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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

RANDY KERTESZ
Plaintiff

RAJESH PIDIKITI
Defendant

Case No: CV-25-122630

Judge: DEBORAH M TURNER

JOURNAL ENTRY

89 DIS. W/PREJ - FINAL

DEFENDANT RAJESH PIDIKITI'S MOTION FOR EXPEDITED RELIEF, FILED 09/11/2025, IS GRANTED. ORDER SEE JOURNAL.

COURT COSTS ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date

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CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

RANDY KERTESZ,)	CASE NO. CV-25-122630
)	
Plaintiff,)	JUDGE DEBORAH M. TURNER
)	
v.)	
)	<u>OPINION AND ORDER</u>
RAJESH PIKIKITI,)	
)	
Defendant.)	

I. INTRODUCTION

On August 12, 2025 Plaintiff Randy Kertesz filed this lawsuit against Defendant Rajesh Pikikiti alleging defamation *per se*. On September 11, 2025 Defendant filed a Motion for Expedited Relief under Ohio’s recently enacted Uniform Public Expression Act, R.C. §2147.01 *et seq.* Plaintiff filed an opposition and Defendant filed a Reply. On November 6, 2025 this Court held a hearing.

The Court has considered all of the above in reaching this Opinion and Order.

II. RELEVANT FACTS

This case involves two incidents of statements made by Defendant regarding Plaintiff.

The first incident occurred at an Orange Village Council meeting. The meeting was recorded and the content of the speech is not disputed.

On October 9, 2024 the Orange Village Council held a meeting regarding an ordinance to approve phase eight of a development supported by Plaintiff. Four

residents, including Mr. Pidikiti came forward to the lectern to speak in opposition to the ordinance approving phase eight. Id. at 34:30–1:07:04.

Mr. Pidikiti's entire statement to the Orange Village Council was as follows:

My previous neighbor mentioned all the problems. Apart from that, I was originally raised in India. I feel that there is more freedom for me in India than living in Lakes of Orange for me. [Kertesz] was harassing me to an extent, picking on each plan. He wants to know which size. And once, after the work is done, and after two years, he's come back to me saying that, "Oh, I want to do an inspection." You know, this kind of harassment, I've never seen even in any other country. I don't know whether I'm living in America or I am living in a third-world country. This is a ridiculous state of -- I mean the HOA -- I speak with the previous mayor. "Oh, he will construct and leave," but no, he's coming with Phase 8. Later he'll come with phase nine or phase 20 or phase 40. I don't know. The councilmen keep on saying that he has a right to do it. Yeah, but you have to look at the welfare of the people. At the end of the day, we have to live there. We have to pay taxes. I'm currently paying, like, \$17,000 taxes. I understand 90 percent goes toward that and I pay city income tax. So tell them, "Oh if you want to move us, we can move out." I don't have a problem. "Move to a different city." I work in Akron. I'm just living there because my wife. We believe in Orange Lakes. "Orange City is good," but it seems like not. City councilmen have to think about the welfare of the people, not for the builder. Thank you."

Id. at 57:16–59:19.

Later in the meeting, the Council president called for audience comments "relating to matters that advance the good of the village." Id. at 1:42:00. Mr. Pidikiti again stood up to address the council.

His full remarks were as follows:

I'm just wondering the councilmen have any—this is regarding Lakes of Orange again—does it have any power in our decision-making process in the city? Or are they just spectators in the whole scenario? Because I don't know what the previous mayor signed, agreed to the -- people don't read all the

documents, generally. When they're buying a home, they just want to live peacefully. They look at the school district. 'Oh, the school is fine. We can live happily there.' We come here and we find a house and we realize that a bunch of this is controlled by the developer, and his association with the previous mayor, maybe. They didn't have any prior negotiation. It seems like they didn't put some restrictions or regulations on him. Whether he cares for the people who live there or he cares for himself. It seems, at least in the future, the city should take care if they have any development, they should make sure that the developer needs to look himself—I know he looks for himself—but at least the city looks for the welfare of the people. Not for the developer. At least that the city takes a note of this in the future developments because we are sure that they're going to have more developments. It's not possible for us to stop anything here.

