

COPY

IN THE CIRCUIT COURT OF OVERTON COUNTY, TENNESSEE

JAMES MARK LEE,

Plaintiff,

vs.

Case No. 2020-CV-50

TONYA MITCHELL, ERICA
PAULENE TROUPE HARRIS,
TOSHA DANIELLE DISHMAN¹,
MICHAEL KINNAIRD, RONNIE
RUDD and CAROL ANN BILBREY
RUDD, individually and in their
capacity as the parents of
E.R., a minor child,

Defendants.

ORDER OF THE COURT²

This Cause came to be heard on the 7th day of June, 2021 at which time both sides argued the Defendants' Tennessee Public Participation (anti-SLAPP)³ motion.⁴ At the conclusion of the arguments, the Court granted the Plaintiff's motion to have the opportunity to take limited discovery. The Court then told both sides after reviewing the depositions, the Court would allow either side to file an additional law or make additional arguments if necessary. On November 9, 2021, the Court conducted a ZOOM hearing

¹ The Attorneys informed the Court that Tosha Danielle Dishman has been dismissed from this lawsuit.

² The Court explained to all parties that this was a very complicated case applying newly created law in Tennessee and all parties agreed to allow the Court more than the standard thirty (30) days to render a verdict due to the holidays and court schedule which is completely overbooked due to COVID.

³ Tennessee's Public Participation Act reverses the burden of proof to the Defendants to prevail in their motion, however the Court will continue to address the parties in their original designations. Mr. Lee will be referred to as Plaintiff and the original defendants (who have the burden of proof in this motion) will still be referred to as the numerous defendants in the plural or in their own names in their individual capacity.

⁴ While this case is under one umbrella, each defendant's fact pattern will be dealt with individually.

with the all the attorneys of record in this matter at which time Plaintiff's counsel stated that he did not wish to make any additional argument or file any additional law. The Defendants' attorneys stated that they wished for the Court to review the depositions of their clients, and this Court granted them additional time to file those depositions with the Clerk of this Court and send a courtesy copy to this Court. Based on the arguments made by counsel at the June hearing, the entire record and the depositions late filed in this matter the Court rules as follows:

Finding of Facts as to the Entire Case:

The Court finds as follows:

1. This is a Libel,⁵ Invasion of Privacy - False Light case governed by the First Amendment of the Constitution of the United States and Article 1 Section 19 of the Tennessee Constitution.⁶
2. The Plaintiff James Mark Lee, being a science teacher at Livingston Academy, is considered a "public figure" in the State of Tennessee.
3. James Mark Lee has been a teacher at Livingston Academy since August 1997.
4. The Defendants have filed a motion to dismiss pursuant to T.C.A. 20-17-101 (Tennessee Public Participation Act) which across the nation is commonly called an Anti-SLAPP motion.

⁵ Libel and slander are both forms of defamation, with "libel" being written defamation and "slander" being spoken defamation.

⁶ The Tennessee Cases on First Amendment violations track exactly with the U.S. Supreme Court cases so the Court for brevity will refer only to the U.S. Constitution in the remainder of this Order.

5. The burden of proof is on the Defendants to prove that they were exercising a Constitutionally protected right to speech under the Tennessee Public Participation Act.⁷
6. The Defendants made various oral and written statements about the Plaintiff in regard to his behavior toward certain female students attending his class.
7. James Mark Lee's accusers accuse him of: unwanted deliberate touching, leaning over, cornering or pinching, unwanted sexual looks or gestures, unwanted jokes, remarks or questions, sexual innuendos or stories, sexual comments about a person's clothing, anatomy or looks, touching clothing hair or body and hanging around a person.
8. Specifically, it is alleged that James Mark Lee:
 - a. Tried to look down girls' shirts,
 - b. Discussed his and his wife's sexual issues and marital problems,
 - c. Walked by a young girl and rubbed her arm,
 - d. Rubbed his head on a young girl's stomach,
 - e. Talked about young girls with "certain hips."
 - f. Stated to one female that her clothes made her look "slim, thick and nice" or that she was "PHAT" and "thick in a good way."
 - g. Publicly stated that he liked his women "thick."

⁷ In this motion, it is not for the Court to decide if the underlying statements of the alleged victims are true or false, but to determine if the statements made by the named Defendants against Mr. James Mark Lee are Constitutionally protected speech. However, the Court does recognize the fact that several former female students have consistently made eerily similar accusations against James Mark Lee.

