[Cite as *Holtrey v. Wiedeman*, 2023-Ohio-2440.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

TROY E. HOLTREY, et al.,	:	
		CASE NO. CA2023-01-011
Appellees,	:	
		O P I N I O N
	:	7/17/2023
- vs -		
	:	
DOUGLAS J. WIEDEMAN,	:	
Appellant.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 20 CV 93503

Smith, Meier & Webb, LPA, and John D. Smith, Andrew P. Meier, and Chase T. Kirby, for appellees.

Roetzel & Andress, LPA, and Nicholas P. Resetar, for appellant.

S. POWELL, P.J.

{¶ 1} Appellant, Douglas J. Wiedeman, appeals the judgment issued by the Warren County Court of Common Pleas after a jury found him liable for defaming appellee, Troy E.

Holtrey, a veteran teacher with over 30 years of teaching experience and the current head boys' tennis coach at Springboro High School located in Springboro, Warren County, Ohio. Wiedeman also appeals the trial court's decision enjoining him from continuing to defame Holtrey in the same manner for which the jury had found him liable. For the reasons outlined below, we affirm.

Facts and Procedural History

{¶ 2} On August 5, 2020, Holtrey filed a complaint against Wiedeman alleging four causes of action. One of those causes of action was a claim of defamation. To support this claim, Holtrey alleged Weideman had defamed him, and prevented him from being hired as the head coach of Springboro High School's varsity boys' basketball team for the 2020-2021 school year, by falsely accusing him of engaging in "criminal and/or improper conduct" that involved the "stealing and/or misappropriating of money" in connection with his prior roles as the school's varsity boys' basketball coach and/or the athletic director between the years 1991 to 2012.[1] Holtrey also requested in a separate cause of action the trial court to permanently enjoin Wiedeman from making any similar defamatory statements about him in the future. The other two causes of action set forth within Holtrey's complaint, false light invasion of privacy and loss of consortium, are not relevant to this appeal and will therefore not be discussed further within this opinion.

{¶ 3} On August 31, 2022, Wiedeman moved the trial court for summary judgment on Holtrey's defamation claim. Six weeks later, on October 14, 2022, the trial court issued a decision denying Wiedeman's motion for summary judgment upon finding genuine issues of material fact remained. In so doing, the trial court determined that, as a matter of law,

1. The record establishes that Holtrey was the head coach of the Springboro High School's varsity boys' basketball team from 1990 to 2011 and served as the Springboro School District's athletic director between 2008 to 2012.

Holtrey had "properly alleged" an actionable claim of defamation per se against Wiedeman based on Wiedeman's statements that Holtrey was "at the center" of an earlier embezzlement scandal involving the Springboro School District's athletic boosters. This was in addition to Wiedeman's statements that Holtrey was a "crook," and that Holtrey may have stolen money from the Springboro School District's concession stands in his role as the site manager for Springboro High School's football and volleyball games.[2] The trial court also determined that, as a matter of law, Holtrey should be classified as a "private person" for purposes of bringing his defamation claim against Wiedeman. This is in addition to the trial court finding, as a matter of law, that Wiedeman's statements about Holtrey were not subject to a qualified privilege.

{¶ 4} On November 7, 8, and 9, 2022, a three-day jury trial was held on Holtrey's defamation claim. During that trial, the jury heard testimony from a number of witnesses. This included testimony from the three individuals to whom Wiedeman had allegedly defamed Holtrey: a member of the Springboro Schools' Board of Education, Lisa Babb, and two former players who had played on the Springboro High School's varsity boys' basketball team, Zach Johnson and Seth Doliboa. Upon the conclusion of that three-day trial, the jury returned a verdict in Holtrey's favor, awarding him with $120 in compensatory damages.

{¶ 5} On November 14, 2022, the trial court issued a decision granting Holtrey's request for a permanent injunction against Wiedeman. In so doing, the trial court determined that, although Holtrey's request for such an injunction against Wiedeman would serve as a prior restraint on Wiedeman's speech:

> a judicial determination has now been made that Wiedeman's statements regarding Holtrey's alleged engagement in criminal or improper conduct involving the stealing or misappropriating

2. The details of that embezzlement scandal and the resulting fallout are readily accessible online via several news outlets. This includes two stories published in the *Dayton Daily News* entitled, "Ex-Springboro boosters treasurer gets jail time," and "The truth out, finally Holtrey speaks out," both of which are available for viewing at https://www.daytondailynews.com.

