

IN THE DISTRICT COURT OF JOHNSON COUNTY
STATE OF NEBRASKA

CHARLES W. HERBSTER,

Case No. CI 22-27

Plaintiff/Counterclaim
Defendant,

v.

JULIE SLAMA,

Defendant/Counter-
claim Plaintiff.

**ANSWER,
AFFIRMATIVE DEFENSES,
COUNTERCLAIM,
AND JURY DEMAND**

COMES NOW Defendant Julie Slama (“Slama”) and answers the Complaint filed April 22, 2022, by Plaintiff Charles W. Herbster (“Herbster”). Slama denies each and every allegation contained in the Complaint except as expressly admitted herein. Slama admits, denies, or otherwise avers as follows:

PRELIMINARY STATEMENT

Herbster’s Complaint is defective in several key respects. Beyond its basic failure to comply with this Court’s technical pleading requirements, it is filed in an improper venue (avoidable with even a modicum of preliminary research), fails to allege necessary elements of a public libel claim under Nebraska law, and purports to seek damages which are barred by the plain language of the defamation statutes. Worse, since Herbster filed his Complaint, he has heralded its existence using the massive media megaphone he currently possesses by virtue of his status as a Nebraska gubernatorial candidate, but has made no move to actually serve Slama, thereby intentionally avoiding the litigant accountability and scrutiny available in a live civil action. Slama cannot afford the risk that Herbster has weaponized the judicial process against her by filing the Complaint but, by his half-stepping

into Court and stopping short of service, will deprive her of the ability to rebut the smears set forth in his pleading. Therefore, mindful that she has multiple (but time-consuming) pre-answer procedural remedies at her disposal, Slama hereby voluntarily appears, consents to this Court's jurisdiction, and answers and counterclaims as set forth below.

RESPONSES TO THE NUMBERED PARAGRAPHS

1. Paragraph 1 is denied.

Parties

2. Slama is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies them.

3. Paragraph 3 is denied.

Jurisdiction and Venue

4. Paragraph 4 contains allegations concerning jurisdiction and venue, which are legal conclusions, to which no response is required. To the extent this Paragraph may be deemed to contain allegations of fact, they are denied. At this juncture, Slama does not contest this Court's jurisdiction and consents to venue in this Court.

Facts

I. Herbster's Background

5. Slama is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies them.

6. Slama is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph

6 and therefore denies them.

7. Slama is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and therefore denies them.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted to the extent it alleges that Governor Ricketts has endorsed Jim Pillen in the 2022 gubernational race and opposes Herbster's candidacy for governor. The remainder of this paragraph is denied.

10. Slama is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and therefore denies them.

II. Defendant Slama's Background

11. Slama affirmatively alleges that in the 2018 gubernatorial campaign, Slama served as communications director for the Governor Ricketts campaign. Paragraph 11 is denied to the extent it alleges facts inconsistent with this statement.

12. Paragraph 12 is admitted.

13. Paragraph 13 is admitted.

14. Paragraph 14 is so vague and unintelligible that Slama is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

15. Paragraph 15 is admitted to the extent it alleges Slama endorsed Jim Pillen in the ongoing 2022 gubernational race.

16. Paragraph 16 is so vague and unintelligible that Slama is without knowledge or information sufficient to form a belief as to the

truth of the allegations in this paragraph, and therefore denies them.

III. The 2019 Elephant Remembers Dinner

17. Paragraph 17 is admitted.

18. Slama is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 and therefore denies them.

19. Paragraph 19 is denied.

20. Paragraph 20 is denied.

21. Paragraph 21 is denied.

IV. Defendant Slama's Continued Interactions with Herbster Following the Dinner

22. Paragraph 22 is denied.

23. Slama affirmatively alleges and admits that Herbster contributed \$10,000 to her 2020 campaign for Legislature. Paragraph 23 is otherwise denied.

24. Paragraph 24 is admitted to the extent it alleges that, by virtue of Slama's and her husband's political contributor lists having been used to generate wedding invitations, Herbster and numerous others were invited to Slama's wedding. The remaining allegations in Paragraph 24 are denied.