- h. Told one young girl that he liked "the way her mouth moved and formed words."
 - i. Told one young girl that he liked the way she "walked and smiled."
 - j. Told the girls basketball team how pretty and well-built they were.
9. Chloe Neal reports that she pleaded with James Mark Lee to stop making statements about her in front of the entire classroom.
- a. She further reported that he told her "there is nothing your mother can do" and that he "liked the way she talked."
 - b. This led to her alleging that other school children publicly referred to her as "Mr. Lee's Whore."
10. Allegations by students of alleged harassment go back as far as 2003-2007.
11. The Plaintiff has denied any of this behavior occurred.
12. Several news agencies and media outlets published articles from March through July, 2020 about the criminal investigation, Mr. Lee's suspension and allegations by multiple students against Mr. James Mark Lee.
13. Since the story broke, even more accusers have come forward with similar allegations against Mr. James Mark Lee.
14. At least one teacher, Jeremy McLerran, came forward to speak to school officials about the Plaintiff's alleged behavior.
15. Jeremy McLerran came forward out of his concern for the students.

16. These allegations were investigated by the TBI, the District Attorney's Office and the Department of Children's Services (DCS).
17. No criminal charges were filled as the District Attorney Bryant Dunaway opined the that applicable statute of limitations had passed for the crime of simple assault (offensive touching).
18. However, District Attorney Bryant Dunaway stated that he believed Mr. James Mark Lee should not be a teacher and that he believed E.R.⁸
19. DCS found that this alleged behavior did not rise to the definition of abuse and neglect under Tennessee Law.
20. DCS did write in their report that they were investigating claims of sexual harassment against James Mark Lee.
21. The Overton County School system suspended James Mark Lee while this case was being investigated and eventually transferred him to a middle school with younger students.
22. The Defendants' motions have attached affidavits to their motion that go to the weight of the evidence defining alleged prior behavior of Mr. James Mark Lee which are incorporated into this Order by reference which are allowed to be considered on ruling on this Motion.

⁸ E.R. is the minor child of Ronnie and Carol Rudd who made allegations against James Mark Lee and posted a video which this Order will discuss.

23. Based on those affidavits, it is clear to this Court that several female students and one teacher have witnessed or been victim to alleged rude, offensive, lewd or perverted behavior of the Plaintiff.
24. Several female students, including parties to this lawsuit, have transferred out of James Mark Lee's classes, withdrew from school or changed their clothing choices based on his alleged lewd behavior.
25. Dr. Mark Lee Winningham, Director of Schools, had heard rumors of alleged inappropriate comments or actions made by the Plaintiff over the years, however shockingly never reported this to DCS nor contacted authorities because he did not know he needed to do so.
26. Principal Richard Melton, James Mark Lee's first cousin, stated that teacher Lee could not get along with his students and that he (Principal Melton) would not want his kids in James Mark Lee's classroom.
27. Assistant Vice-Principal Vickie Phillips stated that Plaintiff was a bully and/or pervert and was known for making inappropriate remarks toward young women for many years.
28. This Court is shocked that these many allegations (true or false) were made about the Plaintiff school teacher in a public school with little to no response, investigation or oversight from the school board, principals or anyone affiliated with the Overton County School System.

29. Early in 2020, the parents of school children and residents of Overton County grew infuriated over the lack of an investigation into this matter and a social media firestorm erupted together with official news media coverage.
30. As is typical in these types of cases, opinions on both sides of the issue formed in favor of and against Mr. James Mark Lee and his alleged actions.
31. The Defendants being sued individually in this action, except for the Rudd's being sued as parents of E.R., were reporting behavior that had been told by their daughters and other students at Livingston Academy or were giving their opinions of the reported conduct.
32. There are no allegations that the Plaintiff ever physically or sexually harmed any female student.
33. The students complaints of physical touching were offensive and inappropriate touching of the arm, massages and/or caresses.

Conclusions of Law as to the Entire Case

Based on the facts stated above, the Court makes the following Conclusions of Law:

1. The Court in reviewing the Tennessee Public Participation Act has determined that this motion is proper under T.C.A. 20-17-101 *et. seq.*
2. All of the speech complained of is protected speech under the First Amendment of the Constitution.

3. Application by state courts of a rule of law, whether statutory or not, to award a judgment in a civil action, is "state action" under the Fourteenth Amendment.
4. It is significant that the guarantee of freedom of speech and press falls between the religious guarantees and the guarantee of the right to petition for redress of grievances in the text of the First Amendment, the principles of which are carried to the States by the Fourteenth Amendment.
5. Libel can claim no talismanic immunity from constitutional limitations, but must be measured by standards that satisfy the First Amendment.
6. E.R., while being a minor in school, is still protected under the First Amendment of the Constitution.
7. The Defendants' claim they were not the only ones who made statements against the plaintiff is without merit as there is no law or requirement that a Plaintiff in a libel suit must track down and sue every person who defamed them.
8. As the Plaintiff is a public figure, the statements alleged will be reviewed under the New York Times standard which is where the statements under the actual malice standard of "false or with reckless disregard of whether it was false or not," by clear and convincing proof⁹. New York Times v. Sullivan, 376 U.S. 254 (1964).

