Firm No. 40151

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CHRISTOPHER S. CYNOWA, Plaintiff,	)	
v.	)	No. 08 L 403
CSSS, INC., et al., Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

Plaintiff Christopher Cynowa's claims for defamation and intentional infliction of emotional distress stem from an alleged statement by Defendant William Slater to a police officer about a potential workplace safety or violence concern. This Court should grant the summary judgment motion of Defendants CSSS.NET, Inc., Lisa Wolford, and Slater for several reasons. First, Slater's statement is protected by absolute and/or qualified privileges. Second, Slater's statement was not defamatory *per se*. Third, Plaintiff lacks damages caused by Slater's alleged statement. Fourth, Slater's alleged statement was not highly offensive or recklessly made, nor did it place Plaintiff "before the public." Fifth, there is no evidence that Wolford made any defamatory statement. Finally, Plaintiff's claim for intentional infliction of emotional distress likewise fails because the record does not show that Defendants' conduct was "extreme and outrageous" or that Plaintiff suffered "severe" emotional distress. For these reasons, and those set forth herein, the Court should grant Defendants' summary judgment motion.

Statement of Undisputed Facts

CSSS had a contract to provide on-site computer support services for the U.S. Department of Veteran Affairs at the Hines VA Hospital in Hines, Illinois. (Ex. 1, Plaintiff's Verified Complaint (hereafter "Compl.") ¶ 2.) Plaintiff was a systems engineer employed by CSSS in connection with CSSS's federal contract. (*Id.* ¶ 1.) In the weeks leading up to Plaintiff's termination, he engaged in conduct that his supervisors considered insubordinate, inconsistent with company policy, ethnically

insensitive, and disruptive to the workplace. (*Id.* at 2-3, ¶¶ 7-10 & Ex. F; Ex. 2, Declaration of William Slater (hereafter "Slater Decl.") ¶ 7; Ex. 16, Deposition of Lisa Wolford at 55, 96-99.)

Wolford, CEO of CSSS, instructed Plaintiff's immediate supervisor, Defendant Slater, who was a CSSS program manager at the VA, to set up a meeting on January 18, 2007 in order to terminate Plaintiff. (Slater Decl. ¶ 10.) Arrangements were made for Wolford and other top CSSS management to be on the telephone and for Slater and Anthony Slatton, who functioned as an assistant supervisor, to be at the termination meeting in person. (*Id.*) Prior to the meeting, Slater spoke with Noel Flanagan, another employee at the Hines VA. (*Id.* ¶ 11.) Plaintiff has verified the fact that Flanagan told Slater that Plaintiff had a bad temper, could be dangerous, and possessed a weapon, gun, and/or AK-47. (Ex. 6, Plaintiff's Verified Amended Complaint (hereafter "Am. Compl.") ¶¶ 4-6.) Based on Flanagan's statement and Slater's own experiences with Plaintiff, Slater was concerned about a potentially aggressive or violent reaction from Plaintiff upon his termination. (Compl., Ex. E at 2; Slater Decl. ¶ 12.) CSSS had an interest in ensuring the safety of its employees and others at the Hines VA. (Slater Decl. ¶ 13; Ex. 5, Pltf. Reply to Defts. Aff. Def. ¶¶ 7, 9.) As a manager, Slater had a duty to report workplace safety information he received to CSSS management, VA management and/or VA Police. (Slater Decl. ¶ 13; Ex. 20, CSSS 50-51; Ex. 5 ¶¶ 7, 9.)

After the decision was made to terminate Plaintiff, VA Police Officer Bob Adrowski was assigned to stand-by during the termination. (Slater Decl. ¶ 14; Compl. at 6, ¶ 20.) Officer Adrowski first met with Slater alone in Slater's office, at which time Adrowski asked Slater what information Slater had about the Plaintiff. (Slater Decl. ¶ 14.) Slater conveyed to Adrowski that Slater was nervous about how Plaintiff would react to being terminated and Slater was concerned about a potentially aggressive or violent reaction from Plaintiff. (*Id.*) According Adrowski's police report, "Mr Slater was nervous about how Mr Cynowa would react to receiving the termination papers." (Compl. at 11, ¶ 46 & Ex. E.) Slater felt obligated to tell Officer Adrowski what Slater had heard from Flanagan. (Slater

