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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MAX MILLER
Plaintiff

EMILY MORENO, ET AL
Defendant

Case No: CV-26-138810

Judge: JOY KENNEDY

JOURNAL ENTRY

89 DIS. W/PREJ - FINAL

PLAINTIFF MAX MILLER'S MOTION TO STRIKE DEFENDANT EMILY MORENO'S POST-HEARING FEE SUBMISSIONS OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE HIS RESPONSE, FILED 11/12/2026, IS GRANTED.

DEFENDANT EMILY MORENO'S MOTION FOR EXPEDITED RELIEF THORUGH DISMISSAL AND REQUEST FOR EXPEDITED HEARING UNDER THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT, R.C.2747.01 ET SEQ., FILED 05/27/2026, IS GRANTED.

ORDER AND OPINION SIGNED AND ATTACHED. OSJ. CASE IS HEREBY DISMISSED WITH PREJUDICE. FINAL.

COURT COSTS ASSESSED TO THE PLAINTIFF(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

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11/13/2026

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MAX MILLER	)	CASE NO. CV-26-138810
	)	
Plaintiff,	)	JUDGE JOY KENNEDY
	)	
	)	
vs.	)	
	)	
	)	
EMILY MORENO, et al.	)	**OPINION AND ORDER**
	)	
Defendants.	)	

This matter is before the Court on Defendant Emily Moreno's Motion for Expedited Relief under Revised Code Chapter 2747. As required, the Court held a hearing on the Motion on September 15, 2026. A hearing on attorney fees, court costs, and other litigation expenses pursuant to R.C. 2747.05 was held October 30, 2026. The Motion is therefore fully briefed, argued, and ripe for opinion. For the reasons that follow, Defendant Emily Moreno's Motion for Expedited Relief is granted.

I. Procedural History

Plaintiff and sitting Congressman Max Miller filed this Complaint against Defendant Emily Moreno, his ex-wife, alleging claims for Defamation *Per Se* and False Light Invasion of Privacy. Plaintiff alleges that on May 7, 2026, Defendant Moreno caused the following allegedly defamatory statements to be published in the Daily Mail:

1. "In an earlier incident, Miller allegedly hurled a pot of boiling water at Moreno during a June 9, 2024, argument. Some of the boiling water hit

Moreno in the chest and she took photographs of her injuries the same day, sources told the outlet."

2. "A handwritten letter allegedly written by Miller to Moreno, the same day as the boiling water incident, shows the Congressman apologizing to his then-wife for failing to protect her, though he does not admit to any physical abuse."

The statements were republished by The New York Post, The Daily Beast, and Yahoo! News. Plaintiff alleges that the statements are false and were made to influence the parties' custody dispute and/or harm Plaintiff's re-election campaign.

Plaintiff asserts that the public statements "have been read, viewed, and discussed by Plaintiff's constituents, his colleagues in Congress, his political supporters and donors, the media, and the general public." As a direct and proximate result, Plaintiff maintains he has and continues to suffer "substantial injury to his personal and professional reputation, personal reputation, public hatred, contempt, and ridicule, the impairment of his standing in his community and in Congress, mental anguish, humiliation, and emotional distress, and pecuniary losses including but not limited to harm to his career and to his ability to raise campaign funds."

Concerning Plaintiff's claim for False Light Invasion of Privacy, Plaintiff maintains that "[t]his false light in which Plaintiff was placed, as a man who beats his wife and abuses his daughter, would be highly offensive to a reasonable person."

Subsequent to Plaintiff's Complaint, filed May 13, 2026, Defendant Moreno timely filed a Motion for Expedited Relief on June 2, 2026. Defendant Moreno's

requested relief was brought pursuant to Ohio's newly-enacted anti-SLAPP law, the Ohio Uniform Public Expression Protection Act, codified within Revised Code Chapter 2747. The acronym "SLAPP" is a term used by legal scholars to generally describe defamation lawsuits used by powerful figures to discourage civil participation and stands for "Strategic Lawsuit Against Public Participation." Anti-SLAPP statutes are aimed at discouraging punitive litigation designed to chill constitutionally protected speech. *See Murray v. Chagrin Valley Publishing Co.*, 8th Dist. Cuyahoga No. 101394, 2014-Ohio-5442, ¶ 40. Simply, a SLAPP lawsuit is filed with the intent to silence statements, actions or participation in legally protected activities. Usually, such lawsuits contain public issues, free speech or other rights embodied in the First Amendment. An Anti-SLAAP motion is a statutory means to terminate the type of chilling litigation that targets said protected activities. Ohio enacted an anti-SLAPP statute in April of 2025.