Id. at 2:03:49–2:05:33.

Defendant also spoke to a reporter from the *Cleveland Jewish News*. While there is some dispute regarding the comments, the Court will make all reasonable inferences in favor of Plaintiff.

Defendant is quoted in the *Cleveland Jewish News* as follows:

Pidikiti told the CJN he has faced numerous issues with Kertesz, including alleged racism, threats of lawsuits and micromanaging homeowners within the homeowner's association.

"The people are not opposing construction," Pidikiti said. "People are not opposing not to have one more phase into the new development. The problem is (Keriesz) mostly -I'm an immigrant- he's a racist."

Pidikiti said he was under the impression he was the only one facing these difficulties but said he's heard of instances with systematic racism across The Lakes of Orange from the builder.

The HOA board sent me an email and brought up the issue of antisemitism, saying, "We are Jewish, we don't do racism," Pidikiti said. "... Comparing apples to oranges basically."

III. LAW AND ANALYSIS

On April 9, 2025, Ohio codified the Uniform Public Expression Protection Act as Ohio R.C. 2747.91. Pursuant to R.C. 2747, a court shall dismiss with prejudice a cause of action if all the following apply:

1. The moving party establishes that the cause of action is based on a communication described in 2747.01 (which includes communications made during a government proceeding).
2. The responding party fails to establish that this chapter does not apply to the cause of action due to an exception:
 - a. A legal action against a governmental unit or an employee or agent of the governmental unit who was acting or purporting to act in an official capacity;
 - b. An enforcement action that is brought in the name of a governmental unit to protect against an imminent threat to public health or safety;
 - c. A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the cause of action arises out of communication related to the person's sale or lease of the goods or services;
 - d. A survivorship claim or a legal action seeking recovery for bodily injury or wrongful death, or statements made regarding that claim or legal action.
3. Either the responding party fails to establish a prima facie case for each essential element of the cause of action or the moving party establishes one of the following:
 - a. The responding party failed to state a cause of action upon which relief can be granted.
 - b. There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.

Under the statute, the court must set a hearing within 60 days of the motion for expedited relief being filed. Then the court has to rule on the motion within 60 days of the hearing. If a court grants a motion for expedited relief, the court shall award reasonable attorney's fees, court costs, and other reasonable expenses. An

award of attorneys' fees can still be granted regardless of whether the attorney represented the moving party on a pro bono basis.

Ohio's adaptation of the Uniform Public Expression Protection Act applies to civil claims based on defendants' communications either in legislative or governmental proceedings or on an issue under consideration or review in legislative or other governmental proceedings. R.C. 2747.01(B)(1-2). The statute also protects a "person's exercise of the right of freedom of speech and of the press ... on a matter of public concern." R.C. 2747.01(B)(3).

Under R.C. 2747.06(C), the legislature directed courts to "consider the need to promote uniformity of the law with respect to its subject matter among states that enact a substantially similar law." R.C. 2747.06(C). Ten states—Hawaii, Idaho, Kentucky, Maine, Minnesota, New Jersey, Ohio, Pennsylvania, Utah, and Washington— have adopted UPEPA

A. Is the statute retroactive?

Plaintiff challenges the retroactivity of UPEPA. The conduct occurred prior to the enactment of UPEPA, but the claim was asserted after the effective date of the statute.

Retroactivity requires a two-step analysis. First, did the legislature intend for the statute to be retroactive. If that question is yes the Court reaches the second question, whether the Constitution permits retroactivity. Only if both questions are answered in the affirmative is the statute in question retroactive.

The statute applies to a "civil action filed or any claim asserted in a civil action on or after the effective date of this section. The effective date is April 9, 2025. This case was filed on August 13, 2025, four months after the effective date. By focusing on the date the claim was filed, rather than the date of the occurrence, the plain language of the statute shows an intent that it be applied retroactively. See, e.g., *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St. 3d 100 (Ohio 1988) (finding that the language that the statute applies to "all claims or actions filed on or after the effective date" of the statute indicates an intent that the statute applies retroactively). See also, *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413 (finding statute that applies to claims commenced on or after the effective date of the new statute indicated an intent for the statute to apply retroactively).