> of money during his career as head basketball coach or athletic director were defamatory.

The trial court therefore determined that "a limited injunctive remedy under closely defined procedural safeguards against statements made of the same nature as were involved in this case is permissible."

{¶ 6} On December 22, 2022, the trial court issued a judgment entry memorializing the jury's verdict and the nominal $120 award of compensatory damages to Holtrey. The trial court's entry also set forth its decision to grant Holtrey's request for a permanent injunction against Wiedeman. Specifically, as it relates to that injunction, the trial court forever enjoined Wiedeman as follows:

> Wiedeman is **ENJOINED** from publicizing any statements regarding [Holtrey] engaging in any criminal or improper conduct involving the stealing or misappropriating of any money during his career as head coach of the Springboro Boys' Basketball team or Athletic Director with the Springboro School District from 1991 to 2012.

{¶ 7} On January 20, 2023, Wiedeman filed a notice of appeal. Oral argument was held before this court on June 5, 2023. Wiedeman's appeal now properly before this court for decision, Wiedeman has raised two assignments of error for review.

Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT INCORRECTLY DENIED SUMMARY JUDGMENT.

{¶ 9} In his first assignment of error, Wiedeman argues the trial court erred by denying his motion for summary judgment as it related to the three fundamental issues presented in this case. Those three issues being whether, as a matter of law: (1) Holtrey was a "private person" for purposes of bringing his defamation claim against Wiedeman; (2) whether Wiedeman's statements about Holtrey presented an actionable defamation claim; and (3) whether Wiedeman's statements about Holtrey were subject to a qualified privilege. After setting forth the proper summary judgment standard of review, we will

address each of these three issues in turn.

Summary Judgment Standard of Review

{¶ 10} "Summary judgment is a procedural device used to terminate litigation when there are no issues in a case requiring a formal trial." *Franchas Holdings, L.L.C. v. Dameron*, 12th Dist. Clermont No. CA2015-09-073, 2016-Ohio-878, ¶ 16. "Civ.R. 56 sets forth the summary judgment standard." *State ex rel. Becker v. Faris*, 12th Dist. Clermont No. CA2020-10-058, 2021-Ohio-1127, ¶ 14. "Pursuant to that rule, a court may grant summary judgment only when (1) there is no genuine issue of any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) the evidence submitted can only lead reasonable minds to a conclusion that is adverse to the nonmoving party." *Spitzer v. Frish's Restaurants, Inc.*, 12th Dist. Butler No. CA2020-12-128, 2021-Ohio-1913, ¶ 6. "An issue is genuine only if the evidence is such that a reasonable jury could find for the non-moving party." *Abduhl v. Orange Village*, 8th Dist. Cuyahoga No. 82203, 2003-Ohio-4662, ¶ 14.

{¶ 11} "In determining whether a genuine issue of material fact exists, the evidence must be construed in favor of the nonmoving party." *Assured Admin., L.L.C. v. Young*, 12th Dist. Warren No. CA2019-04-039, 2019-Ohio-3953, ¶ 14, citing *Vanderbilt v. Pier 27, L.L.C.*, 12th Dist. Butler No. CA2013-02-029, 2013-Ohio-5205, ¶ 8. Therefore, when taken all together, summary judgment is proper only when "there is no genuine issue of material fact remaining for trial, the moving party is entitled to judgment as a matter of law, and reasonable minds can only come to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor." *Total Quality Logistics, L.L.C. v. JK & R Express, L.L.C.*, 12th Dist. Clermont No. CA2022-02-005, 2022-Ohio-3969, ¶ 17.

{¶ 12} This court reviews a trial court's decision to grant a summary judgment motion under a de novo standard. *Faith Lawley, L.L.C. v. McKay*, 12th Dist. Warren No. CA2020-

08-052, 2021-Ohio-2156, ¶ 26. This court also reviews a trial court's decision to deny a summary judgment motion under a de novo standard. *Hellmuth v. Hood*, 12th Dist. Butler No. CA2018-07-154, 2019-Ohio-4825, ¶ 17. A de novo standard of review requires this court to use the same standard that the trial court should have used. *Morris v. Dobbins Nursing Home*, 12th Dist. Clermont No. CA2010-12-102, 2011-Ohio-3014, ¶ 14. Generally, when an error is found in a trial court's decision granting a summary judgment motion, the trial court's decision is reversed and the matter is remanded to the trial court for further proceedings. *See, e.g., Ginn v. Stonecreek Dental Care*, 12th Dist. Fayette No. CA2016-10-014, 2017-Ohio-4370, ¶ 41.

