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IN THE SUPERIOR COURT OF PENNSYLVANIA

Toni Shuppe,

Plaintiff / Appellant,

Case No. 1423 WDA 2023

v.

Josh Shapiro, Candidate for Governor
of Pennsylvania; Shapiro for
Pennsylvania, Inc.; Dana Fritz,
Campaign Manager for Shapiro for
Pennsylvania; Vice.com, Inc.,

Defendants / Appellees.

APPELLANT'S PRINCIPAL BRIEF

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STATEMENT OF JURISDICTION

The Superior Court of Pennsylvania has jurisdiction over appeals from final orders of the courts of common pleas, as established by statute at 42 Pa.C.S. § 742. The Superior Court's jurisdiction is generally confined to appeals from final orders of the courts of common pleas. An order is considered final if it effectively puts a litigant out of court. *Commonwealth v. Chism*, 2019 PA Super 239, 216 A.3d 1133, 1135-36 (Pa. Sup. Ct. 2019). The October 31, 2023 order and accompanying opinion and order being appealed are final appealable orders. (**ATTACHMENT A** (Order, 10/31/2024) and **ATTACHMENT B** (Opinion and Order, 10/31/2024)).

OPINION AND ORDER IN QUESTION

On January 16, 2024, the Court of Common Pleas (trial court) of the 37th Judicial District of Pennsylvania, in Forest County, issued an order dated October 30, 2023 (**ATTACHMENT A**), and on the same day, issued its opinion and order, dismissing with prejudice all claims. (**ATTACHMENT B**).¹

It is from this opinion and order that this appeal is taken.

SCOPE AND STANDARD OF REVIEW

This defamation case was “dismissed” with prejudice. The trial court improperly and summarily ruled on the “merits” of Ms. Shuppe’s defamation

¹ The trial court’s final order, and its opinion and order appear in the record at TR 380-288. However, Appellant attaches these to her brief for ease of reference for the court as required by the rules. Pa. R.A.P. 2111(b).

claims, without giving her any opportunity to correct any of the preliminary defects of service (which Ms. Shuppe does not concede), and without any litigation of the underlying claims – without discovery, without testimony, without briefing, and/or without any of the other required litigation attendant to a defamation suit.

Obviously, the trial court could not summarily dismiss a defamation lawsuit without briefing, oral argument, and litigation of the underlying claims in light of the evidence presented by Ms. Shuppe in her complaint. At a minimum, the trial court was to allow Ms. Shuppe to amend her suit and file an amended complaint. But, that is not what happened here.

The trial court simply sustained incorrectly filed preliminary objections, *and* went out of its way to rule on the merits of the defamation suit, as if that was going to prevent this case from ever being litigated – in other words, the trial court used the preliminary objections process, and the alleged defect in service, to short circuit Ms. Shuppe’s defamation case, when Pennsylvania law *requires* trial courts to allow correction of the non-jurisdictional defects and amendment to the pleadings.

Every citizen is entitled to their day in court. The trial court’s improper, unconventional and furtive summary process deprived Ms. Shuppe of this right.

In reviewing a common pleas court’s order sustaining preliminary objections, “the standard of review is *de novo* and the scope of review is *plenary*.” *Williams v. City of Philadelphia*, 164 A.3d 576, 584 (Pa. Cmwlth. 2017)

(emphasis supplied). These are not just empty words. In ruling on preliminary objections, a court ***must accept as true*** all well-pleaded material allegations in the complaint, as well as all inferences reasonably deduced therefrom. *Torres v. Beard*, 997 A.2d 1242, 1245 (Pa. Cmwlth. 2010). In order to sustain preliminary objections, ***it must appear with certainty*** that the law will not permit recovery, and ***any doubt should be resolved by a refusal to sustain them***. *Id.* (emphasis supplied). See also, *In re Wilkesburg Taxpayers & Residents Interest*, 200 A.3d 634, 640 n.12 (Pa. Cmwlth. 2018).

