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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR CLACKAMAS COUNTY

MAX ZWEIZIG
Plaintiff,

v.
TIMOTHY ROTE; TANYA ROTE,
Defendants.

Case No. 23CV28582

PLAINTIFFS RESPONSE TO
DEFENDANT TIMOTHY ROTE’S
ANTI-SLAPP MOTION TO STRIKE
AND, IN THE ALTERNATIVE MOTION
TO DISMISS

COME NOW Plaintiff Replies to Defendant Timothy Rote’s Motion to Strike, and in the alternative, Motion to Dismiss as follows:

PRELIMINARY STATEMENT

As stated in the Defendants Anti-SLAPP motion, Mr. Rote has yet again initiated a Special Motion to Strike under ORS 31.150. Defendant Rote has weaponized Oregon’s Special Motion to Strike statute for the sole purpose of causing opposing parties to make a Prima Facie showing of their case before the Defendant responds substantively to the allegations.

MEMORANDUM AND POINTS AND AUTHORITIES

Background

1.

While there is a cumbersome amount of history between these two parties, Plaintiff will not give a complete chronology of the actions of Defendant Timothy Rote against the Plaintiff. However, Defendant’s “Background” requires rebuttal such to set the records straight.

1 Plaintiff Max Zweizig was an employee of Mr. Rote's company, Northwest Direct, over
2 two decades ago. During his employment, Plaintiff found illegal activity in Defendant Timothy
3 Rote's organization, and contacted the necessary authorities.

4 2.

5 Plaintiff was then retaliated against by Defendant Timothy Rote in various ways; all of
6 which were recorded in the Defendant Timothy Rote's website "When Justice Falls: A Portland
7 Story of Fraud, Collusion & Cybercrime" where the writer make egregious misstatements of fact
8 about the Plaintiff. Plaintiff Mr. Zweizig prevailed in a whistleblower retaliation action against
9 the Defendant and was award \$1 million in punitive damages in case number 3:15-cv-2401.
10 Since this judgment, Defendant Timothy Rote has continued his delusional crusade against the
11 now Plaintiff in his website and by continual lawsuits against the now Plaintiff for the sole
12 purpose of putting defamatory and inflammatory unsubstantiated information about Mr. Zweizig
13 into the public record. There was never any report of a forensic investigator which found that
14 Mr. Zweizig kept illegal material on his computer.

15 3.

16 Additionally, the whistleblower retaliation lawsuit was prefaced with a mandatory
17 arbitration pursuant to Defendant Timothy Rote's employment agreement with Mr. Zweizig.
18 Defendant Timothy Rote makes many unsubstantiated statements regarding this arbitration, but
19 fails to acknowledge that the arbitration records were sealed and cannot be used as evidence
20 before the Court.

21 Allegations in the Plaintiffs Complaint

22 4.

23 While Defendant Timothy Rote argues that this lawsuit is for defamation, Plaintiff is
24 confused as to whether the Defendant read the caption page of the lawsuit, such to understand
25 the claims against him. Plaintiff is bringing a claim for Intentional Infliction of Emotional
26 Distress relating to the unsubstantiated and untruthful blog posts about the Plaintiff's alleged
27 participation in child pornography dissemination, and the general perpetual pursuit of the
28 Defendant to cause the Plaintiff harm. The lawsuits attached in the Plaintiff's complaint are

1 supplementary commentary on the actions taken by the Defendant to intentionally distress,
2 harass, and harm the Plaintiff in every way possible.

3 **Responses to Defendant's Motions**

4 **Motion 1 ORS 31.150: Plaintiff's defamation and IIED claims should not be dismissed pursuant**
5 **to Oregon's anti-SLAPP statute, because there is no claim brought for defamation, and the IIED**
6 **allegations against Defendant stem from acts outside of Court filings, actions and proceedings,**
7 **and Plaintiff can make a Pima Facie Case for its claims.**

8 5.

9 Pursuant to this statute, the Defendant must show that the Plaintiff's claims arise from a
10 statement which relates to the public interest. ORS 31.150. If Defendant successfully shows that
11 the action or statement is within the scope of ORS 31.150 public interest, then the Plaintiff will
12 have to show a prima facia case for their claims against the Defendant to defeat the motion. Id.

