher' of third party content, Congress has comprehensively immunized republication by individual Internet users." Id.

In Banaian v. Bascom, 281 A.3d 975 (N.H. 2022), the New Hampshire Supreme Court reached a similar conclusion. In Banaian, a student hacked a school website to imply that a teacher was "sexually perverted." Another student posted a picture of the altered website on Twitter. Other students (referred to as the "re-tweeters") re-tweeted the original tweet. The re-tweeters were named as defendants and brought a motion to dismiss under Section 230. The district court granted a motion to dismiss the claims against the defendant re-tweeters and the New Hampshire Supreme Court affirmed. It concluded that Section 230 abrogates the common law of defamation as applied to individual "users." It held that the fact that, "individual users [of the Internet] are immunized from claims of defamation for retweeting content that they did not create is evident from the statutory language." Id. at 980.

However, in both Barrett and Banaian, the user simply republished or reposted the material in question—they did not add to it by adding additional commentary, which Coauette did here. It is without question that Section 230 immunizes someone who merely reposts defamatory information. The issue for this Court to consider is whether Section 230 also immunizes someone who reposts with comment or editorializes the attached information.

The spirit of Section 230 is "to promote rather than chill internet speech." Bennett v. Google, LLC, 882 F.3d 1163, 1166 (D.C. Cir. 2018). Both state and federal courts have determined that Section 230 should be given very broad construction. See Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12, 18–19 (1st Cir. 2016) ("There has been near-universal agreement that section 230 should not be construed grudgingly, but rather should be given broad construction."); see also Teatotaller, LLC v. Facebook, Inc., 242 A.3d 814, 821 (N.H. 2020) (same).

It is also clear that "close cases . . . must be resolved in favor of immunity." Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1174 (9th Cir.2008) (en banc).

IV. Caselaw Rejecting Immunity Claims

Plaintiff asserts that the Second Circuit Court of Appeals, in La Liberte v. Reid, specifically addressed whether Section 230 immunizes an individual who reposts with commentary:

> Plaintiff Roslyn La Liberte spoke at a 2018 city council meeting to oppose California's sanctuary-state law; soon after, a social media activist posted a photo showing the plaintiff with open mouth in front of a minority teenager; the caption was that persons (unnamed) had yelled specific racist remarks at the young man in the photo. Defendant Joy Reid, a personality on [the national cable television network MSNCB], retweeted that post, an act that is not alleged to be defamatory. The defamation claim is based on Reid's two later posts: her June 29 post showed the photograph and attributed the specific racist remarks to La Liberte; her July 1 post, to the same effect, juxtaposed the photograph with the 1957 image of a white woman in Little Rock screaming execrations at a black child trying to go to school.

966 F.3d 79, 83 (2d Cir. 2020). The Second Circuit went on:

> The district court . . . rejected Reid's defense of immunity under section 230 of the Communications Decency Act . . . As to the merits, we agree with the district court that Reid cannot claim immunity under Section 230 . . . This lawsuit does not treat Reid as "the publisher or speaker of any information provided by another information content provider." To the contrary, she is the sole author of both allegedly defamatory posts.

Id. (quoting 47 U.S.C. § 230(c)(1)).

La Liberte also spells out the test for the immunity trigger of Section 230:

> "(1) [the defendant] is a provider or user of an interactive computer service,
>
> (2) the claim is based on information provided by another information content provider and
>
> (3) the claim would treat [the defendant] as the publisher or speaker of that information."

Id. at 89 (quoting F.T.C. v. LeadClick Media, LLC, 838 F.3d 158, 173 (2d Cir. 2016)).