Decl. ¶ 15; Ex. 20, CSSS 50-51.) Slater believed Flanagan's statement was of a nature that he was obligated to provide it to Adrowski so that Adrowski could investigate it if necessary. (Slater Decl. ¶ 16.) Not being a trained investigator himself, Slater reported the statement in a limited manner to authorities he believed needed to know the information. (*Id.* ¶ 17.) According to Adrowski's report, when he was in Slater's office, Slater stated "that Mr. Cynowa has a temper and has had a few verbal confrontations with the staff. He also said that Mr. Cynowa mentioned having an AK-47 assault rifle."[1] (Compl. at 11, ¶ 46 & Ex. E at 2.) There is no evidence that anyone else was present for Slater's statement to Adrowski. (Compl., Ex. E; Slater Decl. ¶ 14.) Slater believed it was in his interest of safety and well-being to tell Adrowski what Slater had heard from Flanagan. (Slater Decl. ¶ 15.)

Subsequently, Slater and Adrowski went to a conference room. (Slater Decl. ¶ 18.) Wolford and her top managers were on the telephone. (*Id.*) Slatton brought Plaintiff to the conference room, after which he was terminated. (*Id.* ¶¶ 18-19; Ex. 3, Deposition of Christopher Cynowa (hereafter "Cynowa dep.") at 22.) Plaintiff was terminated for "insubordination and for being a disruptive influence in the workplace by engaging in several negative workplace behaviors." (Slater Decl. ¶ 19; Compl., Ex. F; Ex. 16 at 23.) Following his termination, Adrowski escorted Plaintiff to his desk to collect his belongings, and then to his car. (Compl. at 8, ¶¶ 29-30 & Ex. E at 2; Slater Decl. ¶¶ 21-22.) At Plaintiff's car, Adrowski asked Plaintiff if he had any weapons in his car, to which Plaintiff replied that he did not. (Compl. ¶¶ 32-34 & Ex. E.) Adrowski then escorted Plaintiff back into the building to make sure he had collected all of his belongings. (Compl., Ex. E at 2; Cynowa dep. at 37.)

Plaintiff claims lost wages of $16,923.08, lost benefits of $1,060.00, inability to pay child support, injuries to professional and personal reputation, humiliation and emotional and physical distress. (Compl. at 17-21, ¶¶ 54-57.) Plaintiff states that he incurred stress, increased blood pressure,

[1] While Defendants deny the exact wording of what was allegedly uttered by Slater to Officer Adrowski in Plaintiff's Verified Complaint, Defendants acknowledge that Slater made a statement to Adrowski. For purposes of this motion, Defendants assume that the statement is viewed as Plaintiff has alleged it in his Verified Complaint.

and was prescribed an antidepressant on one occasion. (Compl. at 23, ¶ 56(a); Cynowa dep. at 68-77.) Plaintiff conceded that these symptoms – along with his loss of wages, inability to pay bills and child support – were simply "standard stresses of losing a job unexpectedly." (Cynowa dep. at 71.) He described his elevated blood pressure as "at the level of low-end hypertension" and not requiring medication. (*Id.* at 76.) He has not seen any mental health professionals since being terminated by CSSS, other than for marital counseling. (*Id.* at 77.) Plaintiff testified that his blood pressure increased only for a short while following his termination during the same time he was going through divorce and custody disputes. (*Id.* at 72, 76-77.) Plaintiff testified that at the time of his termination, he was "looking for other employment" and was planning to leave CSSS. (*Id.* at 19.) He testified that his stress went down once he got a new job at the end of March 2007. (*Id.* at 71.)

Procedural History

Plaintiff filed a verified complaint. (Ex. 1.) Defendants filed a motion to dismiss. (Ex. 8.) The Court denied Defendants' motion to dismiss without prejudice. (Ex. 10.) Defendants filed a verified answer. (Ex. 4.) Plaintiff moved to strike Defendants' affirmative defenses. (Ex. 11.) The Court denied Plaintiff's motion to strike. (Ex. 12.) Plaintiff filed a verified reply to Defendants' affirmative defenses. (Ex. 5.) Plaintiff moved to add Noel Flanagan as a Defendant on the basis that Noel Flanagan told Slater that Plaintiff was dangerous and had a gun. (Ex. 13 ¶ 3.) The Court granted Plaintiff leave to add Flanagan as a Defendant. (Ex. 14.) Plaintiff filed a verified amended complaint. (Ex. 6.) Defendants filed a verified answer to the amended complaint. (Ex. 7.) Plaintiff subsequently voluntarily dismissed his claim against Noel Flanagan. This matter is set for trial on March 14, 2011. (Ex. 15.)