“When preliminary objections, if sustained, would result in the dismissal of an action, such objections should be sustained ***only in cases which are clear and free from doubt***.” *Richard T. Byrnes Co. v. Buss Automation, Inc.*, 415 Pa. Super. 549, 559-60; 609 A.2d 1360, 1365 (1992) (emphasis supplied). Therefore, plenary review must occur at the appellate stage. As the appellate courts have stated:

Our standard of review mandates that on an appeal from an order sustaining preliminary objections which would result in the dismissal of suit, we accept as true all well-pleaded material facts set forth in the Appellant’s complaint and all reasonable inferences which may be drawn from those facts. This standard is equally applicable to our review of [preliminary objections] in the nature of a demurrer. Where, as here, upholding sustained preliminary objections would result in the dismissal of an action, ***we may do so only in cases that are clear and free from doubt***. To be clear and free from doubt that dismissal is appropriate, ***it must appear with certainty that the law would not permit recovery by the plaintiff upon the facts averred***. Any doubt should be resolved by a refusal to sustain the objections. [*Marks v. Nationwide Ins. Co.*, 2000 PA Super 341, ¶ 4, 762 A.2d 1098, 1099 (2000) (emphasis supplied)]

This case was dismissed at the preliminary objections stage on issues of law; therefore, the Court’s scope of review is plenary. *Id.*

STATEMENT OF QUESTIONS INVOLVED

- I. Whether the trial court committed error in allowing the Defendants to file preliminary objections and come within the jurisdiction of the court when they were properly served in accordance with their own “COVID-19” policies; failed to file an answer and/or timely preliminary objections; and where default was properly presented to the prothonotary, fulfilling all requirements for entry of default in this action for defamation, the only remaining issue to be litigated being that of damages?

- II. Whether the trial court committed error in going beyond the jurisdictional questions concerning proper notice, proper entry of default, proper service of same, and addressing preliminary objections filed by the defendants, and, going further to address the substantive merits of plaintiff’s defamation claims where plaintiff satisfied the steps to obtain default, and there was no procedural mechanism by which the trial court could just jump to and reach the substantive merits of the defamation claims lodged against defendants?

- III. Assuming, without conceding, that the trial court could address the “substantive merits” of plaintiff’s defamation claims, without every holding hearing or conducting discovery, did the trial court nonetheless err in its ruling on the merits of plaintiff’s claims that the defamatory statements were “protected opinion,” where plaintiff presented hard evidence of the defamatory actions and conduct of defendants, thereby satisfying the pleading standards required to survive summary dismissal of her defamation claims against defendants?

APPELLANT’S PRINCIPAL BRIEF

I. Statement of the Case

On October 27, 2022, Plaintiff/Appellant (Ms. Toni Shuppe) filed suit for defamation against, *inter alia*, Defendant, Josh Shapiro (Shapiro), who was at that

time, Attorney General of the State of Pennsylvania and then candidate for Governor. In her complaint, Ms. Shuppe pleaded allegations of defamation and damages, and provided documentary evidence in support thereof.

In February 2021, Ms. Shuppe co-founded a group called “Audit the Vote PA,” which sought to pressure lawmakers to audit Pennsylvania’s general election results. (TR 16). Ms. Shuppe conducted research and consulted on issues related to the 2020 election, and for her conduct and actions in doing same, she was subjected to libelous, slanderous, and defamatory statements made by Shapiro and others. In her complaint, Ms. Shuppe explained that after she questioned the legitimacy and accuracy of the results of the November 2020 election as a private citizen, and challenged the use of compromised voting machines, ballot fraud, and fraudulent and illegal voting practices, procedures and methods in Pennsylvania and formed a coalition to investigate and take action, the Defendants baselessly claimed and continue to claim that she was “dangerous” and that she spread “blatant lies” and was a “conspiracy theorist.” (Reproduced Trial Court Record, (TR) at p. 10 (TR 10). As demonstrated in her complaint, Defendant, Shapiro retweeted these baseless claims against Ms. Shuppe. Shapiro then aired television advertisements in his campaign, in which he directly targeted Ms. Shuppe, who again was just a private citizen. (TR 10-11). The Supplemental Trial Court Record (TRS) contains the exhibits to Ms. Shuppe’s Complaint, showing both the written and video media advertisements libeling, slandering, and defaming Ms. Shuppe. (TRS 7-23). Ms. Shuppe’s

Complaint also contained the exhibits from advocates for both political parties, employees of voting machine companies, and official election assistance commission (EAC) reports from both before and after the November 2020 election detailing the problems that Ms. Shuppe was reporting as a private citizen concerning the use of voting machines and flaws in the running of elections in the United States. (TRS 24-927). See also TR 18-19.