V. The Material Contribution Test

Likewise, La Liberte provides groundwork for the "material contribution test":

> Reid relies more persuasively on the "material contribution" test . . . . We apply this test to draw[ ] the line at the crucial distinction between, on the one hand, taking actions . . . to . . . display . . . actionable content and, on the other hand, responsibility for what makes the displayed content [itself] illegal or actionable. That test does not serve Reid because she did not pass along or edit "third-party content"; she authored both [p]osts at issue. To illustrate: in Force v. Facebook, Inc., victims of Hamas-organized terrorist attacks in Israel sought to hold Facebook responsible on the ground that "Hamas . . . used Facebook to post content that encouraged terrorist attacks in Israel."[6] Facebook was immune under Section 230, as we held, because Facebook did not "'develop' the content of the . . . postings by Hamas"; nor does Facebook "edit (or suggest edits) for the content that its users . . . publish."[7] On the other hand, in LeadClick, the defendant "had 'developed' third parties' content by giving specific instructions to those parties on how to edit 'fake news' that they were using in their ads."[8]

Id. at 89–90.[9]

In Jones v. Dirty World Entertainment Recordings, LLC, the Sixth Circuit Court of Appeals also used a "material contribution test" when determining whether to hold a defendant liable for defamation. 755 F.3d 398, 413–17 (6th Cir. 2014). There, a website operator re-published defamatory sexually related material about a professional football cheerleader. Id. at 401–05. The operator added some commentary, but the appellate court concluded:

> [The comment] did not materially contribute to the defamatory content of the statements uploaded on October 27 and December 7, 2009. [The operator's] remark was made after each of the defamatory postings had already been displayed. It would break the concepts of responsibility and material contribution to hold [the operator] responsible for the defamatory content of speech because he later commented on that speech. Although ludicrous, [the operator's] remarks did not materially contribute to the defamatory content of the posts appearing on the website. More importantly, [Section 230] bars claims lodged against website operators for their editorial functions, such as the posting of comments concerning third-party posts, so long as those comments are not themselves actionable.

Id. at 416.

VI. Analysis in Present Case

[6] 934 F.3d 53, 59 (2d. Cir. 2019).
[7] Id. at 69–70.
[8] Id. at 69 (summarizing LeadClick, 838 F.3d at 176).
[9] Some internal quotations omitted. See also Force, 934 F.3d at 68 ("[W]e have recognized that a defendant will not be considered to have developed third-party content unless the defendant directly and 'materially' contributed to what made the content itself 'unlawful.'").

While Minnesota and the Eighth Circuit have not specifically adopted the material contribution test, this Court finds the analysis of other jurisdictions instructive to the present case. This case is like Jones in that the alleged defamatory material had already been published. However, in Jones, the Court determined that the operator's comments were "absurd" and "[the plaintiff] did not allege that [those] comments were defamatory." Id. at 417.[10]

This case differs in that Coauette's comments were not ludicrous. Rather, her comments were articulate and engaging. Coauette's comments also arguably endorsed the attached content. The question is whether Coauette's commentary materially contributed to the alleged defamatory content of the October 30 letter and the interview.

In La Liberte, the defendant's actions were significant:

> La Liberte's claim is based on posts of which Reid is the author, not on "information provided by another content provider." Vargas had tweeted about vile remarks that "they yelled" at the meeting. Vargas did not attribute the remarks to La Liberte. The following day, Reid authored and published her own Instagram post (the June 29 Post), which attributed to La Liberte (albeit not by name) what Vargas attributed only generally to the unnamed "they." ("She ... screamed, 'You are going to be the first deported' ... 'dirty Mexican!' " (emphasis added). The post also included Reid's commentary on the conduct alleged: "Make the picture black and white and it could be the 1950s and the desegregation of a school. Hate is real, y'all. It hasn't even really gone away." As sole author of the June 29 Post, Reid alone was "responsible . . . for [its] creation or development," which makes her the sole "information content provider." 47 U.S.C. § 230(f)(3). Moreover, she went way beyond her earlier retweet of Vargas in ways that intensified and specified the vile conduct that she was attributing to La Liberte. She accordingly stands liable for any defamatory content. And she is similarly the sole "information content provider" for her July 1 Post, a point she does not contest.