I. The Court should grant summary judgment on Plaintiff's defamation-based claims.

Plaintiff has brought nine defamation-based claims.[2] Each claim is based on a single alleged statement by Slater.[3] Summary judgment is appropriate where the record, when viewed in the light

[2] Attached is an Appendix to assist the Court in identifying the nature of and distinctions between the Plaintiff's claims.

most favorable to the non-movant, reveals there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005; *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004). If the party moving for summary judgment supplies the Court with facts that, if not contradicted, would warrant judgment in its favor as a matter of law, the nonmoving party cannot rest on its pleadings to create genuine issues of material fact. *Id.* Here, the Court should grant summary judgment to Defendants as to each of Plaintiff's nine defamation-based claims and Plaintiff's claim for intentional infliction of emotional distress. There are several bases for granting summary judgment as to all of Plaintiff's defamation claims and additional bases that apply to some of the defamation claims.

A. Plaintiff's defamation claims (Counts I-IX) are barred by an absolute privilege.

Whether a statement is protected by privilege is a question of law to be determined by the Court. *Barakat v. Matz*, 271 Ill. App. 3d 662, 667 (1st Dist. 1995). Under Illinois law, allegedly defamatory statements that are protected by privilege are not actionable. *Id.* "[S]tatements to law enforcement officials are absolutely privileged." *Morris v. Harvey Cycle & Camper*, 392 Ill. App. 3d 399, 406 (1st Dist. 2009). Here, each of Plaintiff's defamation claims is based on an allegedly defamatory statement by Slater to VA Police Officer Robert Adrowski. (Compl. at 6, ¶ 21, at 10-11, ¶ 46, at 12 & 14, ¶ 51, at 15, ¶ 53, at 16-20, ¶ 51, at 21 ¶ 52; Ex. 17, Pltf. Answer to Defts. Interrogs. No. 7.) Plaintiff verified that Slater's statement imputed to Plaintiff the commission of a criminal offense. (*E.g.*, Compl. at 13-14, 17-18.) As a result, Plaintiff's own admissions show that Slater's alleged statement falls squarely within the absolute privilege afforded for statements made to a police officer. *Morris*, 392 Ill. App. 3d at 406. Because each of Plaintiff's defamation counts is premised on Slater's statement to Adrowski, Slater's statement is not actionable and the Court must grant Defendants'

[3] In his Complaint, Plaintiff alleged that Defendants published a defamatory statement about Plaintiff having a gun to Michael Nikiforos and Tushar Engregi, Plaintiff's co-workers. (Compl. at 10, ¶ 40.) However, there is no evidence that the Defendants made any defamatory statement to either Nikiforos or Engregi. In fact, Plaintiff concedes that neither Nikiforos nor Engregi knew who told them that Plaintiff might have a gun. (Ex. 19, Pltf. 6th Supp. Resp. to Defts. Interrogs., Ex. A.)

summary judgment motion on Counts I through IX. *See Id.*; *Vincent v. Williams,* 279 Ill. App. 3d 1, 7-8 (1st Dist. 1996); *McGrew v. Heinhold Commodities, Inc.*, 147 Ill. App. 3d 104, 114 (1st Dist. 1986).

Even if Slater's statement did not impute a crime, it involved a matter of safety or potential violence. (Slater Decl. ¶¶ 12-16.) The public has an interest in individuals speaking candidly to police without fear of retribution to enable police officers to assess situations that involve potential safety or violence. *Weber v. Cueto,* 209 Ill. App. 3d 936, 941-42 (5th Dist. 1991) ("[a] communication is absolutely privileged when its propagation is so much in the public interest that the publisher should speak fully and fearlessly"). Therefore, the Court should find that Slater's statement to Adrowski was absolutely privileged and grant the Defendants' summary judgment motion on Counts I-IX.