In supporting here complaint, and in presenting this evidence, Ms. Shuppe alleged and demonstrated factual support that both partisan and non-partisan interest, groups, renowned computer scientists, experts, governmental agencies, and even employees of the voting machine manufacturers, all observed, raised, and acknowledged the utter lack of security and integrity in elections conducted using “private” vendor electronic voting machine systems since at least as early as 2010. (TR 62-63). For all of her efforts to expose these problems and to document the bi-partisan skepticism (at least bi-partisan before the 2020 election), Ms. Shuppe was met with the defamatory statements by Shapiro and others, which she attached to her complaint as exhibits. (TRS 24-92). In fact, the defendants (including Shapiro) made no secret of their defamatory actions, actually using this defamation, libel and slander in publicly disseminated political advertisements and hit pieces aimed at discrediting Ms. Shuppe. *Id.*

In the legal counts of her complaint, Ms. Shuppe set forth the elements of claims against Shapiro and others for these defamatory actions – a claim for defamation, false light invasion of privacy, and civil conspiracy, all recognized

by Pennsylvania law under similar factual scenarios were properly pleaded and related back to the documented actions and conduct of Shapiro and other defendants.

On November 28, 2022, Ms. Shuppe had a process server serve Mr. Shapiro with the lawsuit in accordance with his office's then existing "COVID-19" policy. What was required then because of the government's COVID restrictions was the depositing of the lawsuit and notice papers in a drop box provided by Shapiro's office for that purpose. This was the "COVID-19" policy in effect for providing "service of papers" without the necessity of personal contact. Of course, Shapiro's office specifically instructed that proper service would be effectuated if this was done. However, when Ms. Shuppe moved for default, Shapiro's attorneys claimed that service had to be effected by "personal service" from a Sheriff's officer. And, of course, they make no mention of the COVID-19 policy instituted by Shapiro's office, hiding once again behind the convenience of the COVID-19 epidemic to get out of their legal obligations. The double standards continue and those in power are allowed to thumb their noses at the rest of the population, applying rules only when it suits their insidious purposes.

Of course, Shapiro failed to file an answer or any responsive pleadings to the lawsuit, claiming that service was improper, even though they acknowledged receiving the lawsuit.

Ms. Shuppe therefore moved for default by filing a notice of default with the prothonotary. On June 9, 2023, Ms. Shuppe filed notice and a praecipe for default.

Defaults are governed by the Pennsylvania Rules of Civil Procedure and are entered by prothonotaries without judicial involvement. *EMC Mortg., LLC v. Biddle*, 2015 PA Super 79 , n.8; 114 A.3d 1057, 1068 (2015). The prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or, except as provided by subdivision (d), for any relief admitted to be due by the defendant. Pa.R.C.P. 1037(b). Pursuant to Pa.R.C.P. 237.1, the praecipe for default judgment must contain a certification of written notice of intent to file the praecipe and no default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered, in the case of a default for a failure to plead, after the failure to plead and at least ten days prior to the date of the filing of the praecipe to the party against whom judgment is to be entered and to the party's attorney of record, if any. See Pa. R.C.P. No. 237.1(2). Plaintiff fulfilled these requirements.

The prothonotary shall assess damages for the amount to which the plaintiff is entitled if it is a sum certain, or which can be made certain by computation, but if it is not, the damages shall be assessed at a trial at which the issues shall be limited to the amount of the damages.” Pa.R.C.P. 1037, Official

Note. In all cases, the court, on motion of a party, may enter an appropriate judgment against a party upon default or admission. Pa.R.C.P. 1037(c).