966 F.3d at 89. This case differs from La Liberte in that the author (Reid) went far beyond a retweet by making specific allegations that amplified any assertions made by the original content provider. Yet, this case is similar in that the post included commentary that both supported the original content provider and provided additional assertions.

In addition to La Liberte, this Court finds similarities to Pace v. Baker-White, 432 F. Supp. 3d 495 (E.D. Pa. 2020). In Pace, a police officer sued after a journalism non-

[10] To be sure, other courts—including the district court in Jones—applied a "ratification and adoption test," similar to Minnesota's republication doctrine. Jones v. Dirty World Entertainment Recordings, LLC, 965 F. Supp.2d 818, 823 (E.D. Ky. 2013). In such a regard, one could see how Coauette's posts ratified and adopted the podcast and letter. However, the Sixth Circuit dispelled this error: "The district court's adoption or ratification test, however, is inconsistent with the material contribution standard of "development" and, if established, would undermine [Section 230]." Jones, 755 F.3d at 417.

profit published that plaintiff's otherwise innocuous social media statement together with a list of other statements by police officers that were allegedly racist and violent. Id. at 499–502. While the district court ultimately determined there was no defamation, that court found Section 230 immunity was inappropriate because the defendants were responsible for a portion of the conduct:

> The fact that Plaintiff's claims necessarily involve evaluating his statement in the context of the statements made by Defendants does not undermine this conclusion. Section 230 does not only cover the creation of content that is created in its entirety by a party, it also covers those who are responsible "in part" for the creation of content.[11] "Accordingly, there may be several information content providers with respect to a single item of information (each being 'responsible,' at least 'in part,' for its 'creation or development')."[12] "Section 230 does not preclude joint liability for the joint development of content."[13] Here, Plaintiff's words—"Insightful point"—are not in and of themselves defamatory. The defamatory implication arises, according to Plaintiff, from its framing by the introductory text created by Defendants. One could conclude from that Defendants created that content "in whole." Even so, to extent that one could conclude that, absent Plaintiff's words, there could be no defamation by implication, and that as such Defendants were not the sole author of the allegedly defamatory statements, they nevertheless are responsible for it in part.

Id. at 507–08.

This is a developing area of law. Nevertheless, courts appear to treat the material contribution test as whether a defendant "contributed to the harmful speech through [their] own actions," Kutchinski v. Freeland Community School Dist., 69 F.4th 350, 359 (6th Cir. 2023), not merely reposting in such a manner that "neither offered nor implied any view of [the reposter's] own about the posts." Monsarrat v. Newman, 28 F.4th 314, 319 (1st Cir. 2022).

In this case Coauette clearly went beyond mere reposting of information as she authored her own additional content. The question is whether Coauette's commentary rises to a sufficient level that precludes Section 230 immunity. The facts of this case fall between Jones and La Liberte. The letter and the podcast had already been posted and circulated and without the linked material, Coauette's comments are not directly defamatory to Plaintiff. However, it is apparent from Coauette's posts that she felt she was informing the community of an important issue by reposting the October 30 Letter and the podcast. Her comments with the letter and the linked podcast qualify as an endorsement ("brave families ... stood up for what is right" and "what a brave parent group to come forward"). Coauette encouraged the public to listen to and share the interview. Coauette advocated for individuals to "help and support" the cause. Coauette alleges that there isn't a level playing field in Warroad or section eight. Coauette's added commentary

[11] F.T.C. v. Accusearch, Inc., 570 F.3d 1187, 1197 (10th Cir. 2009).
[12] Id. at 1187.
[13] Blumenthal v. Drudge, 992 F. Supp. 44, 50 (D.C. 1998).

is a material contribution to the original content. As in Pace, the Court finds that Coauette's posts could be actionable.

Conclusion

Accordingly, Section 230 does not immunize Coauette. Count 4 of the Complaint does not fail to state a claim upon which relief can be granted regarding Defendant Kristin Coauette Johnson, pursuant to Minn. R. Civ. P. 12.02(e). Her request to dismiss is denied.

AMR