B. Plaintiff's defamation claims (Counts I-IX) are barred by qualified privilege.

In addition to an absolute privilege, Slater's alleged statement to Adrowski is protected by a qualified privilege. Whether a qualified privilege exists is also a question of law. *Kuwik v. Starmark Star Marketing & Admin., Inc.*, 156 Ill. 2d 16, 25 (1993). A qualified privilege exists when: (1) the statement is in good faith; (2) the defendant has an interest or duty to uphold; and (3) the statement is limited in scope to that purpose, (4) in a proper occasion, and (5) in a proper manner to the proper parties. *Id.* Consistent with these elements, Illinois law recognizes three categories of communications subject to qualified privilege: those involving (1) an interest of the person who published the defamatory matter, (2) an interest of the person to whom the matter is published or a third-party, or (3) a recognized public interest. *Id.* at 29. In analyzing whether a qualified privilege exists, the Court must engage in a general inquiry by which it weighs the value of the type of interest to be protected against the degree of damage expected from the release of the type of defamatory matter involved. *Id.* at 27-28. Once a defendant establishes a qualified privilege, the plaintiff must show the alleged statements were made with actual malice. *Id.* at 24. Here, there are several interests at stake, any one of which give rise to a qualified privilege for Slater's alleged statement to Adrowski.

First, Slater had an interest in making the statement to Adrowski. Based on Flanagan's statement and his own experience with Plaintiff, Slater was concerned about an aggressive or violent reaction from Plaintiff upon his termination. (Slater Decl. ¶ 12.) Slater had a duty to provide workplace safety information he received from Flanagan to CSSS management, the VA and/or Adrowski. (Slater Decl. ¶¶ 6, 13; Ex. 20, CSSS 50-51; Ex. 5 ¶¶ 7, 9.) Slater believed he had a safety and well-being interest in conveying the information to Adrowski. (Slater Decl. ¶ 15.) Thus, when Adrowski came to his office and asked what information he had about Plaintiff, Slater had an interest in making the statement to Adrowski. (*Id.* ¶¶ 13-17.)

Second, Adrowski had an interest in receiving the information. (*Id.* ¶ 6.) Adrowski asked Slater, and Slater responded. (*Id.* ¶ 14.) As a police officer, Adrowski had an interest and a duty to gather information relevant to his assignment, including but not limited to information that may relate to safety or potential violence. (*Id.* ¶ 6.) The information that Slater provided to Adrowski involved a matter of safety or potential violence. (*Id.* ¶¶ 11-12, 14-16; Ex. 5 ¶¶ 7, 9.) CSSS also had an interest in the safety of its employees and other people at its VA work site. (Ex. 5 ¶¶ 7, 9; Slater Decl. ¶¶ 12-14.)

Third, the public and employees at the VA had an interest in a safe workplace. In Illinois, a qualified privilege applies "if the information affects an important public interest and this interest requires the information to be communicated to a public officer capable of taking action if the information is true." *Anderson v. Beach*, 386 Ill. App. 3d 246, 251 (1st Dist. 2008). Thus, there was a public and workplace interest for Slater to give Adrowski the information Slater heard from Flanagan.

Here, Slater made the statement only to people who had an interest in it. (*See* Compl., Ex. E; Slater Decl. ¶¶ 13-17; Ex. 17 at No. 7.) His statement was limited to the information he had received from Flanagan. (Compl., Ex. E; Slater Decl. ¶¶ 16-17.) He made the statement on a proper occasion in a proper manner to the proper parties because Adrowski requested the information and Adrowski was

the person responsible for ensuring Cynowa's termination occurred without incident. (Compl., Ex. E; Slater Decl. ¶¶ 13-17.) Therefore, Slater's statement was subject to a qualified privilege.