13 Plaintiff responds to this in two prongs:

14 a. **PRONG I:** Public Interest - While Plaintiff will concede that dissemination of
15 child pornography and illegal material is within the public interest such to be subject to Anti-
16 SLAPP. However, Defendant has never provided information such to substantiate his deranged
17 claims against the Plaintiff beyond his own declarations and has weaponized the Oregon Anti-
18 SLAPP statute such to require every party to a lawsuit with the Defendant to respond to an Anti-
19 SLAPP motion.

20 b. **PRONG II:** Prima Facie Case - To prevail on an intentional infliction of
21 emotional distress (IIED) claim, plaintiff must demonstrate that (1) defendant intended to inflict
22 severe emotional distress, (2) defendant's acts were the cause of plaintiff's severe emotional
23 distress, and (3) defendant's acts constituted an extraordinary transgression of the bounds of
24 socially tolerable conduct. *McGanty v. Staudenraus*, 321 Or. 532, 543 (1995).

25 6.

26 Here, Plaintiff can show that the Defendant clearly intends to inflict severe emotional
27 distress on the Plaintiff through his publications of false material. At the time of filing this
28 response, the Plaintiff has no reason to believe that Defendant has been diagnosed with a disease

1 which causes these delusional beliefs; such for the Defendant's actions not to be considered
2 intentional.

3 7.

4 Likewise, there is no doubt that the Defendant's actions are the cause of the Plaintiff's
5 emotional distress. The Plaintiff has undergone over two-decades of constant abuse from the
6 defendant, and for twenty years has had to explain the presence of the Defendants' blog due to it
7 coming up when you search for the Plaintiff's name on any internet search engine.

8 8.

9 Finally, the actions of the Defendant of falsely accusing the Plaintiff of downloading and
10 disseminating illegal pornography and "supports the raping of children" constitute a level of
11 extraordinary transgression beyond the bounds of socially tolerable conduct.

12 9.

13 The bar for extraordinary departure from social acceptability is set very high. IIED is not
14 available where the actions complained of are "merely rude, boorish, tyrannical, churlish, [or]
15 mean." *Beck v. City of Portland, Or.*, No. CV-10-434-HU, 2010 WL 4638892, at *8 (D. Or. Nov.
16 5, 2010). "The tort does not provide recovery for the kind of temporary annoyance or injured
17 feelings that can result from friction and rudeness among people in day-to-day life." *Hetfeld v.*
18 *Bostwick*, 136 Or.App. 305, 308 (1995). The conduct must be "outrageous in the
19 extreme." *Id.*; see also RESTATEMENT (SECOND) OF TORTS § 46, comment d ("Liability
20 has been found only where the conduct has been so outrageous in character, and so extreme in
21 degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and
22 utterly intolerable in a civilized community.")

23 10.

24 Whether a defendant's actions rise to the required level of outrageousness is necessarily
25 fact-specific. *Clemente v. State*, 227 Or.App. 434, 442 (2009).

26 11.

27 When evaluating IIED claims, "[t]he most important [contextual] factor is whether a
28 special relationship exists between a plaintiff and a defendant. *House*, 218 Or.App. at 360

1 (quoting *McGanty*, 321 Or. at 547-48). Examples of special relationships include “employer-
2 employee, physician-patient, counselor-client, landlord tenant, debtor-creditor or government
3 officer-citizen.” *House*, 218 Or.App. at 360 .

4 12.

5 Likewise, Courts consider the totality of the circumstances based on the facts presented,
6 including any aggravating factors. *House*, 218 Or.App. at 358. Aggravating factors include
7 ulterior motives on the part of the defendant, intent to take advantage of a plaintiff in a
8 vulnerable state, and the setting in which the conduct occurs. *Id.* at 360.

9 13.

10 While it is difficult to fathom the ulterior motives of Defendant Timothy Rote in his
11 continued actions against the Plaintiff, it is clear that this continued, deranged crusade started as
12 a direct result of Plaintiff reporting illegal activities in Defendant Timothy Rote’s company
13 Northwest Direct, Inc. The Defendant Timothy Rote has used information made available to him
14 through the Plaintiff’s previous employment (IE Social Security Number, Home Address, etc) to
15 harass and embarrass the Plaintiff in any possible way.

