

**JOSEPH PILCHESKY
PLAINTIFF**

vs.

**JUDY GATELLI in her individual
capacity**

DEFENDANT

vs.

**JOANNE PILCHESKY and JOHN
DOES**

**ADDITIONAL
DEFENDANTS**

**IN THE COURT OF COMMON
PLEAS OF LACKAWANNA
COUNTY**

**CLERK OF
JUDICIAL RECORDS**

2008 OCT -1 A 9:49

**MARY F. RINALDI
LACKAWANNA COUNTY**

Civil Action – 07-CV-1838

MEMORANDUM AND ORDER

O'Brien, S.J.

Plaintiff, Joseph Pilchesky, is a citizen and critic of the Scranton City Government. When Defendant, Judy Gatelli, a member of the Scranton City Government, responded to the public criticism, Pilchesky filed a Civil Complaint sounding in Defamation, Retaliation and Harassment. In response Defendant Gatelli filed a Counterclaim sounding in Defamation, Civil Conspiracy, Intentional Infliction of Emotional Distress and Abuse of Process.

Defendant Gatelli also filed a Joinder Complaint on May 24 2007 asserting causes of action against Joanne Pikchesky and ninety-eight (98) John Does ("Doe

Defendants”), who were anonymous political message board posters of the website Dohertydeceit.com. A Petition to Compel Disclosure of the Additional Doe Defendants and a Petition to Prevent Plaintiff and Additional Defendant Joanne Pilchesky from Destroying Information Relevant to this Cause of Action were also filed on by Defendant Gatelli on May 24, 2007. Plaintiff filed Preliminary Objections to Defendant’s Answer, New Matter and Counterclaim on June 14, 2007. On September 21, 2007 Paul Alan Levy, Esquire filed an entry of appearance on behalf of seven (7) Doe Defendants: Aquamg, Bigdaddy, Bopeep, Jimbu15, Katie, MistyMtTop, and Newgirl (“Represented Doe Defendants”). No entry of appearance was filed on behalf of any other Doe Defendants.

Following Oral Argument on October 10, 2007, two Orders were issued by this Court. The first denied Plaintiff’s Preliminary Objections. The second concluded that the Petition for Disclosure filed by Defendant Judy Gatelli contained insufficient information to apply the substantive criteria and procedural safeguards articulated in Polito v. AOL-Time Warner, Inc., 78 Pa. D. & C. 4th 328. Defendant Gatelli was ordered to file an Amended Petition for Disclosure specifying the pseudonym of each Additional Defendant, the complete message containing the actionable words posted by each Additional Defendant, the cause or causes of action that she alleges based on those words, and evidence sufficient to establish a prima facie case against each Additional Defendant. Gatelli was also ordered to attach an affidavit asserting that the information was being sought in good faith and was unavailable by alternative means. The October 10, 2007 Order further directed Plaintiff Pilchesky to send each Additional Defendant a copy of this order to the

email address that was provided when registering for the message board, so that each Doe Defendant had the opportunity to file an objection to disclosure of their identity within thirty (30) days of the email notification.

On March 20, 2008, Defendant Gatelli filed an Amended Petition to Compel Disclosure of the Identity of Additional Defendants. This Petition narrowed the amount of Doe Defendants whose identities were being sought from ninety-eight (98) to forty-four (44). Attorney Levy filed objections to disclosure on behalf of his clients whose identities were sought. No objections to disclosure were filed by any of the unrepresented Doe Defendants.

Discussion:

A component of the First Amendment right to freedom of speech is the right to speak with anonymity. *See Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 167-68 (2002). There is no question that generally, the constitutional right to anonymous free speech is a right deeply rooted in public policy and falls within the class of rights that are too important to be denied review. *Melvin v. Doe*, 575 Pa. 264, 278, 836 A.2d 42, 50 (Pa. 2003). A judge of this Court, after considering the rulings of other jurisdictions, held that the right to speak anonymously extends to electronic speech via the internet. *Polito v. AOL Time Warner, Inc.*, 78 Pa. D. & C. 4th 328, 335, 2004 WL 3768897 (Lac. Cty. 2004).

The right to speak anonymously is not, however, absolute. A corollary to this proposition is the principle that the First Amendment is not intended to protect unconditionally all forms of expression. *Id. citing, Roth v. United States*, 354 U.S.

476, 483 (1957) (obscenity is not protected by the First Amendment); Beauharnais v. Illinois, 343 U.S. 250, 266 (1952) (libelous statements are outside the realm of constitutionally protected speech); Chaplinsky v. New Hampshire, 315 U.S. 568, 573 (1942) (First Amendment protections do not extend to "fighting words").

In Polito v. AOL Time Warner, Inc., 78 Pa. D. & C. 4th 328, 2004 WL 3768897 (Lac. Cty. 2004), the Lackawanna County Court of Common Pleas was presented with a similar factual situation. Plaintiff, Michele Polito, filed a cause of action against Defendant, AOL Time Warner, Inc., ("AOL") seeking the identities of AOL subscribers who had forwarded harassing, pornographic, embarrassing, insulting, annoying and confidential electronic communications to her via the internet. Id. The anonymous individuals transmitting the abusive e-mails and instant messages used multiple screen names which they frequently changed, thereby preventing Polito from permanently blocking the receipt of the communications. Id.