Once a qualified privilege is established, the burden is on Plaintiff to show Slater had "a direct intention to injure [him], or ... a reckless disregard of [the Plaintiff's] rights and the consequences that may result to him." *Kuwik*, 156 Ill. 2d at 30. The record shows that there is no question of material fact regarding whether Slater had a direct intention to injure Plaintiff or acted in reckless disregard of Plaintiff's rights and the consequences that may result to him. Flanagan's statement was such that Slater was obligated to provide it to Adrowski so that Adrowski could investigate it if he deemed it necessary. (Slater Decl. ¶ 16.) Not being a trained investigator himself, he reported the statement in a limited manner to authorities he believed had a legitimate need to know the information. (*Id.* ¶ 17.) Where a qualified privilege applies and the facts fail to show that Defendants acted with malice, Illinois courts will grant summary judgment. *See Larson v. Decatur Mem. Hosp.*, 236 Ill. App. 3d 796, 804 (4th Dist. 1992). Far from showing malice, the facts in this case show that Slater acted in good faith. *See also Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 406 (1st Dist. 1999) (affirming summary judgment based on qualified privilege); *see also, e.g., Martin v. Southwestern Elec. Power Co.*, 860 S.W.2d 197, 199 (Tex. App. 1993) (affirming summary judgment based on qualified privilege to report workplace safety issue). Thus, the Court should grant Defendants summary judgment on Counts I through IX on the ground that they are barred by a qualified privilege.

C. Defendants are entitled to summary judgment on Counts I-IV because Slater's alleged statements to Officer Adrowski are not defamatory *per se*.

1. In the alternative, Slater's statement to Adrowski did not impute a crime.

Should the Court conclude that no absolute or qualified privilege bars Plaintiff's *per se* claims, in the alternative, the Court should grant summary judgment on Counts I and II because Slater's statement to Adrowski did not impute a crime. To constitute defamation *per se* based on imputing the commission of a criminal offense, "the crime must be an indictable one, involving moral turpitude and

punishable by death or by imprisonment in lieu of a fine." *Kirchner v. Greene*, 294 Ill. App. 3d 672, 680 (1st Dist. 1998). Yet, Slater's alleged statement "that Mr. Cynowa has a temper and has had confrontations with the staff" and that "Mr. Cynowa mentioned having an AK-47 assault rifle" as reflected by the record does not identify and refer to a criminal offense as it must to be defamation *per se*. *See* Illinois Deadly Weapons Act, 720 ILCS 5/24-1(a)(7)(i) & (ii) (AK-47 not illegal unless automatic); *see, e.g., Trembois v. Standard Ry. Equip. Mfg. Co.*, 337 Ill. App. 3d 35, 43-44 (1st Dist. 1949) (statement that plaintiff was "mixed in a rape charge" did *not* impute the commission of a crime and was not actionable as defamation *per se*). Accordingly, Slater's alleged statement does not impute a crime and is not actionable as defamation *per se*. Thus, Defendants are entitled to summary judgment with respect to Counts I and II.

2. Slater's alleged statement to Officer Adrowski did not impute Plaintiff's inability to perform or a want of integrity in his job.

Plaintiff also claims in Counts III-IV that Slater's alleged statements to Adrowski are defamatory *per se* because the statements "imputed to Plaintiff an inability to perform or want of integrity in the discharge of duties of employment." (Compl. at 15-16.) Yet, Slater's statement did not disparage Plaintiff's skills as a systems engineer. It did not mention Plaintiff's job or professional skills. Rather, the only language that even arguably relates to his job was the language that Plaintiff had "a few confrontations with staff." This is not enough to prove defamation *per se* based on imputed inability or want of integrity in his job. *See, e.g., Cody v. Harris*, 409 F.3d 853, 858 (7th Cir. 2005) (comments indicating that plaintiff "has a bad temper, is unable to control his anger, and lacks the integrity and judgment to resist getting revenge in an immature and vicious matter" all go to the personal characteristics and not professional traits). Because Slater's alleged statements to Adrowski were directed to, if at all, Plaintiff's personal characteristics, Counts III and IV are not actionable as defamation *per se* and Defendants are entitled to summary judgment.

3. Plaintiff's *per se* defamation claims (Counts I-IV) are also non-actionable because they are subject to "innocent construction."

Even if the Court concludes Slater's statement to Adrowski imputed a crime or Plaintiff's inability or want of integrity in his job, the alleged statements are still non-actionable because they are subject to an innocent construction. Under Illinois law "[i]f the actual words spoken [or written] do not by themselves denote criminal (or unethical) conduct and in common usage have a more flexible and broader meaning than ascribed by plaintiff, then, as a matter of law, the words are nonactionable as defamation *per se*." *Moore v. People for the Ethical Treatment of Animals*, 402 Ill. App. 3d 62, 70 (1st Dist. 2010). Whether an alleged defamatory statement is entitled to an innocent construction in a defamation action is a question of law. *Id.* "[I]f a statement is capable of two reasonable constructions, one defamatory and one innocent, the innocent one will prevail." *Muzikowski v. Paramount Pictures Corp.*, 322 F.3d 918, 925 (7th Cir. 2003) (citing *Anderson v. Vanden Dorpel,* 172 Ill. 2d 399 (1996)).