16 14.

17 The ongoing, public, and egregious attacks have left Plaintiff in a vulnerable state,
18 making it difficult to seek advancements or different opportunities in employment, and difficulty
19 with general socializing; because a simple search of the Plaintiff’s name results in Defendant
20 Timothy Rote’s website calling Plaintiff a “child predator” and discusses his “criminal
21 organization”. These claims have been unsubstantiated by Defendant Timothy Rote and their
22 posting is for the sole purpose of causing the Plaintiff severe emotional harm.

23 15.

24 The setting for Defendant Timothy Rote’s unfounded claims are on a public forum, and a
25 reasonable person would believe that it would be extremely damaging to an individual to have
26 claims of you engaging in child pornography available to anyone who searches their name.

1 **Motion 2** ORCP 21 A(8): Plaintiff's IIED claim should not be dismissed with prejudice because
2 while Defendant enjoys absolute privilege and immunity
3 from liability on the Plaintiff's allegations stemming from Court filings, actions and
4 proceedings, Plaintiff has alleged other acts outside of these such to defeat dismissal.

5 16.

6 Plaintiff's claims do not solely arise from complaints and court filings of the Defendant.
7 Instead, Plaintiff's claims arise from an array of activities, including the defamatory blog
8 postings, and the surrounding circumstances of the continual litigation against the Plaintiff,
9 which is allowed to be considered by the court pursuant to House. *House*, 218 Or.App. at 358;
10 citing *Hall v. The May Dept. Stores*, 292 Or 131, 137, 637 P2d 126 (1981) who opined
11 ("Whether conduct is an extraordinary transgression is a fact-specific inquiry, to be considered
12 on a case-by-case basis, based on the totality of the circumstances. We consider whether the
13 offensiveness of the conduct "exceeds any reasonable limit of social toleration [,]" which is "a
14 judgment of social standards rather than of specific occurrences.")

15 As such, the court can take into account the totality of the claims and allegations of the
16 Defendant against the Plaintiff, including the court records, to opine whether the conduct of the
17 defendant is truly an extraordinary transgression of societal standards.

18 **Motion 3** ORCP 21 A(9): Plaintiff's IIED claims should not
19 be dismissed with prejudice, because the statute of limitations has not tolled pursuant to ORS

20 12.110(1)

21 17.

22 Intentional Infliction of Emotional Distress

23 It is true that the statute of limitations does not begin to run on claims for IIED "until the
24 defendant's conduct has culminated into the plaintiff's severe emotional distress. *Davis v.*
25 *Bostick*, 282 Or 667, 673-74, 580 P2d 544 (1978).

26 //

27 //

1 18.

2 An action for the intentional infliction of emotional distress must be commenced within
3 two years of the date of injury. ORS 12.110(1); see § 7.11B (continuing torts; course of conduct).

4 19.

5 When a defendant engages in a course of conduct over a period of time that can produce
6 cumulative compensable harm (e.g., emotional distress), but each act is discrete and produces
7 compensable harm, evidence of those acts occurring before the two years preceding the filing of
8 the complaint is barred by the statute of limitations. *Davis*, 282 Or 667, 673–74.

9 20.

10 However, when each of a defendant’s acts does not by itself support a claim, but the
11 pattern of conduct eventually results in severe emotional distress to the plaintiff—a necessary
12 element of the tort of the intentional infliction of emotional distress—the plaintiff’s claim
13 accrues when the plaintiff “in fact” suffers such distress. (Emphasis Added) *Barrington ex rel.*
14 *Barrington v. Sandberg*, 164 Or App 292, 297, 991 P2d 1071 (1999). Under those
15 circumstances, the defendant’s conduct constitutes a “continuing tort,” which is based on “the
16 concept that recovery is for the cumulative effect of wrongful behavior, not for discrete elements
17 of that conduct.” *Davis*, 282 Or at 671–72.

18 21.