⁹ In order to be "clear and convincing evidence," the evidence must eliminate any serious or substantial doubt about the correctness of the conclusions to be drawn from the evidence; such evidence should produce in the fact-finder's mind a firm belief or conviction as to the truth of the allegations sought to be established.

9. As a public figure, Mr. James Mark Lee bears a heavy burden of proof because of our society's commitment to the principle that debate on public issues should be uninhibited, robust and wide-open.
10. A vital part of free, wide-open and robust public debate protected by the First Amendment is deciding what issues should be debated, and no arm of the government, including the judiciary, should be able to set society's agenda for public debate.
11. Statements that cannot reasonably be interpreted as actual facts about an individual because they are expressed in loose, figurative, or hyperbolic language and/or because the content and tenor of the statements negate the impression that the author seriously is maintaining an assertion of actual fact about the plaintiff are not provably false, and as such, will not provide a legal basis for defamation.
12. There are no lesser or greater public figures under the law; therefore, a school teacher in Overton County is on par with the President of the United States, a Kardashian or any other public figure.
13. Actual error, content defamatory of official reputation, or both, are insufficient to warrant an award of damages for false statements unless "actual malice" -- knowledge that statements are false or in reckless disregard of the truth -- is alleged and proved.

14. The Plaintiff in this case is a public official, a school teacher, and as such the public has an independent interest in their qualifications and performance.
15. While the Plaintiff wants this Court to focus on one definition of alleged libelous words spoken about the Plaintiff, the Court finds that the English language is becoming more fluid and standard definitions of words or phrases earlier this year can change or take on new meanings based on culture and current events.
16. Legal definitions, medical definitions and other scientific definitions of a word make take on entirely different context or meaning than the common definition or use of a word.
17. All of the speech complained of by the Plaintiff was at worst characterization of published facts, hyperbole and/or exaggerated statements intended to make a point.
18. The record is replete with firsthand statements by E.R., Chloe Neal and other former students.
19. Any person with a cellphone and social media is considered a journalist today and as such receives the same Constitutional protection as a dedicated journalist.
20. Based on the evidence each individual defendant relied upon, at worst the words and phrases complained of by the Plaintiff comply with the common meaning and usages of these terms.
21. The opinions of the Defendants were based on reported facts for the basis of their opinions and as such are not actionable.

22. All statements of the Defendants in this matter were concerning a public official and involved a public concern of the young women attending Livingston Academy.
23. No statement complained of by the Plaintiff was made with actual malice.
24. The Plaintiff has not suffered any actual damages on behalf of the Defendant, because all of the statements complained of in his complaint occurred after the school board made their decision to suspend and subsequently transfer him.
25. The Plaintiff is not libel-proof, but the statements made by the Defendants are protected by the Constitution because they were not made with actual malice.
26. The Tennessee Educators Protection Act¹⁰ does not apply to this action as no defendant has filed any litigation on this matter except to respond to the Plaintiff's complaint.

Definitions

The Court finds these definitions to be valid definitions of the words complained of by the Plaintiff.

Sexual Harassment: uninvited and unwelcome verbal or physical behavior of a sexual nature especially by a person in authority toward a subordinate (such as an employee or student). "Sexual harassment." *Merriam-Webster.com Dictionary*,

¹⁰ There were brief oral arguments made about the Constitutionality of the Tennessee Educators Act, but this is not properly before the Court and the Court cannot address this matter because a three-judge panel was not requested pursuant to T.C.A. 20-18-101 *et. seq.* Since the Court has ruled this act does not apply in the current matter the issue is MOOT. This Court does opine that clearly this statute would never prevent a victim from legitimately seeking help for harassment, abuse or a crime committed by a teacher or in school.

Merriam-Webster, <https://www.merriam-webster.com/dictionary/sexual%20harassment>. Accessed 6 Dec. 2021.

What is Sexual Harassment: Attached Exhibit A. "What is Sexual Harassment." U.S. Equal Employment Opportunities Commission, <https://www.eeoc.gov/sexual-harassment> Accessed 6 Dec. 2021. Citing *Preventing Sexual Harassment (BNA Communications Inc.)* SPC IP. 73 1992 *manual*.

Sexual Predator: a person who has committed a sexually violent offense and especially one who is likely to commit more sexual offenses. "Sexual predator." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/sexual%20predator>. Accessed 2 Dec. 2021.

Sexual Predator: a person seen as obtaining or trying to obtain sexual contact with another person in a metaphorically "predatory" or abusive manner. Analogous to how a predator hunts down its prey, so the sexual predator is thought to "hunt" for his or her sex partners.