Slater's alleged statements to Adrowski are subject to innocent construction. That Adrowski was informed that Plaintiff had a temper and had had past confrontations with staff does not imply that Plaintiff committed criminal acts. *Cody*, 409 F.3d at 858 (noting that some statements are directed at a plaintiff's personal characteristics and not professional skills). Similarly, Slater's alleged statement did not disparage Plaintiff's skills as a systems engineer but rather described generic character traits. Moreover, Slater's alleged statement that Plaintiff "mentioned having an AK-47 assault rifle" may be readily construed as providing non-defamatory information because it is legal to own an AK-47 in Illinois. 720 ILCS 5/24-1(a)(7)(i) & (ii). Thus, Slater's alleged statement to Adrowski is subject to innocent construction. Therefore, Defendants are entitled to summary judgment on Counts I-IV.

D. The Court should grant Defendants' summary judgment motion on Plaintiff's defamation *per quod* claims (Counts V-VIII).

As discussed above, Plaintiff must present facts showing that Defendants made a defamatory statement about Plaintiff, Defendants made an unprivileged publication of that statement to a third

party, and the publication caused damages. *Wynne v. Loyola Univ. of Chicago*, 318 Ill. App. 3d 443, 451 (1st Dist. 2000). As discussed above, Slater's statement to Adrowski neither imputed a crime nor imputed inability or lack of integrity in his job. (*See supra* Section I.C.) In addition, for defamation *per quod*, Plaintiff must prove actual damage to his reputation and financial loss caused by Slater's statement. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 390 (2008). Here, there is no evidence that Slater's statement caused Plaintiff's lost wages, lost benefits, inability to pay child support, injuries to professional and personal reputation, and humiliation and emotional and physical distress. (Compl. at 16-21; Cynowa dep. at 67-77.) Plaintiff was terminated because of "insubordination and for being a disruptive influence in the workplace by engaging in several negative workplace behaviors" and would have been terminated regardless of Slater's statement. (Compl., Ex. F; Ex. 16 at 23.) The decision to terminate Plaintiff was made *before* Slater's statement to Adrowski. (Slater Decl. ¶¶ 10, 14.) Therefore, Slater's statement to Adrowski could not have caused Plaintiff's lost job, wages, benefits, or his inability to pay child support from loss of the foregoing. On the contrary, Plaintiff admitted that he was "looking for other employment" and was planning to leave CSSS at the time of his termination. (Cynowa dep. at 19.)

In addition, Plaintiff only identified generic reputation damages and emotional distress. (Compl. at 16-21; Cynowa dep. at 67-77; Ex. 18, Pltf. 3d Am. Resp. to Defts. Interrogs. No. 6.) In Illinois, "[g]eneral allegations, such as damage to an individual's health or reputation, economic loss, and emotional distress, are insufficient to support an action *per quod*...." *Schaffer v. Zekman,* 196 Ill. App. 3d 727, 733 (1st Dist. 1990), citing *Harris Trust & Sav. Bank v. Phillips,* 154 Ill. App. 3d 574, 585-86 (1st Dist. 1987) (assertion that "plaintiff was exposed to 'public hatred, contempt, and ridicule and tended to deprive ... [plaintiff] of public confidence and injured it in its business reputation'" found insufficient); *von Solbrig Memorial Hosp. v. Licata*, 15 Ill. App. 3d 1025, 1028 (1st Dist. 1973) ("ill health, emotional distress and damage to his reputation and medical practice" is insufficient).

Thus, Plaintiff cannot prove Slater's alleged statement caused his damages. Therefore, Defendants are entitled to summary judgment on Counts V-VIII.

