

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

PAUL MARCUM,

Plaintiff,

Case No: 2022-191878-CZ  
HON. JEFFERY S. MATIS

v.

EUCLID MEDIA GROUP d/b/a DETROIT  
METRO TIMES, DEADLINE DETROIT, INC.,  
NEWSWEEK DIGITAL, LLC, KOS MEDIA,  
LLC AND NEWSER, LLC,

Defendants.

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**OPINION AND ORDER**

**I. INTRODUCTION**

This matter is before the Court on Defendant Deadline Detroit’s Motion for Summary Disposition and Frivolous Litigation Sanctions. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

**II. BACKGROUND**

This matter arises out of the publication of Plaintiff’s reported conduct at an August 17, 2021 Birmingham Public School Board of Education meeting where parents and other residents were voicing their opinions concerning mask mandates. The Complaint alleges that Plaintiff was attempting to express that mask mandates were fascist and/or oppressive (in other words “Nazi-like”) in nature and in doing so engaged in conduct that is protected by the First Amendment of the Constitution. Compl at ¶ 9-13. The Defendants in this matter are media outlets. The Complaint alleges that Defendants began circulating articles that took dramatic liberties with the reporting of the events that occurred on August 17, 2021. Compl at ¶ 15. The Complaint asserts that as a result of these publications, Plaintiff has lost his job and has been labeled as a “KKK

member” and a “Nazi.” Compl at ¶ 16-17. Plaintiff commenced this action on January 4, 2022 asserting seven causes of action: Count I – Defamation and Libel; Count II –Intentional Infliction of Emotional Distress; Count III –Tortious Interference with Business and/or Contractual Relationship; Count IV –Tortious Intrusion; Count V –Tortious Publication; Count VI –False Light; Count VII –Injunctive Relief. Defendant Deadline Detroit filed the present motion arguing that they are entitled to summary disposition as to each cause of action.

As to Deadline Detroit, the Complaint alleges in pertinent part as follows:

24. Alternatively, Deadline Detroit published an article entitled *Man Who Gave Nazi Salute at Birmingham Schools Meeting Loses Tennis Job*.

25. In this article, Mr. Marcum is identified not only by name but also by photograph and the article states that Mr. Marcum was seen flashing the Nazi salute and **repeatedly chanting “Heil Hitler.”**

### III. STANDARDS OF REVIEW

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-movant. *Wade v Dep’t of Corrections*, 439 Mich 158 (1992). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* at 163. “When deciding a motion brought under this section, a court considers only the pleadings. MCR 2.116(G)(5).” *Maiden v Rozwood*, 461 Mich 109 (1999).

“A motion under MCR 2.116(C)(10) test the factual sufficiency of the complaint.” *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). “In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence.” *Quinto v Cross & Peters*

*Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The Court must review the evidence in the light most favorable to the party opposing the motion. *Maiden*, 461 Mich at 120.

The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto*, 451 Mich at 362-363 (citations omitted).]

“A genuine issue of material facts exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion for summary disposition, the courts “may not resolve factual disputes or determine credibility in ruling on a summary disposition motion.” *Burkhardt v Bailey*, 260 Mich App 636, 646–647; 680 NW2d 453 (2004).

#### **IV. ANALYSIS**

Deadline Detroit argues that Plaintiff’s defamation claim fails because Plaintiff fails to allege any specific, materially false statement concerning him in Deadline Detroit’s publication and the story is privileged and unactionable under MCL 600.2911(3).

“A plaintiff claiming defamation must plead a defamation claim with specificity by identifying the exact language that each defendant published that the plaintiff alleges was false and defamatory[.]” *Saker v Doe*, 318 Mich App 156, 179 n13 (2016) (citation omitted). The Court having reviewed the complaint in this matter finds that Plaintiff failed to allege with specificity any false statement published by Deadline Detroit.

Specifically, Plaintiff does not dispute that he gave a Nazi Salute at a Birmingham Public Schools Meeting and admitted that he lost his job. Accordingly, the alleged defamatory statements set forth in paragraph 24 of the Complaint are substantially true and not actionable.

In addition, Contrary to the allegations in the Complaint, the Deadline Detroit article stated that Plaintiff was seen flashing the Nazi salute and chanting “Heil Hitler!” (as opposed to “repeatedly chanting” as alleged). The evidence attached to Deadline Detroit’s motion establishes that Plaintiff stated, “Heil Hitler!” more than once. Regardless, whether Plaintiff was chanting or repeatedly chanting during the meeting is irrelevant because it is a substantially true statement and the effect on the reader is the same. See *Koniak v Heritage Newspapers (after Remand)*, 198 Mich App 577 (1993) *lv den.*, 508 NW2d 5500 (1993) (whether libel plaintiff was charged with raping his stepdaughter 30 to 50 times, as reported, or “only” six to eight times, as the court record reflected, the report was “close enough to the truth” and the effect on the reader was the same, one time being one too many).

Further, Deadline Detroit’s article mirrors the public record and is therefore, privileged and unactionable under MCR 600.2911(3) which provides in relevant part that “[d]amages shall not be awarded in a libel action for the publication or broadcast of a fair and true report of matters of public record, a public and official proceeding, or of a governmental notice, announcement, written or recorded report or record generally available to the public, or an act or action of a public body, or for a heading of the report which is a fair and true headnote of the report.”

Accordingly, Deadline Detroit is entitled to summary disposition of Plaintiff’s defamation claim pursuant to MCR 2.116(C)(8) and (C)(10).

Next, Deadline Detroit argues that it is entitled to summary disposition of Plaintiff’s remaining claims. Here, Plaintiff’s claims for intentional infliction of emotional distress, tortious

interference with business and/or contractual relationship, tortious Intrusion, tortious publication, and false light are repackaged claims for libel. Because all these claims are based on the same statements as his libel claim and because he cannot overcome the First Amendment limitations regarding these statements, summary disposition is warranted as to all of Plaintiff's remaining claims pursuant to MCR 2.116(C)(8) and (C)(10).

Finally, Deadline Detroit argues that sanctions are appropriate pursuant to MCR 600.2591(3)(a)(iii). However, Deadline Detroit has failed to attach to its motion any documentation in support for its request for attorney fees or provide any legal analysis as required by *Pirgu v United Services Automobile Insurance Agency Inc*, 499 Mich 269, 281 (2016) and *Smith v Khouri*, 418 Mich 519 (2008). This Court has no obligation to find case law or make any arguments to support a party's position. *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265 (2007) (stating that "[a] party may not merely announce a position and leave it to [the court] to discover and rationalize the basis for the claim").

Accordingly, Deadline Detroit's request for sanctions and attorney fees is DENIED.

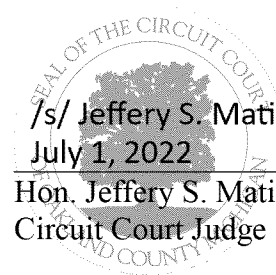
**V. Conclusion**

In sum, for the reasons stated above, Deadline Detroit's motion is GRANTED in PART and DENIED in PART. Plaintiff's claims against Deadline Detroit are DISMISSED.

This is not a final order and does not close the case.

IT IS SO ORDERED.

Date: 7/1/2022

 /s/ Jeffery S. Matis  
July 1, 2022  
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Hon. Jeffery S. Matis  
Circuit Court Judge BB