25. Paragraph 25 is admitted to the extent it alleges the January 22, 2022, text message was sent. This paragraph is denied to the extent it alleges that Slama's January 22, 2022, text message to Herbster was "unsolicited."

26. Paragraph 26 is denied.

V. The April 14, 2022 Nebraska Examiner Article

27. Paragraph 27 is admitted to the extent it alleges on or about April 14, 2022 the reporter Aaron Sanderford and the Nebraska Examiner published an article regarding, among other things, events that occurred at the spring 2019 Elephant Remembers Dinner. Paragraph 27 is specifically denied to the extent it alleges that statements made by Slama were defamatory. The remainder of Paragraph 27 is denied.

28. Paragraph 28 is admitted.

29. Paragraph 29 is denied.

30. Paragraph 30 is admitted.

31. Paragraph 31 contains legal conclusions to which no response is required. Nebraska's statutory prohibitions on sexual assault speak for themselves.

32. Paragraph 32 is admitted.

33. Paragraph 33 is admitted to the extent it alleges Slama participated in an interview with KFAB's Ian Swanson on or about April 15, 2022, and reiterated the events that occurred at the spring 2019 Elephant Remembers Dinner. Paragraph 33 is further admitted to the extent it alleges that Slama stated:

As I was going in, walking to my table I felt a hand reach up my skirt, up my dress and the hand was Charles Herbster's. I was in shock. I was mortified. It's one of the most traumatizing things I've ever been through.

Paragraph 33 is denied to the extent it alleges that Slama's allegations were false. The remainder of Paragraph 33 is denied.

34. Paragraph 34 is admitted.

VI. Damage to Herbster's Reputation

35. Paragraph 35 is denied.

36. Paragraph 36 is denied.

Count I: Defamation (Slander Per Se)

37. Slama realleges and incorporates by reference each of the answers contained in the foregoing paragraphs as though fully set forth herein.

38. Paragraph 38 is denied.

39. Paragraph 39 is denied.

40. Paragraph 40 is denied.

41. Paragraph 41 is denied.

42. Paragraph 42 is denied.

43. Paragraph 43 is denied.

Prayer for Relief

This section consists of Herbster's requests for relief, to which no response is required. To the extent a response is deemed required, Slama denies Herbster is entitled to the requested relief or to any relief whatsoever and requests that his Complaint be dismissed with prejudice.

AFFIRMATIVE AND OTHER DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint fails to plead special damages as required for a public libel claim under *Moats v. Republican Party of Neb.*,

281 Neb. 411, 796 N.W.2d 584 (2011).

3. Venue is improper in the District Court for Johnson County, Nebraska.
4. Slama affirmatively alleges and pleads that Herbster failed to make any demand for retraction of the allegedly defamatory statements and therefore may not recover more than such damages as Herbster alleges and proves were suffered in respect to his property, business, trade, profession, or occupation as the direct and proximate result of Slama's alleged publication. Neb. Rev. Stat. § 25-841.01.
5. Slama affirmatively alleges and pleads that the allegedly defamatory statements in question were true or substantially true, and thus, cannot be the basis for a defamation action.
6. Slama's statements in question are entitled to conditional or qualified privilege.
7. At all relevant times, Herbster was a public figure and the allegedly defamatory statements were on a matter of public concern. Thus, the rules for public libel claims apply, which rules Herbster cannot satisfy.
8. Herbster and his counsel know, or should know, that Slama's statements in question are true or substantially true. Therefore, the Complaint is frivolous and made in bad faith. Pursuant to Neb. Rev. Stat. § 25-824 the Complaint should be stricken and reasonable attorney fees and costs incurred in defending this action awarded to Slama. As provided by the statute, such fees and costs should be allocated to Herbster and his attorneys as the Court deems appropriate.

WHEREFORE, Slama respectfully requests that Herbster's Complaint be dismissed with prejudice, that Herbster be denied all

relief requested, that Slama be awarded reasonable attorneys' fees and costs under Neb. Rev. Stat. § 25-824 and any other applicable law, and for such further relief as the Court deems appropriate.

COUNTERCLAIM

Slama, pursuant to Neb. Ct. R. Pldg. § 6-1113, for her counterclaim, states and alleges as follows.