E. Plaintiff cannot prevail on his false light claim (Count IX).

Even if the Court does not find absolute or qualified privileges, the Court should still grant Defendants' summary judgment motion on Plaintiff's false light claim because there is no issue of material fact. For his false light claim, Plaintiff must prove: (1) he was placed in a false light before the public as a result of Defendants' actions; (2) the false light would be highly offensive to a reasonable person; and (3) Defendants acted with actual malice, with knowledge of or reckless disregard for the falsity of the statement. *Wynne*, 318 Ill. App. 3d at 454. Here, Plaintiff's claim is legally deficient.

First, Slater's statement did not put Plaintiff in a false light "before the public." Under Illinois law, the "before the public" requirement is not satisfied when the person receiving the statement has a natural or proper interest in being informed of such facts. *See Poulos v. Lutheran Social Services*, 312 Ill. App. 3d 731, 740 (1st Dist. 2000); *Frobose v. American Sav. & Loan Ass'n*, 152 F.3d 602, 618 (7th Cir. 1998). Here, Adrowski had an interest in being informed of matters relating to safety or potential violence. Moreover, given that Slater was answering a question posed by Adrowski, it is beyond dispute that Adrowski had an interest in Slater's answer. (Slater Decl. ¶¶ 14-17.)

Second, Plaintiff cannot show he was placed in a false light "before the public" because the statement at issue was only made to Adrowski. The Supreme Court has explained that "the heart of this tort lies in the publicity." *Lovgren v. Citizens First Nat'l Bank*, 126 Ill. 2d 411, 418-19 (1989). "[A] matter is made public [ ] by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." Restatement (Second) of Torts, § 652D, cmt. a, at 384, quoted in *Frobose*, 152 F.3d at 617-18. Here, Slater's statement to Adrowski was made in private in Slater's office. (Slater Decl. ¶ 14.)

Third, for the same reasons the record is insufficient to show that Defendants' conduct does not meet the "outrageous" requirement for Plaintiff's intentional infliction of emotional distress claim, Plaintiff cannot identify any statement by Defendants that puts the Plaintiff in a false light that would be highly offensive to a reasonable person. See *infra* Section II.B; *Wynne*, 318 Ill. App. 3d at 454.

Finally, there is no evidence that Slater knew his statement was false or was made with reckless disregard for the truth. On the contrary, Slater believed his statement to Adrowski was of a nature that he felt obligated to provide it to Adrowski so that Adrowski could investigate it because Slater heard it first from Flanagan, a fact that Plaintiff has admitted. (Slater Decl. ¶ 16.) For the foregoing reasons, the Court should grant summary judgment to Defendants on Plaintiff's false light claim.

II. The Court should grant summary judgment on Plaintiff's claim for intentional infliction of emotional distress (Count X).

To prevail on his claim, Plaintiff must prove: (1) Defendants' conduct was extreme and outrageous; (2) Plaintiff's emotional distress was severe; and (3) Defendants' knew severe emotional distress was substantially certain to result. *Vickers*, 308 Ill. App. 3d at 393, 409-10. Here, the record is devoid of facts to support Plaintiff's claim. Thus, the Court should grant Defendants' summary judgment motion on Plaintiff's claim for intentional infliction of emotional distress.

A. Plaintiff has not suffered *severe* emotional distress.

Plaintiff's damages are not severe emotional distress as a matter of law. Under Illinois law, Plaintiff's emotional distress must be "severe." Symptoms such as higher blood pressure, depression, and stress are not enough to support a claim for intentional infliction of emotional distress. Nor can such assertions create a question of fact regarding the severity of emotional distress suffered by Plaintiff. *See, e.g., Johnson v. K Mart Corp.*, 311 Ill. App. 3d 573, 581 (1st Dist. 2000) (stress and distrust insufficiently severe). Where a plaintiff's emotional distress is based on such symptoms, Illinois courts routinely grant summary judgment to defendants. *See, e.g., Id.* (affirming summary judgment; stress and distrust are insufficiently severe to establish severe emotion distress); *Lundy v.*

City of Calumet City, 209 Ill. App. 3d 790, 793-94 (1st Dist. 1991) (affirming summary judgment, holding that chest pains, loss of sleep, and mental and emotional distress were not enough to support a claim for intentional infliction of emotional distress). Here, the Plaintiff states that he incurred stress, increased blood pressure, was prescribed an antidepressant on one occasion, and never even met with a mental health professional, other than for marital counseling. (Compl. at 23, ¶ 56(a); Cynowa dep. at 68-72, 77.) Plaintiff conceded that these symptoms were simply "standard stresses of losing a job unexpectedly." (Cynowa dep. at 71.) This evidence is not close to the severe emotional distress required to avoid summary judgment. *E.g., Vickers*, 308 Ill. App. 3d at 410 (if job stresses from discipline, personality conflicts and terminations gave rise to intentional infliction of emotional distress, nearly every employee would have a claim). On this basis alone, the Court should grant the defendants summary judgment on Count X.