Where a default judgment has been obtained, the plaintiff may file an amended complaint seeking a trial on the lone issue of damages if a sum certain amount cannot be ascertained. *Reichert v. TRW, Inc.*, 531 Pa. 193, 611 A.2d 1191, 1193 (Pa. Super. 1992) (filing an amended complaint foreclosed ability for default judgment on the original complaint).

Somehow, Shapiro was allowed to file preliminary objections, even though he had never acknowledged service, and never answered or otherwise attempted to counter the default. Even in their efforts to quash Ms. Shuppe's constitutional rights of free expression, Shapiro's team admits that Ms. Shuppe was a private citizen simply heading up an organization to bring truth and integrity to the election process – something that every true American should want, and indeed, demand. (TR pp. 95-96). However, in their next breath, Shapiro's team then claims that they had the right to use their own extraordinary powers over the media and the government (Shapiro was then attorney general) to bully Shuppe and make these baseless, harmful, and defamatory statements against her, nonetheless. *Id.* They admit to treating Ms. Shuppe, a private citizen, as a dangerous political opponent.

This resulted in the trial court wrongly assuming jurisdiction over the case, and then undertaking briefing by the parties and ruling “on the *merits*” of Ms. Shuppe's lawsuit, while taking no evidence. Therefore, the Commonwealth

Court committed its first error by assuming jurisdiction of a case in which there was a pending default notice before the prothonotary. The Commonwealth Court had no jurisdiction to accept “preliminary objections” filed by Shapiro because they had never objected to the entry of notice of default, and they had never answered or otherwise explained why or how they were allowed to bypass the default process.

The Commonwealth Court then failed to even rule on this question – the propriety of allowing Shapiro to bypass the notice of default process – and instead, it purported to assume jurisdiction over and rule on the merits of the defamation case, without even taking evidence or allowing discovery.

Finally, the trial court, after disregarding these stalwart procedural safeguards (why plenary review is the proper standard where a case is dismissed on preliminary objections), went into the substantive merits of Ms. Shuppe’s lawsuit, as if the court could possibly make a ruling of such magnitude based simply on a complaint and preliminary objections. The dearth of effort by the trial court to engage in proper legal analysis, and the maximum effort made to obfuscate the legitimacy of Ms. Shuppe’s preliminary pleadings is evident in the trial court’s opinion and order.

First, the trial court ignored completely the fact that then Attorney General Shapiro’s “COVID-19” policy regarding service of papers required that there be no personal contact and that the service be effectuated by use of the drop box. (**ATTACHMENT B**, pp. 2-4). The trial court ruled that personal service was

required to be made. However, cognizant that this in itself would be insufficient to dismiss the suit on the merits, the trial court then went out of its way to address, summarily, and without litigation, the substantive merits of Ms. Shuppe's claims.

In this regard, the trial court concluded that it could determine as a "question of law" whether a "political statement" was one of "fact" or "law". *Id.*, p. 5. However, the trial court never explains how this makes it possible to summarily dismiss the claims where the factual allegations in the defamation complaint are supported by documentary evidence, which would require both litigation of the underlying nature of each of the statements made and the legal questions concerning application of the law to this evidence. *Id.*, pp. 5-6.

In this way, the Commonwealth Court short-circuited Ms. Shuppe's defamation case by simply ruling that as a matter of law, she could not succeed in her lawsuit.

II. Argument and Analysis

When a defendant fails to file an answer, the plaintiff's remedy is to move for a default judgment under Pa.R.C.P. 1037. See, e.g., *Vogel v. Berkley*, 40 Pa. D.&C. 3d 339 (Pa. Super. 1985) (citing *Poliquin v. Heckler*, 597 F. Supp. 1004, 1006 (D. Me. 1984) ("Since the pleadings *are not closed* until after the defendant has filed an answer, the proper course for a plaintiff in a case in which the defendant has failed to file a timely answer is a motion for default.") (emphasis added). See also, *Roy v. Cerone*, 240 A.3d 151, n.5 (Pa. Super. Ct. 2020).