1. Slama hereby incorporates by reference all allegations, denials, and other averments in the foregoing Answer to Herbster's Complaint.

FACTUAL ALLEGATIONS

Spring 2019 Elephant Remembers Dinner

2. In December 2018 Julie Slama was appointed as a state senator to fill a vacancy in the First Legislative District.

3. In the Spring of 2019 Julie Slama attended the Elephant Remembers Dinner (the "Dinner").

4. Slama was 22 years old when she attended the Dinner.

5. Shortly after Slama entered the Dinner and as she was heading to her table, she felt Herbster's hand reach up her dress and inappropriately touch her.

6. Slama in no way consented to Herbster reaching up her dress or touching her.

7. Other individuals attending the Dinner either witnessed Herbster inappropriately touch Slama or were contemporaneously aware that it had occurred.

8. Only a few minutes after Herbster reached up Slama's dress, Slama witnessed Herbster grab the buttocks of another woman

attending the event. Several other individuals at the dinner witnessed this event.

9. Slama was shocked, mortified, and traumatized by Herbster's actions. Slama was also frightened of retribution that could occur if she came forward because she knew Herbster was a multi-millionaire and a major donor for the Republican Party in Nebraska.

COUNTERCLAIM COUNT I: BATTERY (SEXUAL)

10. Slama realleges and incorporates by reference each of the foregoing Counterclaim paragraphs as though fully set forth herein.

11. Herbster intended to and in fact committed a harmful and offensive touching of Slama's person by reaching up her dress during the Dinner.

12. Herbster's actions constituted a battery of Slama.

13. As a direct and proximate result of Herbster's tortious actions against Slama she sustained damages including:

Special Damages, Economic Losses:

- a. Damages to her personal reputation. These damages are accruing and their full extent is not known.
- b. Expenses to attempt to mitigate damages to her personal reputation. These special damages are accruing and their full extent is not known.
- c. Expenses for psychological care. These damages are accruing and their full extent is not known.

General, Non-Economic Damages:

- d. Physical illness.
- e. Emotional distress and sleep disturbance.
- f. Damage to Slama's mental and emotional health

including depression, anxiety, preoccupation, fixation, and fear of loss of reputation.

g. General pain and suffering.

Slama's damages are ongoing and still accruing. Her personal injury is believed to be permanent as the impact of Herbster's battery of Slama can never be fully eradicated. Slama requests leave to amend this Counterclaim to further state her damages at the pre-trial conference.

14. If a frivolous or bad faith defense is offered by Herbster, Slama seeks attorneys' fees, expenses, and costs pursuant to Neb. Rev. Stat. § 25-824. If no defense is offered and it is thereby revealed that Herbster acted in bad faith by filing a Complaint against Slama for defamation, Slama seeks attorneys' fees, expenses, and costs pursuant to Neb. Rev. Stat. § 25-824.

REQUEST FOR RELIEF

WHEREFORE, Slama requests judgment against Herbster for special damages to be stated at the final pretrial conference, general damages, prejudgment interest to the extent permitted by law, costs, including attorney's fees under Neb. Rev. Stat. § 25-824, and for further relief as the Court deems appropriate.

JURY DEMAND

Julie Slama hereby demands a trial by jury for this case.

Respectfully submitted April 25, 2022.

JULIE SLAMA,
Defendant/Counterclaim Plaintiff.

By: /s/Dave Lopez
Marnie A. Jensen (NE #22380)
David A. Lopez (NE #24947)

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*Attorneys for Julie Slama,
Defendant / Counterclaim Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, I filed the foregoing document using the Nebraska Judicial System's E-Filing function, causing notice of such filing to be served electronically on all parties' counsel of record.

/s/Dave Lopez

Certificate of Service

I hereby certify that on Monday, April 25, 2022 I provided a true and correct copy of the Answer & Counterclaim to the following:

Herbster, Charles, W represented by Theodore Boecker (Bar Number: 20346) service method: Electronic Service to boeckerlaw@msn.com

Slama, Julie, service method: No Service

Signature: /s/ David A. Lopez (Bar Number: 24947)