As the conduct pre-dates the statute. Therefore, the Court must consider whether retroactive application of UPEPA violates the constitutional rights of Plaintiff.

"The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17, 96 S. Ct. 2882, 49 L. Ed. 2d 752 (1976). Retroactive civil legislation is subject to only 'modest' constitutional limits. *Holzager v. D.C. Alcoholic Bev. Control Bd.*, 979 A.2d 52, 57 (D.C. 2009) (citing *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 179 (D.C. 2008)) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 272, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994)). Retroactivity in legislation often serves a legitimate

purpose, including to "to respond to emergencies, to correct mistakes, to prevent circumvention of a new statute in the interval immediately preceding its passage, or simply to give comprehensive effect to a new law [the legislature] considers salutary,' and should be given its intended scope absent constitutional restrictions." See *Public Media Lab* at 9; *Nixon v. District of Columbia Dep't of Emp't Servs.*, 954 A.2d 1016, 1022 n.5 (D.C. 2008) (quoting *Landgraf v. USI Film Prods.* at 267-78).

Other states enacting this uniform legislation have found it to be permissibly retroactive. In *Davenport Extreme Pools v. Mulflur*, 698 S.W.3d 140 (Court of Appeals of Kentucky, 2024), the court found Kentucky's Uniform Public Expression Protection Act to be retroactive. The court in *Davenport* found the statute to be procedural in nature. The substantive law remains established First Amendment and defamation law. The procedure for vetting the claims is expedited, the substance of the claims is not altered. The burdens of proof align with pre-existing procedural mechanisms.

The Court in *Davenport* noted that many Federal Courts have elected not to apply states' anti-SLAPP, aka UPEPA, dismissal statutes because the laws are procedural, not substantive. These Federal Courts have determined that litigants may instead utilize established, federal procedures, namely Federal Rules of Civil Procedure ("FRCP") 12 and 56, to file motions to dismiss and for summary judgment, respectively. *Id.* at 153 (citing *La Liberte v. Reid*, 966 F.3d 79 (2d Cir. 2020) (holding that California's special motion to strike in its anti-SLAPP statute

answers the same question as FRCP 12 and 56 and is thus procedural); *Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019) (holding that the Texas anti-SLAPP statute "deals only with the conduct of the lawsuit; it creates no rights independent of existing legislation") (quoting *Makaeff v. Trump University, LLC*, 715 F.3d 254, 273 (9th Cir. 2013) (Kozinski, C.J., concurring)); *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1347 (11th Cir. 2018) (holding that Georgia's anti-SLAPP statute is "a special procedural device"); *Los Lobos Renewable Power, LLC v. Americulture, Inc.*, 885 F.3d 659, 670 (10th Cir. 2018) (holding that "one cannot reasonably read the language of the New Mexico anti-SLAPP statute as providing a defendant with a substantive defense to SLAPP liability"); *Intercon Sols., Inc. v. Basel Action Network*, 791 F.3d 729 (7th Cir. 2015); *Abbas v. Foreign Policy Group, LLC*, 783 F.3d 1328, 1333-34, 414 U.S. App. D.C. 465 (D.C. Cir. 2015) (holding, in an opinion authored by now-United States Supreme Court Justice Kavanaugh, that the D.C.'s anti-SLAPP Act's special motion to dismiss cannot be applied in Federal Court).

The Court finds that UPEPA can be applied retroactively in this case. The legislature intended for it to apply to cases in this posture. No substantive rights are affected. At most, Plaintiff was unable to conduct initial discovery. This caused no prejudice to Plaintiff.

The comments at issue are simple, short, and undisputed. A hearing was held and neither party requested the ability to present additional evidence nor did any party request limited discovery. Based upon the facts and circumstances presented

in this case, additional discovery would not have changed the outcome. The time, place, manner, and content of all statements is already known.