Defendant Moreno's primary argument for dismissal of Plaintiff's claims is that she did not cause the allegedly defamatory statements to be published. Defendant Moreno further asserts that the statement allegedly attributed to her that Plaintiff threw water on her is true, and thus not actionable as defamation. In addition, the statement about the handwritten letter in which Plaintiff apologizes for failing to protect Defendant Moreno is subject to multiple interpretations, and therefore not defamatory.

Turning to the False Light claim, Defendant Moreno asserts the same arguments: that the Daily Mail allegations are true and that Defendant Moreno did not cause the statements to be published.

II. The Applicable Statute

Ohio's Uniform Public Expression Protection Act ("UPEPA") establishes an expedited procedure that allows a defendant in a pending lawsuit to file for a dismissal of claims that are based on a defendant's exercise of protected expressive activity i.e. an exercise of "free speech." Specifically, the statute protects the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution and the Ohio Constitution. R.C. 2747.06.

Pursuant to R.C. 2747, a court shall dismiss a cause of action with prejudice if all of the following apply:

1. The moving party establishes that the cause of action is based on a communication described in 2747.01(B); which includes the following:

    (1) The person's communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

    (2) The person's communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding;

    (3) The person's exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or the Ohio Constitution, on a matter of public concern.

2. The responding party fails to establish that this chapter does not apply to the cause of action due to one of the enumerated exceptions in R.C. 2747.01(C):

    (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.

3. Under R.C. 2747.04(C)(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:

    (1) The responding party failed to state a cause of action upon which relief can be granted.

    (2) There is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.

Pursuant to R.C. 2747.03, filing a motion for expedited relief stays all other proceedings in the action between the moving party and the responding party, including discovery and any other pending hearing or motion. The same section requires a hearing on said motion. An award of attorney fees, court costs, and other litigation expenses shall be awarded if a defendant prevails on the motion. R.C. 2747.05(A). A monetary award may be ordered against a non-prevailing party if the

defendant's motion is declared frivolous. R.C. 2747.05(B). A denial of the motion is a final appealable order. R.C. 2747.05(C).

III. Legal Analysis

Defendant Moreno satisfies the first prong of the statute under R.C. 2747.01(B)(3) since the statements are an exercise of free speech on a matter of public concern. The statements concern the alleged actions of a sitting Congressman engaged in a campaign for re-election.

The burden then shifts to Plaintiff to demonstrate that one of the statutory exceptions contained in R.C. 2747.01(C) applies to the statements. The Court finds that none of the statutory exceptions apply, therefore Defendant Moreno has satisfied the second prong of the statute. Plaintiff conceded that both prong one and prong two of the statute are met.

Lastly, the third prong of the statute requires Plaintiff to establish a prima facie case for each essential element of the cause of action, or that Defendant establishes either 1) Plaintiff failed to state of cause of action upon which relief can be granted, or 2) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The legal standard in ruling on an expedited motion brought pursuant to R.C. 2747(C)(3)(b) is that "the court shall consider the pleadings, the motion, any response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Rule 56 of the Rules of Civil Procedure."

a. Defamation Claim

To establish defamation, the plaintiff must show (1) that a false statement of fact was made, (2) that the statement was defamatory, (3) that the statement was published, (4) that the plaintiff suffered injury as a proximate result of the publication, and (5) that the defendant acted with the requisite degree of fault in publishing the statement. *Am. Chem. Soc'y v. Leadscope, Inc.*, 133 Ohio St.3d 366, 389 (2012) (citation omitted). The essential elements of a defamation action are therefore that the defendant made a false statement, that the false statement was defamatory, that the false statement was published, that the plaintiff was injured and that the defendant acted with the required degree of fault. *Heidel v. Amburgy*, 2003-Ohio-3073, P14 (12th Dist.) citing *Celebrezze v. Dayton Newspapers, Inc.*, 41 Ohio App.3d 343, 346-347 (8th Dist. 1988).

Due to Plaintiff's status as a public figure, the standard of fault is actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). A plaintiff shows actual malice if that plaintiff can show a defendant spoke "with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 280.

A statement is defamatory when it causes injury to one's reputation, or exposes one to public hatred, contempt, ridicule, shame or disgrace, or has an adverse effect on one's trade or business. *Matalka v. Lagemann*, 21 Ohio App.3d 134, 136 (8th Dist. 1985). "In determining whether a statement is defamatory as a matter of law, a court must review the totality of the circumstances and by reading the statement in the context of the entire publication to determine whether a

reasonable reader would interpret it as defamatory. *Leadscope, Inc.* at 389 (citation omitted).