And, even where a party files preliminary objections (where a default notice is pending), the opposing party is under no obligation to respond precisely because the court presiding over the case must assess the former's failure to answer the default notice. *Dixon v. Northwestern Mutual*, 2016 PA Super 186, 146 A.3d 780 (Pa. Super. 2016) (party's failure to respond to preliminary objections does not sustain preliminary objections by default); *Schuylkill Navy v. Langbord*, 1999 PA Super 75, 728 A.2d 964 (Pa. Super. 1999) (a court cannot sustain preliminary objections based solely on party's failure to file response). See also, *Warner v B Pietrini & Sons*, 175 A3d 409 (Pa Super Ct, 2017) (same).

“Every pleading subsequent to the complaint shall be filed ***within 20 days*** after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.” *Parmar v. Alside, Inc.*, 37 Pa.D.&C.3d 430, 431-32 (C.P. Clarion 1984). The comment to Pa. R. C. P. 1026 makes it clear that preliminary objections are within the scope of Rule 1026 and thus, must be filed within 20 days of the preceding pleading. In this case, the complaint did contain a notice to defend. The first responsive pleading, however, was not filed until the “preliminary objections.” Further, there was no extension to file preliminary objections or to waive the requirements to follow upon notice of default to the prothonotary. According to Pa.R.C.P. 201, extension agreements, or any other agreements of attorneys relating to the business of the court, must be in writing unless noted on

the record in hearings in open court. There was no hearing and no agreement within which Shapiro could file untimely responsive pleadings.

In any event, there was no extension granted for the filing of preliminary objections at all as no meeting of the minds existed between counsel, as is required for an extension agreement to exist. *Hahnemann Med. College & Hosp. v. Hubbard*, 267 Pa. Super. 436, 439, 406 A.2d 1120, 1122 (1979). As such, Shapiro's preliminary objections were clearly not timely filed.

Ms. Shuppe gave notice of intention to file a default judgment, as required in Pa.R.C.P. 237.1, and only then, did the defense counsel file his preliminary objection. Because preliminary objections are responsive pleadings, the objection is deemed waived if not filed within 20 days of the preceding pleading or within the period of any extension granted. *Hohlstein v. Hohlstein*, 223 Pa. Super. 348, 353, 296 A.2d 886, 888 (1972). See also, *O'Barto v. Glossers Stores, Inc.*, 228 Pa. Super. 201, 204-05, 324 A.2d 474, 475-76 (1974) and Pa.R.C.P. 1026, 1032. While the court may, on cause shown or in the interest of justice, extend the filing period or allow late pleadings, Pa.R.C.P. 1003; *Fisher v. Hill*, 368 Pa. 53, 56, 81 A.2d 860, 863 (1951), Shapiro offered no just reason to excuse the considerable delay in the filing of preliminary objection. As such, Shapiro should be deemed to have waived the substantive defense to Ms. Shuppe's complaint, and the trial court should not have granted summary dismissal on the merits (the trial court should have provided an opportunity to amend and serve the complaint and should *not* have gone directly to substantive claims in the

complaint and then summarily dismiss them). If this technical detail had been honored by the trial court, the preliminary objections would not have been allowed, and Ms. Shuppe would have had the opportunity to amend her complaint, refile and serve it upon Shapiro.

Pennsylvania law does not allow for the filing of post-default pleadings on the part of a Defendant other than to contest the damages entered by the prothonotary. At such proceedings, the merits of the allegations in the complaint are taken as true and the trial proceeds only to determine an adequate and just calculation of the damages.