19 When the continuing-tort doctrine applies, it “tolls the statute of limitations on otherwise
20 actionable conduct until that conduct stops.” *Barrington ex rel. Barrington*, 164 Or App at 308 n
21 2 (Kistler, J., concurring); see § 7.26A(1) to § 7.26A(4) (continuing torts). As such, the
22 Plaintiff’s claim for IIED is timely and is not barred by the Statute of Limitations.

23 22.

24 Fraudulent transfer

25 The first time the Plaintiff was made aware that the Sunriver property was in the
26 proposed Trust, was during the 19cv01547 case. The first Sheriff’s sale was to occur on or about
27 February 3, 2022 in which there was no mention of a trust by Defendant Timothy Rote. It was
28 not until the Sheriff’s sale which was to occur on or about September 9, 2022, that the sale could

1 not go through due to the fact that the property had been placed in an irrevocable trust. This
2 fraudulent transfer occurred a full seven (7) months after Defendant Timothy Rote was put on
3 notice of the imminent sale of his property to pay for the \$1,000,000.00 judgment for Plaintiff.

4 As such, the statute of limitation for fraudulent transfer has not tolled, and the claim
5 should be allowed to go forward.

6 **Motion 4 Doctrine of Claim Preclusion: Plaintiff's claims are not precluded because new**
7 **facts and events have occurred since case 19cv01547 which give rise to the claims at hand.**

8 23.

9 The doctrine of claim preclusion holds that a conclusive determination of a controversy
10 between parties in court prevents those parties from initiating another lawsuit or proceeding
11 arising from the same set of facts. *Bloomfield v. Weakland*, 339 Or 504, 510–511 (2005); *Drews*
12 *v. EBI Cos.*, 310 Or 134, 140 (1990). The doctrine has developed in Oregon under both statutory
13 and common-law formulations. *Van De Hey v. United States Nat'l Bank*, 313 Or 86, 90 (1992).
14 The relevant portion of the statute, ORS 43.130, provides:

15 *The effect of a judgment, decree or final order in an action, suit or proceeding before a*
16 *court or judge of this state or of the United States, having jurisdiction is as follows: . . .*

17 *(2) In other cases, the judgment, decree or order is, in respect to the matter*
18 *directly determined, conclusive between the parties, their representatives and*
19 *their successors in interest by title subsequent to the commencement of the*
20 *action, suit or proceeding, litigating for the same thing, under the same title and In the*
21 *same capacity.*

22 Despite the statute's longevity, decisions on claim preclusion are typically based on the
23 broader common-law formulation, even when the statute would seem to apply. See, *Van De Hey*,
24 313 Or at 90–92 & n 4. The Oregon Supreme Court has formulated the common-law definition
25 of claim preclusion as follows: “[A] plaintiff who has prosecuted one action against a defendant
26 through to a final judgment. . . is barred [i.e., precluded] . . . from prosecuting another action
27 against the same defendant where the claim in the second action is one which is based on the
28 same factual transaction that was at issue in the first, seeks a remedy additional or alternative to

1 the one sought earlier, and is of such a nature as could have been joined in the first action.”
2 *Drews*, 310 Or at 140. This formulation is known as the transactional approach to claim
3 preclusion. *Peterson v. Temple*, 323 Or 322 , 326 (1996).

4 Here the Plaintiff is litigating over new facts regarding both of his claims; as Defendant has
5 continued transferred assets since the last collection effort, and the Defendant has continued to
6 take actions for the purpose of causing emotional harm to the Plaintiff.

- 7 1. The Plaintiff’s claims in this case is one which is not based on the same factual
8 transaction that was at issue in the first (19cv01547),
- 9 2. The Plaintiff’s claims do not seek a remedy additional or alternative to the one sought
10 earlier as the IIED claim is novel between these parties, and the fraudulent transfer claim
11 is based on a separate alleged fraudulent transfer; AND
- 12 3. The claims are not of such a nature as could have been joined in the first action, as the
13 transfer has not occurred yet, and the ongoing emotional distress of the Plaintiff has
14 culminated in the past year such to make this claim ripe well after the 19cv01547 case.

15
16 **Motion 5 Doctrine of Issue Preclusion: Plaintiff’s Motion for Declaratory Relief should not**
17 **be dismissed under the Doctrine of issue preclusion because Defendant has made new posts since**
18 **the 19cv01547 case.**

19 24.