"Sexual Predator" *Wikipedia*, https://en.wikipedia.org/wiki/Sexual_predator Accessed 2 Dec. 2021 citing Katherine Ramsland, *Inside the Minds of Sexual Predators* (Santa Barbara, CA: ABC-CLIO, LLC, 2010).

Sexual Predator: a person who seeks out sexual contact with another person in a predatory or abusive manner. People who are sexual predators may or may not have

committed sex crimes — like sexual harassment, assault rape, and pedophilia — but all sexual predators have sought out inappropriate contact in one way or another. Dan Brennan, MD, "Signs of a Sexual Predator" *WebMD* <https://www.webmd.com/sex-relationships/signs-sexual-predator> Accessed 2 Dec. 2021

Signs of a Sexual Predator

Knowing how to identify the signs of sexual abuse and predatory behavior can help stop the abuse as soon as possible — or before any more harm can be done. *Not all of these warning signs indicate sexual abuse. However, they can act as a red flag for abusive, and possibly sexually predatory, behavior.*

1. Associating with Children

A sexual predator with a particular interest in children may show a preference for associating with grade school, middle school, or high school-aged children. They may have few friendships of their own age or have unusually close friendships with children.

In addition to spending a lot of time around children, they might also engage in inappropriate behaviors. For example, they may show an unusual interest in physical play with a child, like wrestling, tickling, kissing, or hugging.

2. Creating Dependency

A sexual predator may begin manipulating their chosen victim to create dependency and intimacy. In the beginning, they may be very attentive, showering the individual with gifts, praise, phone calls, and texts.

This creates a feeling in the victim that the perpetrator has a special bond with them. The victim may feel that the perpetrator can provide something nobody else can — and they are the only person who truly understands, respects, and cares for the victim. This builds loyalty and vulnerability, which the sexual predator can then use to their advantage.

3. Using Manipulative Language

You may notice a potential sexual predator using manipulative language. *They may insult or mock the victim on their behavior, appearance, clothes, friends, or other parts of their personal life.* When challenged on this

behavior, they may lie and twist the information, making the victim feel as though they are at fault. They may repeatedly focus on their own feelings in order to make the victim feel guilty for hurting them.

Some predators may also engage in gaslighting. Gaslighting is a form of emotional abuse where the perpetrator makes a person question their thoughts, memories, and events they have experienced. The goal of gaslighting is to force the victim to question their own memory, or even their sanity, in favor of the abuser's version of events.

4. Pushing Physical and Sexual Boundaries

Sexual predators may push past healthy boundaries. This behavior may begin with seemingly innocent touches on the back, hand, or leg. But it may escalate to inappropriate touching on the thigh, near the genitals, on breasts, or even fondling without the person's consent.

If the predator is already in a relationship with the victim, they may cross pre-established boundaries or fail to ask for consent. They may use manipulation to push the person to carry out tasks they are not comfortable with.

For children, this can look like rubbing the child's leg, drying them off with a towel, changing their clothes, hugging, or cuddling. This may then escalate to more sexual behavior.

Before doing so, the predator may introduce and normalize ideas of sex to the child. By talking to the child about sex, making suggestive jokes, showing them pornography, or encouraging them to be naked together, they may be able to introduce sexual activity by telling the child it's a "game".

5. Expressing Jealousy and Controlling Behavior

In many cases, the sexual predator may be jealous and controlling around friends, family members, or other romantic interests. *They may monitor the victim's social media activity, personal life, and day-to-day activities.*

This can be taken a step further, to the point where the predator becomes controlling. They may seek to limit the victim's contact with others, especially those of the opposite sex.

Id. emphasis added.

Pedophilia: Sexual perversion in which children are the preferred sexual object.

Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/pedophilia>. Accessed 6 Dec. 2021.

Pedophilia: In popular usage, the word *pedophilia* is often applied to any sexual interest in children or the act of child sexual abuse.

"Pedophilia." Wikipedia.com, <https://en.wikipedia.org/wiki/Pedophilia>. Accessed 6 Dec. 2021 citing: Gavin H (2013). *Criminological and Forensic Psychology*. SAGE Publications. p. 155. ISBN 978-1118510377. Retrieved July 7, 2018, Seto, Michael (2008). *Pedophilia and Sexual Offending Against Children*. Washington, D.C.: American Psychological Association. p. vii. ISBN 978-1-4338-2926-0 and Fagan PJ, Wise TN, Schmidt CW, Berlin FS (November 2002). "Pedophilia". *JAMA*. 288 (19): 2458–65. doi:10.1001/jama.288.19.2458. PMID 12435259.

INDIVIDUAL FINDING OF FACTS AND CONCLUSIONS OF LAW

Allegations Against Tonya Mitchell

The Allegations against Defendant Tonya Mitchell are contained in the Amended Petition paragraphs 20, 21, 22 and are incorporated into this Order by reference.