B. UPEPA Three-Step Analysis

A party who is subjected to a civil action under the Act may file a motion for expedited relief within 60 days of being served with the Complaint. R.C. §2747.02. In this case, such a motion was filed and this case was stayed pending this Order.

The Court must dismiss the Complaint with prejudice if the moving party establishes that: (1) the action is based upon a communication protected under §2747.01(B); (2) the responding party fails to establish an exemption under §2747.01(C); and (3) the responding party either fails to establish a *prima facie* cause of action.

1.) Step one: In scope

Under the Uniform Public Expression Protection Act's framework, defendants must first establish that their communications are protected under the statute—meaning that it touches on a matter of public concern. R.C. § 2747.04(C); R.C. § 2747.01(B)(1–3). As stated above, the legislature directed that the statute's scope be broadly interpreted. R.C. § 2747.06(B) (“a court shall broadly construe and apply section[] 2747.01 ...”).

The comments at issue occurred in two traditional public forums. The first was the Orange Village Council meeting, a governmental proceeding. The second was in a published newspaper of general circulation in an article about that

proceeding. The comments related to a developer seeking public approval for a development project. The comments at issue touched upon matters of public concern.

2.) Step Two: Exemptions

R.C. § 2747.01 provides four, narrow exceptions to the Uniform Public Expression Protection Act, which are as follows:

- (1) A legal action against a governmental unit or an employee or agent of the governmental unit who was acting or purporting to act in an official capacity;
- (2) An enforcement action that is brought in the name of a governmental unit to protect against an imminent threat to public health or safety;
- (3) A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the cause of action arises out of communication related to the person's sale or lease of the goods or services;
- (4) A survivorship claim or a legal action seeking recovery for bodily injury or wrongful death, or statements made regarding that claim or legal action.

R.C. § 2747.01(C)(1-4).

Plaintiff has not asserted that any of these exceptions apply.

3.) Step Three: Legal Viability

After defendants establish that the speech at hand is within the scope of the Act's protections and that no exception applies, the burden then shifts to plaintiff to show their actions are valid. R.C. 2747.04(C). If a plaintiff fails to do so, a defendant is entitled to relief. *Id.* Alternatively, defendants are entitled to relief if they can show that either (a) plaintiff failed to state a cause of action upon which relief can be granted, or (b) there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law. *Id.*

Defendant asserts that Plaintiff failed to state a cause of action upon which relief can be granted.

To establish defamation, Kertesz must show that Mr. Pidikiti (1) made a false statement of fact, (2) that was defamatory, (3) that was published, (4) Plaintiff suffered an injury as a result, and (5) Mr. Pidikiti acted with the requisite degree of fault in publishing the statement. *Am Chem. Soc. v. Leadscope, Inc.*, 2012-Ohio-4193, ¶ 77.

"Expressions of opinion[.]" as opposed to statements of fact, "are generally accorded absolute immunity from liability under the First Amendment."). The Ohio Supreme Court has held that in determining "whether a statement constitutes protected opinion or actionable fact, courts should consider the totality of the circumstances, including factors such as: (1) the specific language used; (2) whether the statement is verifiable; (3) the general context of the statement; and (4) the broader context in which the statement appeared." *Bentkowski v. Scene Mag.*, 637 F.3d 689, 693-94 (6th Cir. 2011).

"[I]t is for the court to decide as a matter of law whether certain statements alleged to be defamatory are actionable or not." *Yeager v. Local Union 20, Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 6 Ohio St.3d 369, 372, 6 Ohio B. 421, 453 N.E.2d 666 (1983).

"In determining whether a statement is defamatory as a matter of law, a court must review * * * the totality of the circumstances" and by "read[ing] the

statement[] * * * in the context of the entire [publication] to determine whether a [reasonable] reader would interpret [it] as defamatory." *Mann v. Cincinnati Enquirer*, 1st Dist. No. C-09074, 2010 Ohio 3963, ¶ 12, citing *Scott v. News-Herald*, 25 Ohio St.3d 243, 253, 25 Ohio B. 302, 496 N.E.2d 699 (1986), and *Mendise v. Plain Dealer Publishing Co.*, 69 Ohio App.3d 721, 726, 591 N.E.2d 789 (1990).