In order to establish a *prima facie* case of defamation, a plaintiff is required to establish that the statement made is actionable, that the defendant published that statement to a third person, and that the recipient understood the defamatory meaning of the published statement. *Hahn v. Kotten*, 43 Ohio St.2d 237 (1975). "Prima facie tests are mechanisms by which courts may readily dispose of cases that cannot sustain a particular cause of action. 'To say that a plaintiff has established a *prima facie* case is simply to say that he has produced sufficient evidence to present his case to the jury, *i.e.*, he has avoided a directed verdict.'" *Coryell v. Bank One Trust Co. N.A.*, 101 Ohio St.3d 175, 179 (2004) (citations omitted).

The parties agree that a crucial contested issue is whether Defendant Moreno was responsible for the publication. The incident is contained in the record in the parties' domestic relations matter, including a disclosure to law enforcement, and Defendant Moreno admits to speaking to others about the incident for a 2-month time period directly subsequent. The article cites to "multiple sources." Plaintiff has not produced credible evidence that Defendant Moreno was one of the anonymous sources, nor caused the article to be published.

Further, since a plaintiff must prove falsity as an essential element of a defamation claim, "[i]n Ohio, truth is a complete defense to a claim for defamation." *Hartman v. Kerch*, 2023-Ohio-1972, P37 (8th Dist.) (citations omitted). Therefore, in defending against a defamation action, it is sufficient for the defendant to show

that "the imputation is substantially true, or as it is often put, to justify the "gist," the "sting," or the substantial truth of the defamation." *Id.* (citing *Krems v. University Hosps. Of Cleveland*, 133 Ohio App.3d, 6, 9 (8th Dist. 1999).

An audio recording of the parties discussing the incident supports Defendant Moreno's contention of truth. Defendant Moreno confronted Plaintiff about pouring "bowling hot water on me." Although Plaintiff denies pouring hot water on her neck, he further admits the incident occurred. Plaintiff specifically stated "it was never done to hurt you with intent." Plaintiff's intent is irrelevant to the basic fact of whether the incident occurred, which addresses the element of falsity.

Plaintiff maintains that the gist or sting of hurling a pot of boiling water is "categorically different" than the actions Plaintiff states actually occurred. It is Plaintiff's burden to support his claims with credible, admissible evidence. Plaintiff has not shown that the statement about dousing Defendant Moreno with boiling hot water are false. The imputation that Plaintiff poured or doused Defendant Moreno with hot water is substantially true.

Finally, Plaintiff is unable to show actual malice as required. As outlined in *Scott v. News Herald*, 25 Ohio St.3d 243 (1986), the United States Supreme Court found that actual malice may not be inferred from the evidence of personal spite, ill-will or intention to injure on the part of the writer. *Scott* at 248 (citing *Beckely Newspapers Corp. v. Hanks*, 389 U.S. 81, 82 (1967). "Rather, the focus of [an actual malice] inquiry is on defendant's attitude toward the truth or falsity of the publication . . . and a public official may recover only upon clear and convincing

proof of actual malice." *Id.* (citations omitted). Plaintiff provided no credible evidence to support actual malice.

b. False Light Claim

The Ohio Supreme Court set forth the elements of a false light claim as one who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Welling v. Weinfeld*, 113 Ohio St.3d 464, 473.

The parties set forth similar arguments in validation of their respective positions. Defendant Moreno declares Plaintiff cannot proceed on the false light claim since the statements are true and Defendant Moreno did not publish said statements. Plaintiff asserts that his false light claims survives for the same reasons as his defamation claims. Accordingly, the Court finds that Plaintiff's false light claim fails for the reasons formerly cited.

IV. Attorney's Fees, Court Costs, and Other Litigation Expenses Under R.C. 2747.05

R.C. 2747.05(A) provides that, when a court grants a motion for expedited relief under R.C. 2747.04, the court "shall award reasonable attorney's fees, court costs, and other reasonable litigation expenses to the moving party." The award is mandatory. On September 30, 2026, the Court ordered any party seeking attorney

fees and costs under R.C. 2747.05 to file an itemization and accounting, and held a hearing on attorney fees and costs on October 30, 2026. The Court proceeded with the hearing prior to rendering a decision on the merits of Defendant Moreno's Motion for Expedited Relief with the purpose of creating a final appealable order. The Eighth District Court of Appeals has remanded cases back to the trial court to determine attorney fees and costs after the trial court initially decided a UPEPA motion's merits. *See Dengler, et al. v. Dengler, et al.*, CA-26-116761. Upon finding for Defendant Moreno as established herein, the statutory prerequisite to issue an award is satisfied.