The Polito Court held that it agreed with the jurists from other jurisdictions that the Court must strive to achieve an equitable balance between the anonymous declarant's First Amendment right to speak anonymously and the plaintiff's right to obtain relief for criminal or tortious conduct. The Court concluded that Polito was entitled to obtain the identity of the AOL subscribers in question provided that she: (1) satisfactorily states a cognizable claim under Pennsylvania law entitling her to some form of civil or criminal redress for the actionable speech of the unknown declarant(s); (2) demonstrates that the identifying information is directly related to her claim and fundamentally necessary to secure relief; (3) is seeking the requested information in good faith and not for some improper purpose such as harassing,

intimidating or silencing her critics; and (4) is unable to discover the identity of the anonymous speaker(s) by alternative means. Id. at 341.

A prima facie case for defamation requires the plaintiff to plead the following: (1) the defamatory character of the communication, (2) publication of the communication to a third party, (3) the communication refers to the plaintiff, (4) the third party's understanding of the communication's defamatory character, and (5) injury. Bell v. Mayview State Hosp., 853 A.2d 1058, 1061 (Pa. Super. 2004).

However, the special harm element of a defamation claim under Pennsylvania law is eliminated where the words constitute defamation per se. Cornell Companies, Inc. v. Borough of New Morgan, 512 F.Supp.2d 238, 271 (E.D. Pa. 2007).

Defamation per se can be either words imputing (1) criminal offense, (2) loathsome disease, (3) business misconduct, or (4) serious sexual misconduct. 42 Pa.C.S.A. § 8343. It is actionable per se to accuse in libelous form either a man or woman of any sexual misconduct irrespective of whether the misconduct constitutes criminal offense or whether it harms the other in his business, trade or profession. Thus, it is actionable per se to accuse by a libelous publication either a man or woman of adultery or fornication. Baird v. Dun and Bradstreet, 446 Pa. 266, 274, 285 A.2d 166, 171 (Pa. 1971) *citing* REST (FIRST) OF TORTS § 569 cmt. f (1938).

Applying the foregoing standard to the arguments made by the parties in their briefs and during oral argument, the authors of the following postings will be disclosed to Defendant Gatelli:

- (1) Adam – “I had an encounter with her at a drug store. That bitch had the nerve to mention to me that Scranton is a far better place than it was before she was elected. I couldn’t help myself and called her a Doherty blowjob right to her face. I gave it to her good. She left her stuff on the counter and all upset she walked out. Looking into her eyes is looking into something that transformed into something unhuman. She’s got a cold deep look to her, pretty scary.”
- (2) FRICKELLMOIE – “Judy and Sherry down on their knees S-E-R-V-I-N-G the King
First came the insults
Then came the lies
Then came the re-call and our good byes...”
- (3) Lipstick and Lashes – “I love the cartoon and love the idea. I’ll start downloading that pic now and distributing it. I have some words for those two whores, but they can’t be said on TV.”
- (4) 1 Musketeer – “Just when you thought Judy Gatelli was the world’s biggest asshole, she shows up as the world’s dumbest, biggest asshole. And where was the whore of all whores tonight? She was a no-show once again. Too afraid of questions? You can’t make this crap up, she goes down in history as the ugliest woman to ever take council and the most dysfunction moran [sic] to ever be president.
- (5) Gatellis blue dress – “Yipee [sic], I Made the list. What happens now? Does this mean that my free speech was not privileged? My opinions were threats?

Wow. Does this mean Fat ass Judy Gatelli determines for us what free speech is? I don't think so, you fat-assed, no good, Doherty blowjob, crony-ridden piece of ****. Come and get me. Hey, Joe, give them anything you want on me.

I'D LOVE TO BE IN COURT WITH THAT POLITICAL WHORE.

LOVE IT!"

(6) MILOs Ghost – “Nazi-Protected Opinionated Free Speech deal with it. Whore”

The First Amendment protects opinion criticism of public officials. The above quoted statements attributing serious sexual misconduct to Defendant Gatelli go beyond the bounds of those protections afforded by the First Amendment.

**JOSEPH PILCHESKY
PLAINTIFF**

**IN THE COURT OF COMMON
PLEAS OF LACKAWANNA
COUNTY**

vs.

**JUDY GATELLI in her individual
capacity**

DEFENDANT

vs.

**JOANNE PILCHESKY and JOHN
DOES**

**ADDITIONAL
DEFENDANTS**

Civil Action – 07-CV-1838

ORDER

AND NOW, this 1st day of October 2008, upon consideration of Defendant Judy Gatelli's Amended Petition to Disclose the Identities of Additional Defendants and Brief in Support thereof, as well as Plaintiff, Joseph Pilchesky, and Additional Represented Doe Defendants' Responses and Briefs in Opposition to Defendant's Amended Petition to Disclose the Identities of Additional Defendants, and following the oral argument on the matter before this Court, it is ordered that:

- (1) Plaintiff, Joseph Pilchesky, is required to disclose the identities, including addresses, of the following usernames to Defendant within thirty (30) days of the date of this Order:

1. Adam
2. FRICKELLMOIE
3. Lipstick and Lashes
4. 1 Musketeer
5. Gatellis blue dress
6. MILOs Ghost

(2) The Petition to Disclose the Identities of all other John Doe Defendants is
DENIED.

BY THE COURT,


Peter J. O'Brien SJ.
Peter J. O'Brien