Finding of Facts for Tonya Mitchell ONLY

The Court finds as follows:

1. Tonya Mitchell is a mother of Chloe Neal, one of the children alleging sexual harassment from James Mark Lee.

2. Tonya Mitchell made all of the above allegations on social media.
3. For the purposes of this motion only, the Court is including Plaintiff's post that was outside the scope of the pleadings.
4. Tonya Mitchell had no firsthand knowledge of the allegations she posted.
5. Tonya Mitchell repeated statements made by her daughter some of which were made under oath.
6. Tonya Mitchell was giving her opinion and making conclusions as to the statements made by her daughter, other social media statements and the various other news reports.
7. Tonya Mitchell attributed all of her comments to her daughter who alleged this behavior occurred to her when she was a freshman in Mr. Lee's class in 2017.

Conclusions of Law for Tonya Mitchell ONLY

Based on the facts stated above, the Court makes the following Conclusions of Law:

1. Tonya Mitchell reported allegations made to her by her daughter.
2. Tonya Mitchell's source gave a creditable statement to Ms. Mitchell and even repeated her statement under oath to the TBI.
3. Based on the statements of her daughter and other the credible accusers, the statements and actions of Mr. Mark Lee do fit the current definitions of "sexual harassment" and are not baseless.

4. The statements that this behavior happened “everyday” if not completely true was simply mere hyperbole intended to make a point and thus is not actionable defamatory statements.
5. No statements reported or made by Tonya Mitchell were made with knowledge that the statement was false or with reckless disregard as to whether it was false or not.
6. Tonya Mitchell made these statements to warn the public of alleged sexual harassment of James Mark Lee.
7. The Court finds that Tonya Michell’s statements were a proper exercise of the right of free speech in regard to the safety of her child and the safety of the Overton County community at large, and were a matter of public concern being the Overton County School Board and a public official (James Mark Lee).

Allegations Against Erica Pauline Troupe Harris¹¹

Allegations against Erica Harris are contained in the Plaintiff’s Amended Complaint paragraphs 26, 27, 28, 29 and possibly 30 and are incorporated into this Order by reference.

Finding of Facts for Erica Harris ONLY

The Court finds as follows:

1. Erica Harris made all of the above allegations on social media.

¹¹ For the Remainder of this order, Erica Pauline Troupe Harris will be referred to as Erica Harris.

2. Erica Harris had no firsthand knowledge of the allegations she reported.
3. Erica Harris read news articles and formed an opinion that Mr. James Mark Lee was a "sexual predator" or "pedophile."
4. Erica Harris was giving her opinion as to what she read in the newspaper and based on the reported conduct concluded that Mr. James Mark Lee was a sexual predator and a pedophile.
5. Erica Harris also opined that Mr. James Mark Lee's license should be revoked and that he should not be allowed around underage girls.

Conclusions of Law for Erica Harris Only

The Court finds as follows:

1. Erica Harris made conclusory statements based on the reported behavior of Mr. James Mark Lee.
2. Erica Harris' remarks are not baseless, but are made in response to various credible sources and reports and personally speaking to an alleged victim, Chloe Neal.
3. The statements made by Erica Harris based on the statements made by the accusers conform with the current definitions of "sexual predator" and "pedophile."
4. The statement that Mr. James Mark Lee's license should be revoked and that he should not be allowed around underage girls is simply an opinion or hyperbole,

and an opinion about a public official is not libelous and is protected by the First Amendment.

5. The fact that one of Erica Harris' "friends" made a comment on her page is not actionable as to Erica Harris as the maker is not in control of Erica Harris.
6. Erica Harris made these statements to warn the public of alleged sexual harassment by James Mark Lee.
7. No statement made by Erica Harris was made with knowledge that the statement was false or with reckless disregard as to whether it was false or not, but was in fact based on several credible sources.
8. The Court finds that Erica Harris' statements were a proper exercise of the right of free speech in regard to the safety of the Overton County community at large, and were a matter of public concern being the Overton County School Board and a public official (James Mark Lee).

Allegations Against Michael Kinnaird

Allegations against Michael Kinnaird are contained in the Plaintiff's Amended Complaint paragraph 30 and is incorporated into this Order by reference.