Despite fulfilling the necessary prerequisites under the Pennsylvania Rules of Civil Procedure mentioned above, counsel for Shapiro filed an appearance in this court and “preliminary objections” *after* the notice and praecipe for default issued. Interestingly, and perhaps because the issue of “damages” is the only substantive matter that can be litigated once a party defaults, counsel for Shapiro admitted that the factual allegations in the complaint were essentially as Plaintiff had presented them. (TR 258). Furthermore, Shapiro’s counsel attempted to skirt the default notice and the procedural consequences of default by urging this court to address “the merits” of the preliminary objections. (TR 262). Clearly, Shapiro’s counsel was trying to dupe the trial court into advancing into the merits of the preliminary objections because that would be advancing into the merits of the underlying case, i.e., litigating the merits, which is prohibited by Pennsylvania law when a plaintiff has satisfied the requirements for issuance of default by the

prothonotary. Good faith discussions about whether or not service was proper would not be required where after over a year, the defendant has not answered or responded, despite having been properly served in accordance with the then-applicable policies established by the defendant's own office.

In any event, Shapiro's counsel was then permitted to argue the merits of the case, the issue of service, the preliminary objections, and the issue concerning change of venue, as opposed simply to responding as to why Shapiro, after having been properly served, failed to answer or respond to this lawsuit. It is worth pointing out that the attempt by Shapiro's counsel to inject the question of "good faith" into the case at all is irrelevant. The issue of "good faith" concerns whether the plaintiff made a "good faith" effort to effectuate proper service, not whether they then engaged in good faith discussions to talk about whether or not service was proper in the first place. That is exactly what Defendant's counsel did and they as much admitted it during the October 18, 2023 hearing.

Where the party has performed service, documented service, and, as in this case, followed the legal policies and guidance put in place by the Defendant for service of process of lawsuits against him, the question of good faith is answered by the fact that Plaintiff has already demonstrated good faith service upon Defendant.

Indeed, Shapiro's counsel then spent about half of the hearing arguing the substantive merits of Ms. Shuppe's allegations. (TR 259-267). Again, this was

an attempt on Shapiro's counsel to insert back into this defaulted case a discussion of its substantive merits. This appeared to be an attempt to deceive the trial court into simply resuscitating a case which should only now be about damages. See *Reichert v. TRW, Inc.*, 531 Pa. 193, 611 A.2d 1191, 1193 (Pa. Super. 1992).

In support of their objections, Shapiro's counsel also attempted to paint this case as a "2020 election" case. (TR 266). This is a suit about a man (Shapiro) a candidate, running for office, calling a mom a terrorist because he thought it could bolster his chances to win. Moreover, Shapiro uses his credentials as an attorney and prosecutor to give credibility to his statement which has been harmful to Ms. Shuppe reputation.

This is a defamation case, pure and simple. Ms. Shuppe alleges that Shapiro defamed her on local, state, and national news and social media platforms, including within the State of Pennsylvania, Forrest County. Plaintiff also alleges false light and invasion of privacy. In particular, Shapiro accused Ms. Shuppe of being a terrorist, a criminal, and/or being associated with criminals and "dangerous" people, simply for her comments as an ordinary citizen. These are not opinions, but designed, hateful and malicious speech used to destroy and damage Ms. Shuppe's reputation in the community. Ms. Shuppe alleges, and can show that she suffered physical, mental, emotional, and social / reputational damages as a result of Shapiro's defamatory statements. Therefore, the nature and substance of this lawsuit is one sounding in the tort of defamation.

Shapiro's attempt to change venue or dismiss for lack of jurisdiction were also unavailing. Ms. Shuppe alleged that the defendants made defamatory, slanderous, and libelous statements in writing and orally, and in written, social, electronic, and video formats broadcast and heard and read by the public at large in the State of Pennsylvania and elsewhere. Thus, both venue and jurisdiction were proper in the Forest County trial court.

Pennsylvania law precisely allows suits for defamation to be brought *anywhere in the state*. "Recovery in any action [for defamation] shall include all damages for any such tort suffered by the plaintiff *in all jurisdictions*." 42 Pa. C.S. § 8341(b) (emphasis added). Shapiro caused harm and tortious injury in this Commonwealth by an act or omission inside this Commonwealth, and/or an act or omission made outside of this Commonwealth while conducting business and/or consenting to the jurisdiction of this Commonwealth, as further set forth herein at length. Venue is proper in the county or counties in which the act or occurrence that is the subject of this complaint (defamatory statements) took place. Pa.R.C.P. Nos. 1006(a)(1), 2179(a)(3). In a defamation action, the latter includes a place or places in which the allegedly defamatory statements were made, broadcast, and/or heard. *Fox v. Smith*, 263 A.3d 555, 561 (Pa. 2021).