Plaintiff claims that Defendant called him a racist and asserted that Plaintiff had "made threats of a lawsuit."

No comments of this nature were made during the Orange Village Council meetings. Plaintiff has not identified any actionable comments made during this meeting. None of the comments made during the Orange Village Council meeting constitute actionable defamation.

This leaves only the comments made to and published by the *Cleveland Jewish News* for the Court to consider.

Plaintiff asserts that merely being called a racist is sufficient to state a claim of defamation *per se* if the statement could impact a person in their business or occupation. Plaintiff cites *Boulger v. Woods*, 917 F.3d 471, 478-79 (6th Cir. 2019), for the proposition that calling someone "racist" is not automatically non-actionable opinion. While the opinion supports that limited proposition, *Boulger* read in its entirety is not helpful to Plaintiff. In *Boulger*, a newspaper published a photograph of a woman at a Trump rally giving a Nazi salute. Defendant re-tweeted the photo and asked if the woman was plaintiff, with a notable question mark. Defendant

later retracted the comment and apologized when he learned it was not plaintiff in the photograph. In the interim, plaintiff had received hundreds of obscene messages, including death threats. *Boulger* did not involve someone being labelled a racist, but involved identifying someone in a photograph. In spite of this, the tweet had a question mark, and therefore was not actionable defamation.

Plaintiff next cites *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990). In *Milkovich* coach sued respondents, an author and a newspaper, for defamation after respondents printed an article implying that petitioner had lied under oath. The Appeals Court had found the statements to be opinion. The Supreme Court reversed and remanded the case, finding that statements that the plaintiff had lied under oath were potentially verifiable and therefore beyond opinion. Plaintiff also cites *Scott v. News-Herald*, 25 Ohio St.3d 243 (Ohio 1986) (holding that allegation that plaintiff had broken his solemn oath to tell the truth was protected opinion).

Finally, Plaintiff cites *Gibson Bros, Inc. v. Oberlin College*, 2022-Ohio-1079, 187 N.E.2d 629 (9th Dist. 2022). In *Gibson Bros, Inc.*, a shoplifting incident resulted in allegations of racism. Defendants distributed flyers stating not only that the establishment was racist, but that it had a long history of racial profiling and discrimination. The Oberlin Student Senate passed a resolution stating that the bakery had a history of discrimination and called for an immediate boycott. The resolution was e-mailed to all students and publicly displayed at the student center. At trial e-mails and text messages were introduced showing some senior Oberlin

staff were angry about the shoplifter's being convicted and one stated "I hope we rain fire and brimstone on that store."

The context of the statement calling Plaintiff a racist is an isolated comment does not allege any specific details. Under the totality of the circumstances, the Court finds this comment to be non-actionable opinion and not defamatory *per se* as a matter of law.

Defendant also made a statement to the reporter that Plaintiff made threats of lawsuits.

Plaintiff cites no cases where threatening to use the legal system was considered defamatory. In *Am. Chem. Soc. V. Leadscape, Inc.* 2012-Ohio-4193, the Court found that all of the comments at issue were not defamatory as a matter of law.

In *Hartman v. Kerch*, 2023-Ohio-1972, the defamatory statements were that plaintiff "preyed on older women." The case did not involve any allegations of using the legal system to seek resolution or of filing frivolous lawsuits.

An innocent construction of a "threat" to file a lawsuit would be that the person intends to file a valid lawsuit. Defendant's comment is not that Plaintiff threatened frivolous lawsuits, or that he filed lawsuits in bad faith.

Defendant's comments regarding Plaintiff threatening lawsuits, under the totality of the circumstances presented herein, is not defamatory *per se* as a matter of law.

IV. CONCLUSION

Defendant's Motion for Expedited Relief is GRANTED and Plaintiff's Complaint is dismissed with prejudice pursuant to the Uniform Public Expression Act, R.C. §2747.01, *et seq.*

IT IS SO ORDERED.


JUDGE DEBORAH M. TURNER
Visiting Judge William T. McGinty

12/9/25
DATE