Finding of Facts for Michael Kinnaird ONLY

The Court finds as follows:

1. Michael Kinnaird made one allegation on social media.

2. Mr. Kinnaird actually attended a semester of Mr. James Mark Lee's class between 1999 and 2002.
3. Mr. Kinnaird actually witnessed preferential treatment given to females in Mr. James Mark Lee's class over the males in the same class.
4. Mr. Kinnaird had no independent knowledge of the treatment of Chloe Neal, Tosha Dishman or E.R.
5. Michael Kinnaird read news articles and formed an opinion that Mr. James Mark Lee was a "sexual predator."
6. Michael Kinnaird actually defined his use of the term "sexual predator" as one who "preys on underage girls."
7. Michael Kinnaird's other statement about "Good Ole Boy mentalities" was in reference to others in the community and not Mr. James Mark Lee.
8. Michael Kinnaird was giving his opinion as to what he read in the newspaper and what he observed personally in class, and based on the reported conduct concluded that Mr. James Mark Lee was a sexual predator.

Conclusions of Law for Michael Kinnaird Only

The Court finds as follows:

1. Michael Kinnaird made conclusory statements based on the reported behavior of Mr. James Mark Lee.
2. Michael Kinnaird's remarks were not baseless, but were made in response to his own observations and various credible sources and reports.

3. The statements made by Michael Kinnaird based on the statements made by the accusers conform with the definitions of "sexual predator" and "pedophile" cited above.
4. The statement about the "Good Ole Boys" was not directed at Mr. James Mark Lee, but the Court finds this statement to be merely opinion or hyperbole about public officials and is protected under the First Amendment.
5. Michael Kinnaird made this statement to warn the public of alleged sexual harassment of James Mark Lee.
6. No statement made by Michael Kinnaird was made with knowledge that the statement was false or with reckless disregard as to whether it was false or not.
7. The Court finds that Michael Kinnaird's statements were a proper exercise of the right of free speech in regard to the safety of the Overton County community at large, and were a matter of public concern being the Overton County School Board and a public official (James Mark Lee).

Individual Allegations Against Ronnie Rudd and Carol Ann Bilbrey Rudd¹²

Allegations against Ronnie Rudd and Carol Rudd are contained in the Plaintiff's Amended Complaint paragraphs 31 through 33 and are incorporated into this Order by reference.

¹² For brevity the Court will refer to Carol Ann Bilbrey Rudd as Carol Rudd for the remainder of this Order.

**Finding of Facts for Individual Allegations against Ronnie Rudd
and Carol Rudd ONLY**

The Court finds as follows:

1. Ronnie Rudd and Carol Rudd are the parents of E.R., one of the numerous children who have complained of Mr. James Mark Lee's behavior.
2. Ronnie Rudd posted messages to Facebook which accused Mr. James Mark Lee of being a "sexual predator" and "sexually harassing" another student.
3. This posts were "shared" by his wife to her Facebook page.
4. Mrs. Carol Rudd grew up with Mr. James Mark Lee and said his nasty behavior toward women started when he was in school.
5. In response to their posts, several former students of Mr. James Mark Lee contacted Mrs. Carol Rudd and described in detail similar instances of harassment allegedly perpetrated by Mr. James Mark Lee.
6. Mr. Ronnie Rudd had been provided information that Mr. James Mark Lee had been on probation two years earlier for this same type of behavior.
7. After meeting with the principal and the Superintendent of Overton County schools, Mr. Ronnie Rudd received a phone call from Richard Melton saying, "It's done. He's gone."
8. However, three days later, Mr. James Mark Lee was seen by Mr. Ronnie Rudd in the school parking lot allegedly stalking his daughter E.R.

Conclusions of Law for Ronnie Rudd and Carol Rudd ONLY

The Court finds as follows:

1. Ronnie Rudd and Carol Rudd made conclusory statements based on the reported behavior of Mr. James Mark Lee and the word of their daughter.
2. Ronnie Rudd and Carol Rudd's remarks are not baseless, but are made in response their daughter's testimony and various credible sources and reports.
3. The statements made by Ronnie Rudd and Carol Rudd based on the statements made by the accusers conform with the definitions of "sexual predator" and "sexual harassment" cited above.
4. Ronnie Rudd and Carol Rudd made these statements to warn the public of alleged sexual harassment of James Mark Lee.
5. No statement made by Ronnie Rudd and Carol Rudd was made with knowledge that the statement was false or with reckless disregard as to whether it was false or not.
6. The Court finds that Ronnie Rudd and Carol Rudd's statements were a proper exercise of the right of free speech in regard to the safety of their child and the safety of the Overton County community at large, and were a matter of public concern being the Overton County School Board and a public official (James Mark Lee).

**Allegations Against Ronnie Rudd and Carol Ann Bilbrey Rudd as Parents of
E.R. a minor child**

Allegations against Ronnie Rudd and Carol Rudd, as Parents of E.R. a minor child, are contained in the Plaintiff's Amended Complaint paragraphs 39 and 40 and are incorporated into this Order by reference.