B. The record fails to show Defendants committed "outrageous" conduct.

Plaintiff must show Defendants' conduct was "so outrageous, so atrocious and so utterly intolerable that a reasonable person could not be expected to endure it." *Witkowski v. St. Anne's Hosp. of Chicago, Inc.*, 113 Ill. App. 3d 745, 754 (1st Dist. 1983); *see Public Finance Corp. v. Davis*, 66 Ill. 2d 85, 89-90 (1976) (mere insult, threat, or annoyance is insufficient). Here, Slater's alleged statement was to a police officer, in response to his question, about a potential safety or violence issue that Slater had heard from another employee and which Slater had a duty to report. (Compl., Ex. E; Ex. 6, Plaintiff's Verified Amended Complaint (hereafter "Am. Compl.") ¶¶ 5-6; Slater Decl. ¶¶ 11-17.) This type of conduct is not extreme and outrageous conduct under Illinois law. *See, e.g., Gibson v. Chemical Card Services Corp.*, 157 Ill. App. 3d 211, 219 (1st Dist. 1987) (affirming summary judgment where employer falsely accused employee of stealing and using company credit cards, subjected plaintiff to interrogation by federal officer, and shouted at plaintiff that she was going to jail); *Wynne*, 318 Ill. App. 3d at 454 (granting summary judgment; co-worker's memo to supervisor about plaintiff's psychiatric

and fertility problems was not outrageous); *Balark v. Ethicon, Inc.*, 575 F. Supp. 1227, 1231 (N.D. Ill. 1983) (plaintiff alleged defendants wrongly gave plaintiff's name to the FBI in connection with its investigation of the "Tylenol murders"); *see also Layne v. Plumbing Supply Co., Inc.*,, 210 Ill. App. 3d 966, 972-73 (2nd Dist. 1991) (plaintiff alleged employer told police that plaintiff harassed, assaulted, and threatened co-worker). Thus, the Court should grant Defendants summary judgment on Count X.

III. The Court should grant summary judgment to CSSS and Lisa Wolford on all claims.

Plaintiff's claims are not based on any statement other than by Slater. Thus, if the Court grants summary judgment as to all claims against Slater, then it should grant summary judgment to CSSS and Wolford as to all claims too. In addition, even if the Court denies Defendants' summary judgment motion based on the foregoing, it should grant summary judgment to Wolford because no claim, allegation, or disclosed fact identifies any statement by Wolford that was allegedly defamatory or caused Plaintiff any emotional distress. (*See* Compl., *passim*; Am. Compl., passim; Ex. 17 at No. 7.)

Conclusion

WHEREFORE, Defendants CSSS.NET, Inc., Lisa Wolford, and William Slater respectfully request that this Court grant their motion for summary judgment on Counts I-X of Plaintiff's Verified Complaint and award them such other relief as the Court deems just and proper.

Dated: January 19, 2011

Respectfully submitted,

CSSS.NET, INC., LISA WOLFORD, and WILLIAM SLATER

By: _____

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Appendix

(List of Plaintiff's Claims in the Verified Complaint)

I. defamation *per se* – imputing criminal offense – slander

II. defamation *per se* – imputing criminal offense – libel

III. defamation *per se* – imputing lack of ability in trade, profession, or business – slander

IV. defamation *per se* – imputing lack of ability in trade, profession, or business – libel

V. defamation *per quod* – imputing criminal offense – slander

VI. defamation *per quod* – imputing criminal offense – libel

VII. defamation *per quod* – imputing lack of ability in trade, profession, or business – slander

VIII. defamation *per quod* – imputing lack of ability in trade, profession, or business – libel

IX. false light

X. intentional infliction of emotional distress