In addition, the drive time for Ms. Shuppe's counsel and Shapiro's counsel would be approximately the same, as Forest County is roughly equidistant from the location of both parties' counsel. If Shapiro were allowed to choose the

venue, this would effectively place Ms. Shuppe's counsel at a disadvantage, nearly doubling her commute time. Therefore, there was also no justification the trial court to even consider that this case be moved or filed elsewhere in the State of Pennsylvania. The law allows such suits to be filed anywhere.

Counsel for Ms. Shuppe presented the trial court with these arguments, demonstrating that the only real issue that should be addressed was the issue concerning whether service of process was properly effectuated, and whether Ms. Shuppe should be allowed to file and serve an amended complaint. As explained herein, Ms. Shuppe demonstrated that Shapiro forfeited the right to address the merits of a lawsuit as a default notice had been issued by the prothonotary. Indeed, judicial involvement is not even anticipated by the Pennsylvania rules. *EMC Mortg., LLC v. Biddle*, 2015 PA Super 79 , n.8; 114 A.3d 1057, 1068 (2015).

Turning to the trial court's consideration of the substantive merits, it is Ms. Shuppe's position first and foremost that the trial court erred in even doing so. As explained above, the most the trial court could do here was to allow Ms. Shuppe to file and serve an amended complaint. She met all the prerequisites of stating a claim for defamation, and as noted, the dismissal of the suit on preliminary objections is not only rare, but viewed by the appellate courts with much disdain. This is especially true where, as here, there has been absolutely no litigation or opportunity for the plaintiff to pursue her day in court, even

though she followed all the “rules” put in place by Shapiro for service, and even though she followed the process for obtaining judgment by default – which, as further explained, should have precluded litigation on the merits of the underlying claims.

Under Pennsylvania Law, a private individual can bring a defamation claim against a candidate for public office. *Fox v. Kahn*, 421 Pa. 563, 565, 221 A.2d 181, 182 (1966). A plaintiff pursuing a common law claim for defamation must only allege the following: (1) the defamatory character of the communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion. *Balletta v. Spadoni*, 47 A.3d 183, 197 (Pa. Comm. 2011).

The determination of whether a statement is defamatory turns on whether “it tends to harm the reputation of another so as to lower him in the estimation of the community or deter third persons from associating or dealing with him.” *Weber v. Lancaster Newspapers, Inc.*, 878 A.2d 63, 78 (Pa. Super. 2005) (citations omitted). When considering whether a communication is slanderous, “the Court must determine the effect of the communication in the minds of average people amongst whom the communication is intended to circulate.” *Reardon v. Allegheny Coll.*, 926 A.2d 477, 484 (Pa. Super. 2007) (citation omitted). A

statement is “defamatory if it ascribes to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his business.” *Constantino v. Univ. of Pittsburgh*, 766 A.2d 1265, 1270 (Pa. Super. 2001) (citation omitted). Statements by a defendant imputing to the plaintiff a criminal offense, punishable by imprisonment, or conduct incompatible with the plaintiff’s business constitute slander per se. *Brinich v. Jencka*, 757 A.2d 388, 397 (Pa. Super. 2000), citing Restatement (second) of Torts §§ 570(a), (c), 571, 573.

Shapiro’s statements documented in the complaint and indeed acknowledged by Shapiro’s counsel characterizing Ms. Shuppe as a criminal terrorist – in other words imputing criminal conduct – were of a defamatory character because they were meant to portray Ms. Shuppe as a dangerous conspirator, a liar and a dishonest person. Shapiro’s statements ascribed to Ms. Shuppe conduct, character, or a condition that adversely reflected upon, and have and will adversely reflect upon, her fitness and/or perceived fitness to be in any position of trust. Shapiro’s statements went beyond mere “opinion” because, as his counsel admits, they characterized Ms. Shuppe as a “criminal”. These statements were improper and unlawful, and impugned Ms. Shuppe’s integrity and denigrated her personal and professional reputation. Shapiro’s defamatory statements necessarily exposed Ms. Shuppe, a private citizen, to hatred, contempt, ridicule, and/or threats of physical harm and/or physical illnesses, and otherwise injured her in her business and profession and impaired her reputation and

standing in the community, thereby causing personal humiliation, mental anguish, and suffering. Shapiro's defamatory statements also deterred third persons, including potential employers, clients and co-workers, from associating with and/or engaging with her or employing Ms. Shuppe in any capacity.