The burden of establishing the amount of attorney fees lies with the party requesting said fees. *Adams v. Fleck*, 171 Ohio St. 451 (1961). The amount of an award of attorney fees is within the discretion of the trial court. Ohio courts have calculated "reasonable attorney's fees" using the "lodestar" method, which multiplies the number of hours reasonably expended on a case by a reasonable hourly rate. *Bittner v. Tri-County Toyota*, 58 Ohio St.3d 143 (1991). Rule 1.5 of the Ohio Rules of Professional Conduct sets forth elements for determining reasonable fees: "The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services;(4) the amount involved and the

results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent."

Before the Court may address Defendant Moreno's submitted Petition for Attorney Fees and Costs, Plaintiff's Motion to Strike shall be addressed. The Court grants Plaintiffs Motion to Strike, and accordingly shall consider Defendant Moreno's Petition for Attorney Fees and Costs as the basis of the requisite award calculation.

The Court has considered the billing records and supporting affidavits submitted, as well as Plaintiffs objections. The litigation in this matter involved substantial factual and legal issues. Particular, the motions for expedited relief required counsel to address Ohio's newly enacted Uniform Public Expression Protection Act under R.C. Chapter 2747, for which there is limited Ohio precedent. The Court limited its consideration to fees and expenses reasonably attributable to the claims and the expedited motion at issue. The hourly rates charged by counsel are supported by the affidavits and billing records. The Court finds the rates appear to be within reasonable range of what other attorneys who are similarly situated at regional firms in the area would charge. In addition, Plaintiff's application of *State ex rel. Harris v. Rubino*, 2018-Ohio-5109 is persuasive and applicable as to certain fees and costs. As such, the Court finds it reasonable to reduce the requested award as follows:

a. $1,513.89 for duplicative costs.

b. $1,540.00 for Defendant Moreno's expert affidavit.

c. $6,146.00 for Defendant Moreno's Fourth Supplement.

d. $3,690.88 for reducing Defendant Moreno's Reply Brief by 25%.

e. $2,134.00 for Civ.R. 11 correspondence.

f. $1,196.00 for other proceedings.

g. $1,575.00 for Courtney Bow's duplicative hours.

h. $5,058.50 for Emily Bohatch's duplicative hours.

Applying the reductions totaling $22,854.27, the Court finds $76,762.38 as a reasonable award for attorney fees and costs.

V. Defendants Andrew Zashin and Zashin Law, LLC's Motion for Expedited Relief

Defendants Andrew Zashin and Zashin Law, LLC ("Zashin Defendants") were initially named in Plaintiff's complaint and filed a timely Motion for Expedited Relief on June 5, 2026.

On July 20, 2026, the Court dismissed the Zashin Defendants without prejudice pursuant to Plaintiff's Notice of Voluntary Dismissal. Upon dismissing the Zashin Defendants, the Court further dismissed their Motion for Expedited Relief as moot.

Pursuant to R.C. 2747.04(E)(1), "[a] voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion for expedited relief does not affect a moving party's right to obtain a

ruling on the motion for the purpose of obtaining attorney's fees, court costs, and other litigation expenses under section 2747.05 of the Revised Code."

Under R.C. 2747.04(E)(1), the Zashin Defendants maintained the right to engage the Court for a ruling on the merits of their Motion. The Zashin Defendants failed to timely appeal or contest the July 20, 2026 journal entry denying their Motion as moot. Further, the Zashin Defendants failed to appear for the hearing held September 15, 2026, nor did they file to obtain attorney's fees, court costs, and other litigation expenses under R.C. 2747.05 as ordered by the Court September 30, 2026. The Court therefore finds that the July 20, 2026 order remains in full force and effect and that a further decision on the Zashin Defendants' Motion was waived as they failed to pursue a ruling under R.C. 2747.04(E)(1).

VI. Conclusion

For the foregoing reasons, construing the evidence in the light most favorable to Plaintiff, the Court finds that there is no credible evidence in support of Plaintiff's claims against Defendant Moreno. Therefore, the Court grants Defendant Moreno's Motion for Expedited Relief. Judgment for attorney fees and costs is hereby awarded in favor of Defendant Moreno against Plaintiff in the amount of $76,672.38.

It is so ordered.

11/13/24

Date

Judge Joy Kennedy