**Findings of Facts for Ronnie Rudd and Carol Ann Bilbrey Rudd as Parents of
E.R. a minor child**

The Court finds as follows:

1. Around the first of July, 2020, E.R. published a two-minute three-second video on her Facebook page which was shared by at least her father Ronnie Rudd.
2. In the video, E.R. seems to be reading a statement she prepared detailing the allegations of sexual harassment by James Mark Lee.
3. The video goes on to criticize the School Board's handling of this situation and her reactions to the alleged abuse.
4. Ronnie Rudd and Carol Rudd stated that they supported their daughter's decision to make and post this video one hundred percent.
5. Ronnie Rudd and Carol Rudd stated under oath that they did not help make, write or produce this statement.

Conclusions of Law for Ronnie Rudd and Carol Ann Bilbrey Rudd as Parents of

E.R. a minor child

1. The video was that of a now 15-year-old little girl who was trying to tell her story to protect others and make them aware of the abuse she alleges and who believed that the School Board of Overton County did almost nothing to redress her grievances and those of other young girls who complained of similar treatment.
2. The Court does not find a video that has 700+ views over several months to be viral.
3. The parents had no knowledge of what was being recorded by their daughter, but they supported whatever she did.
4. There are very few additional facts, if any, contained in the video that were previously expressed by E.R.
5. Any changes in the facts were at worst characterization of published facts, hyperbole and/or exaggerated statements intended to make a point and at best a fairly accurate representation of conduct E.R. reasonably believes happened.
6. All of the statements made by E.R. were made without actual malice and were dealing with a matter of public concern.
7. The Court finds that Ronnie Rudd and Carol Rudd's sharing and support of E.R.'s video were a proper exercise of the right of free speech in regard to the safety of their child and the safety of the Overton County community at large, and were a

matter of public concern being the Overton County School Board and a public official (James Mark Lee).

ORDER OF THE COURT

Based on the Finding of Facts and Conclusions of Law set out above, this Court pursuant to T.C.A. 20-17-101 *et. seq.* FINDS:

1. That the petitioning party (the original Defendants) have met their burden of making a prima facie case that they were properly exercising their right to free speech protected under the First Amendment of the United States Constitution and Article I Section 17 of the Constitution of Tennessee.
2. That the Complaint against the Defendants shall be **DISMISSED WITH PREJUDICE** because the Responding Party (original plaintiff) has failed to establish a prima facie case for each essential element of his claim foremost of these being Actual Malice.
3. That all the Defendants be awarded court costs, reasonable attorney's fees, discretionary costs and other expenses incurred in filing.
4. That those expenses shall be agreed to by the parties, or they will be set by the Court at a hearing on a later date.
5. That the Defendant be assessed sanctions of \$10,000.00¹³ to deter repetition of this conduct by James Mark Lee and others similarly situated who may file similar

¹³ The Court would assess more, but understands that the Plaintiff is a school teacher with limited income.

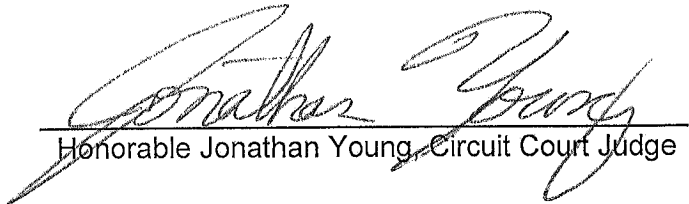
actions to try to embarrass and silence young women and their families who are alleged victims of sexual harassment by a school teacher.

6. The Court ORDERS the attorneys in this matter to file **ALL** of the Defendant's depositions and to download E.R.'s video to a thumb drive and file same with the Overton County Clerk's Office within ten (10) days of the date of this ORDER.

The Clerk of this Court shall certify and send a copy of this ORDER to all the attorneys now of record and to any party not represented by an attorney.

BE IT SO ORDERED.

This the 10th day of December, 2021.


Honorable Jonathan Young, Circuit Court Judge

Original mailed to:

Ms. Barbara Matthews
Circuit Court Clerk
1000 J. T. Poindexter Drive
Livingston, TN 38570

Copy mailed to:

Attorney for the Plaintiff

Mr. Larry Crain
Attorney at Law
5214 Maryland Way, Suite 402
Brentwood, TN 37027

**Attorney for Tonya Mitchell
and Tosha Dishman**

Mr. Randall A. York
Attorney at Law
46 North Jefferson Avenue
Cookeville, TN 38501

Attorney for Erica Pauline Troupe Harris

Ms. Dana Looper
Attorney at Law
165 East Spring Street
Cookeville, TN 38501

Attorney for Michael Kinnaird

Mr. Michael Giaimo
Attorney at Law
310 East Broad Street, Suite A
Cookeville, TN 38501

**Attorney for Ronnie Rudd
and Carol Ann Bilbrey Rudd**

Mr. Richard M. Brooks
Attorney at Law
130 Third Avenue West
Carthage, TN 37030

What is Sexual Harassment

What?