Given that investigations and suspicions concerning use of voting machines in elections have been raised by partisan and non-partisan groups alike from all political sides since at least 2010, as demonstrated by Ms. Shuppe in her complaint, Shapiro knew or should have known, when they published these defamatory statements and/or insinuations, that they were false and/or were unreliable at a bare minimum and/or were of questionable veracity. Despite knowing the falsity of his statements and/or insinuations, and/or the likelihood thereof, and despite that Ms. Shuppe was a private citizen (not a candidate for public office) Shapiro promoted them anyway, on a national level. These statements were therefore made with malice, and with knowledge that they were false.

As Ms. Shuppe clearly alleged in her complaint, which is all that is required to survive the preliminary objection stage, as a direct and proximate result of the delivery and publication of these defamatory statements by Shapiro, Ms. Shuppe suffered injury, including, but not limited to her health, the denigration of her integrity, and her personal and professional standing and reputation; injurious and harmful exposure to hatred, contempt, ridicule, and/or threats of physical and

psychological harm, and injury to her economic, business and/or professional and/or personal life; and has damaged her reputation and standing in the estimation of the recipients of the statements and/or deterred third persons including potential employers, clients and co-workers from associating with and/or engaging with her or employing her in any capacity.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, for the reasons stated herein, Plaintiff would urge the court to consider that the rules for service of process were properly followed in this case given the policies and rules established by Shapiro for same suspending the rules due to the COVID-19 pandemic; that Shapiro's preliminary objections were not properly filed and should not have been addressed; that upon applying the proper standard of review the trial court's summary dismissal of Ms. Shuppe's complaint on the substantive merits of her defamation and other claims, the trial court's decision was legal error because the trial court could not summarily dismiss a suit for defamation on preliminary objections.

Ms. Shuppe properly alleged and demonstrated serious defamatory statements that were made against her as a private citizen by Shapiro, and for this reason alone, her suit should be allowed to proceed into litigation and discovery, or possible settlement and resolution.

Respectfully submitted,

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Date: April 10, 2024

VERIFICATION

I, Thomas J. Carroll, Esquire, hereby verify that I represent Plaintiff, Toni Shuppe, in this action and that the statements made in the foregoing pleadings of April 10, 2024, are true and correct to the best of my knowledge and belief.

Undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'T. J. Carroll', is written above a horizontal line.

THOMAS J. CARROLL

CERTIFICATE OF COMPLIANCE WITH PA. R.A.P. 127

I, Thomas J. Carroll, Esquire, hereby certify that this brief complies with the filing requirements of Pa. R.A.P. 127 concerning confidential information and filing of same.

Respectfully submitted,

/s/ Thomas J Carroll
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Attorney for Plaintiff

CERTIFICATE OF COMPLIANCE WITH PA. R.A.P. 2135

I, Thomas J. Carroll, Esquire, hereby certify that this brief complies with the filing requirements of Pa. R.A.P. 2135 concerning type-face size, font, and number of words, in that it is formatted in Times New Roman 14-point in the main text and 12-point in the footnotes, and contains 5,617 words in those sections of the brief to which the word-count limitations are applied.

Respectfully submitted,

/s/ Thomas J Carroll
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CERTIFICATE OF SERVICE

I, Thomas J. Carroll, Esquire, hereby certify that I have filed this brief in accordance with the Pa. Rules of Appellate Procedure and served it and all attachments upon counsel for the Appellee by electronic filing and mailing of same where required.

Respectfully submitted,

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