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IN THE COURT OF COMMON PLEAS, FAYETTE COUNTY, OHIO  
CIVIL DIVISION

CLAIR BETZKO,  
Plaintiff,

Case No. CVH 20180307

vs.

CHARLES MICK, *et al.*,  
Defendants.

**FINAL JUDGMENT ENTRY**  
(Final Appealable Order)

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**PROCEDURAL POSTURE**

Plaintiff has filed claims for defamation, malicious prosecution, abuse of process, and civil conspiracy against Defendants, and each have filed for summary judgment as to all cause of action. The motions have been fully briefed and are now ripe for adjudication.

**FINDINGS OF FACT**

The Court finds the following to be material facts to be applied against controlling precedent. The Court has construed the evidence in favor of Plaintiff, the non-moving party.

Defendant Charles Mick ("Mick") began his law enforcement employment with the Village of New Holland in early 2018 and was under the supervision of the chief of police and Plaintiff Clair Betzko ("Betzko"). Shortly after his hire, Mick met surreptitiously with Defendants Karen Francis ("Francis") and Teresa Bayer ("Bayer"), outside of the Village limits. At the time of this clandestine meeting, Francis was a co-defendant involving charges instituted by Mick. This meeting was not authorized by Betzko or the chief of police and resulted in internal charges against Mick, which included insubordination. While still employed by the Village, Mick filed a misdemeanor charge against Betzko for obstruction of official business and

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later a felony charge of forgery, both with the Circleville Municipal Court. The gravamen of the misdemeanor charge was Betzko's order to Mick to cease an interview with a Village resident. Mick continued to investigate Betzko after the citizen interview and received information regarding a potential forged official document. Mick sought and obtained a valid search warrant for the Village offices. Francis had no input in Mick's affidavit for the warrant.

At the conclusion of the search, Mick informed Betzko that he was under investigation for criminal conduct. Mick later, and at a Village council meeting, served Betzko with felony forgery and misdemeanor obstruction complaints. These criminal charges were dismissed upon motion of the Pickaway County Prosecutor, each without prejudice.

Francis co-authored a letter sent to various governmental agencies regarding her concerns with the state of affairs in the Village and specifically with the Village administration. She also addressed council at a public meeting regarding her concerns and referenced these also in social media posts.

Bayer had no input on the search warrant affidavit prepared by Mick. She was not involved in Mick's decision to file criminal charges. Bayer was a signatory on a malfeasance complaint filed in the Pickaway County Probate Court pursuant to statute. This complaint was ultimately dismissed by the Ohio Attorney General's Office. Bayer erected a sign in her yard for a period of time which read "Stop the Corruption."

**STANDARD OF LAW**  
CIVIL RULE 56

The parties have each correctly stated the applicable law and appropriate burden regarding summary judgment. The Court need not reiterate that binding precedent.

## DEFAMATION

A five-part test has been established by precedent to maintain a cause of action for defamation. Plaintiff's burden is to establish a false and defamatory statement made against another, published without privilege to a third person that was either defamatory per se or resulted in special harm and with the required degree of fault. To rebut a prima facie complaint for defamation, a defendant may assert the defenses of immunity, truth, and lack of actual malice. Some defamatory statements are still entitled to absolute privilege if the statements are reasonably related to judicial proceedings, even if made with actual malice. A defamation action fails if it is based upon a true statement. It is axiomatic that truth is always a defense to a defamation action. In order to maintain a defamation against a public figure, clear and convincing evidence must be shown that the statement was made with actual malice. The nonexistence of an objectively reasonable investigation cannot serve to infer malice and evidence of failure to investigate facts is insufficient to establish actual malice. The classification of the Plaintiff claiming to have been defamed determines the requisite burden of proof. An elected mayor in the State of Ohio constitutes a public figure.

## MALICIOUS PROSECUTION

In order to sustain a cause of action for malicious civil and/or criminal prosecution, four essential elements must be pled by a plaintiff: (1) malicious institution of prior proceedings against plaintiff by a defendant; (2) lack of probable cause for the filing of the prior lawsuit or criminal proceeding; (3) termination of the prior proceedings in plaintiff's favor; and (4) seizure of plaintiff's person or property during the course of the prior proceedings.

## ABUSE OF PROCESS

Abuse of process claims require a tripartite analysis. A plaintiff must allege and prove: (1) a legal proceeding has been set in motion in proper form and with probable cause; (2) that the proceedings have been perverted to attempt to accomplish an ulterior motive for which it was not designed; and (3) direct damage has resulted from the wrongful use of process. There is no liability for abuse of process where a defendant has done nothing more than carry out a process to its authorized conclusion.

#### CIVIL CONSPIRACY

Civil conspiracy occurs when a malicious combination of two or more persons injure another person or property, in a way not competent for one alone, resulting in actual damages. Civil conspiracy claims cannot survive on their own. There must be an unlawful act or intentional tort independent of the actual conspiracy.

#### DECISION

Plaintiff is a public figure. The alleged defamatory statements and malicious prosecution claims relevant to the summary judgment motion include institution of the criminal charges and the affidavits executed to obtain the search warrant. These statements and actions by Mick are entitled to absolute immunity as a matter of law, regardless of malice. The pertinent social media posts by Mick are not defamatory. Betzko has failed to provide any evidence, much less clear and convincing, that Mick made any statements or engaged in any act, with actual malice. The criminal cases were dismissed without prejudice which does not denominate innocence. The Court finds from the evidence that the criminal actions were commenced with probable cause.

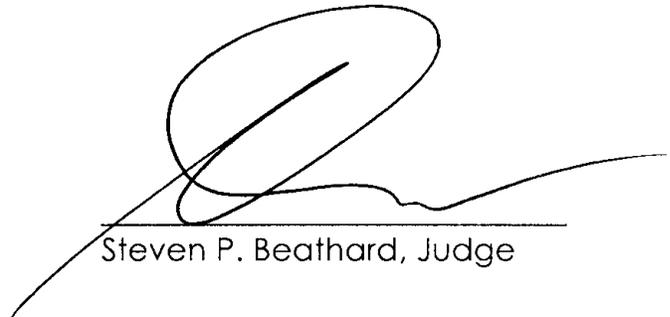
The Court finds no abuse of process as Betzko has alleged the criminal charges were instituted without probable cause and that the tortious acts

occurred pre-proceeding. The Court finds, as a matter of law, that the relevant statements of Francis are not defamatory. These statements are of opinion and not of fact, based on the totality of all the relevant evidence. Bayer's participation in the statutory malfeasance does not constitute tortious conduct, nor does her "billboard" posted at her residence qualify as anything more than her opinion.

In conclusion, each Defendant is granted a judgment of dismissal on each claim of the Plaintiff. This decision does not settle issues of public trust and confidence in the administration of the Village. Majorative governance must be framed by constitutional limitations. The language and actions of all Defendants may be characterized as honest opinion or extreme distortions of fact – however nothing said or done constitutes an actionable tort.

This is a final appealable Order. Costs to Plaintiff.

IT IS SO ORDERED!



Steven P. Beathard, Judge

To the Clerk:

Please send copies of the foregoing to all parties and/or their counsel of record.