The EEOC has defined sexual harassment in its guidelines as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Unwelcome Behavior is the critical word. Unwelcome does not mean "involuntary." A victim may consent or agree to certain conduct and actively participate in it even though it is offensive and objectionable. Therefore, sexual conduct is unwelcome whenever the person subjected to it considers it unwelcome. Whether the person in fact welcomed a request for a date, sex-oriented comment, or joke depends on all the circumstances.

*Source: Preventing Sexual Harassment (BNA Communications, Inc.) SDC IP .73
1992 manual*

Sexual harassment includes many things...

- Actual or attempted rape or sexual assault.
- Unwanted pressure for sexual favors.
- Unwanted deliberate touching, leaning over, cornering, or pinching.
- Unwanted sexual looks or gestures.
- Unwanted letters, telephone calls, or materials of a sexual nature.

- Unwanted pressure for dates.
- Unwanted sexual teasing, jokes, remarks, or questions.
- Referring to an adult as a girl, hunk, doll, babe, or honey.
- Whistling at someone.
- Cat calls.
- Sexual comments.
- Turning work discussions to sexual topics.
- Sexual innuendos or stories.
- Asking about sexual fantasies, preferences, or history.
- Personal questions about social or sexual life.
- Sexual comments about a person's clothing, anatomy, or looks.
- Kissing sounds, howling, and smacking lips.
- Telling lies or spreading rumors about a person's personal sex life.
- Neck massage.
- Touching an employee's clothing, hair, or body.
- Giving personal gifts.
- Hanging around a person.
- Hugging, kissing, patting, or stroking.
- Touching or rubbing oneself sexually around another person.
- Standing close or brushing up against a person.
- Looking a person up and down (elevator eyes).
- Staring at someone.
- Sexually suggestive signals.
- Facial expressions, winking, throwing kisses, or licking lips.
- Making sexual gestures with hands or through body movements.

Examples

VERBAL

- Referring to an adult as a girl, hunk, doll, babe, or honey
- Whistling at someone, cat calls
- Making sexual comments about a person's body
- Making sexual comments or innuendos
- Turning work discussions to sexual topics
- Telling sexual jokes or stories
- Asking about sexual fantasies, preferences, or history
- Asking personal questions about social or sexual life
- Making kissing sounds, howling, and smacking lips
- Making sexual comments about a person's clothing, anatomy, or looks
- Repeatedly asking out a person who is not interested
- Telling lies or spreading rumors about a person's personal sex life

NON-VERBAL

- Looking a person up and down (Elevator eyes)
- Staring at someone
- Blocking a person's path
- Following the person
- Giving personal gifts
- Displaying sexually suggestive visuals
- Making sexual gestures with hands or through body movements
- Making facial expressions such as winking, throwing kisses, or licking lips

PHYSICAL

- Giving a massage around the neck or shoulders

- Touching the person's clothing, hair, or body
- Hugging, kissing, patting, or stroking
- Touching or rubbing oneself sexually around another person
- Standing close or brushing up against another person

Terminology

SEXISM is an attitude. It is an attitude of a person of one sex that he or she is superior to a person of the other sex.

For example, a man thinks that women are too emotional. Or a woman thinks that men are chauvinists.

SEX DISCRIMINATION is a behavior. It occurs when employment decisions are based on an employee's sex or when an employee is treated differently because of his or her sex.

For example, a female supervisor always asks the male employees, in a coed workplace, to move the boxes of computer paper. Or, a male supervisor always asks the female employees, in a coed workplace to plan office parties.

SEXUAL HARASSMENT is a behavior. It is defined as unwelcome behavior of a sexual nature.

For example, a man whistles at a woman when she walks by. Or a woman looks a man up and down when he walks towards her.

SUBTLE SEXUAL HARASSMENT is a behavior but not a legal term. It is unwelcome behavior of a sexual nature that if allowed to continue could create a QUID PRO QUO and/or a Hostile Work Environment for the recipient.

For example, unwelcome sexual comments, jokes, innuendoes.

QUID PRO QUO HARASSMENT is when employment and/or employment decisions for an employee are based on that employee's acceptance or rejection of unwelcome sexual behavior.

For example, a supervisor fires an employee because that employee will not go out with him or her.

HOSTILE WORK ENVIRONMENT is a work environment created by unwelcome sexual behavior or behavior directed at an employee because of that employee's sex that is offensive, hostile and/or intimidating and that adversely affects that employee's ability to do his or her job.

For example, pervasive unwelcome sexual comments or jokes that continue even though the recipient has indicated that those behaviors are unwelcome.