20 As stated above, issue preclusion applies when a Plaintiff attempts to litigate the same
21 facts or claims that were a part of a previously decided case. However, here, the Plaintiff is
22 litigating facts and claims which have arisen since the last case between the parties, such that
23 issue preclusion does not apply to the claims in this case. While Plaintiff was denied Declaratory
24 Relief in the 19cv01547

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1 **Motion 6** Motion for Sanctions: The Cauble Firm should not be sanctioned, as Defendant has
2 failed to present any allegations or claims which would justify sanctions

3
4 25.

5 This action is the first lawsuit filed by Chase A.S. Beguin against Defendant Timothy
6 Rote, and the majority of the lawsuits filed against Defendant Rote by the Plaintiff were an
7 attempt to collect on the \$1 million dollar judgment the Plaintiff has against him; which
8 Defendant has been avoiding since the entry of the judgment. Defendant failed in previous
9 litigation against the Plaintiff in an attempt to claim Wrongful Initiation of Civil Proceedings
10 against the Plaintiff and has created a vendetta against Plaintiff attorney in relation to that
11 proceeding.

12 Defendant has failed to identify even a scintilla of evidence to show that Zweizig, or his
13 attorney, have made any false certifications on the record, have underwent this litigation for the
14 purpose to harass or intimidate the Defendant, or have breached any other Code of Professional
15 Conduct enumerated in the American Bar Associations Model of Professional Conduct.
16 Defendant's motion for sanctions should be denied.

17 **CONCLUSION**

18 For the reasons outlines above, the court should deny the Defendant's motion to Strike
19 the Plaintiff's claims, and deny in like the Defendant's motion to dismiss claims, and allow the
20 case to proceed.

21 **DATED** this 29th day of August, 2023.

22 CAUBLE & WHITTINGTON, LLP

23
24 /s/Chase A.S. Beguin

25 Chase A. S. Beguin, OSB No. 222861

26 cbeguin@thecaublefirm.com

27 PO Box 398

28 111 SE Sixth Street

Grants Pass, OR 97528

Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I am employed in Josephine County, Oregon, with Cauble & Whittington, LLP. I am over
3 18 years old and not a party to the within cause. My business address is 111 SE 6th Street,
4 Grants Pass, OR 97526.

5 On the date below, I served a true and correct copy of the foregoing RESPONSE TO
6 PLAINTIFF’S MOTION TO STRIKE on the following by manner of service specified:

7 Timothy C. Rote
8 7427 SW Coho Ct. #200
9 Tualatin, OR 97062
Pro Se Defendant

10 Brooks Foster
11 Chenoweth Law Group
12 510 SW 5th, 4th Floor
13 Portland, OR 97204
foster@chenowethlaw.com
Attorney for Defendant Tanya Rote

14 (X) (BY MAIL) By placing in a sealed envelope, with postage thereon fully pre-paid in
15 the United States Mail, at Grants Pass, Josephine County, Oregon

16 () (BY E-MAIL) By sending to the email address(es) of counsel and any of their staff
17 listed above. The counsel listed above have consented to service by e-mail and no
18 “bounce back” message was received in response.

19 () (BY FACSIMILE) By facsimile to the number(s) of counsel listed above. A
20 confirmation is attached hereto.

21 (X) (BY OTHER E-SERVICE) By selecting the individual recipients on the e-filing
22 website. The electronic transmission was reported as complete, and a copy of the
23 transaction receipt page and original documents will be maintained in our office. The e-
24 filing service used was: [name of service]

25
26 ///

27 ///

1 This matter is a case filed in the jurisdiction of:

2 (x) the State of Oregon and I hereby declare that the above statement is true to the best of
3 my knowledge and belief, and that I understand it is made for use as evidence in court
4 and is subject to penalty for perjury.

5 **DATED** this 29th day of August, 2023.

6 CAUBLE & WHITTINGTON, LLP

7
8 /s/Chase A.S. Beguin

9 Chase A. S. Beguin, OSB No. 222861

10 cbeguin@thecaublefirm.com

11 PO Box 398

12 111 SE Sixth Street

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14 *Attorneys for Plaintiff*