{¶ 13} However, "any error in denying a summary judgment motion is rendered moot or harmless if the motion is denied due to the existence of genuine issues of material fact, and a subsequent trial results in a verdict in favor of the party who did not move for summary judgment." *Smith v. Ironwood*, 12th Dist. Warren Nos. CA2021-07-065 and CA2021-08-068, 2022-Ohio-875, ¶ 17. The same does not hold true in circumstances where the denial of the motion for summary judgment presents a purely legal question. *Clarkwestern Dietrich Bldg. Sys., L.L.C. v. Certified Steel Stud Assn., Inc.*, 12th Dist. Butler No. CA2016-06-113, 2017-Ohio-2713, ¶ 12. "When the alleged error in the denial of summary judgment is based purely on a question of law that must be answered without regard to issues of fact, the denial of summary judgment is reviewable." *Id.* at ¶ 13, citing *The Promotion Co., Inc./Special Events Div. v. Sweeney*, 150 Ohio App.3d 471, 2002-Ohio-6711, ¶ 15 (7th Dist.).

(1) Was Holtrey a "Private Person" for Purposes of Bringing his Defamation Claim?

{¶ 14} Initially, we address the question of whether Holtrey was, as a matter of law, a private person for the purpose of bringing his defamation claim against Wiedeman. Wiedeman argues that Holtrey should not have been classified as a private person, but

should have instead been classified, at a minimum, as a limited-purpose public figure. The trial court disagreed with Wiedeman and determined that, as it relates to this case, Holtrey should instead be considered a private person for purposes of bringing his defamation claim. We agree with the trial court.

{¶ 15} "There are four classifications for a plaintiff who alleges defamation." *Kassouf v. Cleveland Magazine City Magazines*, 142 Ohio App.3d 413, 421 (11th Dist.2001), citing *Talley v. WHO TV-7*, 131 Ohio App.3d 164, 169 (2d Dist.1998). "A defamation plaintiff may be classified as a private person, a public official, a public figure, or a limited-purpose public figure." *McPeek v. Leetonia Italian-Am. Club*, 174 Ohio App.3d 380, 2007-Ohio-7218, ¶ 11 (7th Dist.). "The difference in a defamation claim brought by a private individual versus a public figure lies not in the nature of the allegedly defamatory statement but rather in the degree of fault required to prove the claim." *Corso Ventures, L.L.C. v. Paye*, 10th Dist. Franklin No. 21AP-510, 2023-Ohio-127, ¶ 21. That is to say, "[c]lassification determines the plaintiff's burden of proof." *Reo v. Lindstedt*, 11th Dist. Lake Nos. 2019-L-073 and 2019-L-074, 2020-Ohio-6674, ¶ 62.

{¶ 16} "When a plaintiff is a private individual, the court applies a negligence standard; when a plaintiff is a public figure or a limited purpose public figure, the plaintiff must prove that the publisher acted with actual malice in publishing the alleged defamatory statement." *Sullins v. Raycom Media, Inc.*, 8th Dist. Cuyahoga No. 99235, 2013-Ohio-3530, ¶ 17, fn. 3. "The determination of whether a party is a private or public figure is a matter of law." *Ackison v. Gergley*, 5th Dist. Licking Nos. 2021 CA 00087 and 2021 CA 00089, 2022-Ohio-3490, ¶ 60. This includes the determination of whether a party is a limited-purpose public figure. *Brown v. Lawson*, 169 Ohio App.3d 430, 2006-Ohio-5897, ¶ 10 (1st Dist.).

{¶ 17} A limited-purpose public figure is "a person who becomes a public figure for a specific range of issues from which the person gains general notoriety in the community."

Spingola v. Stonewall Columbus, Inc., 10th Dist. Franklin No. 06AP-403, 2007-Ohio-381, ¶ 10. This occurs where an individual has either been drawn into or voluntarily injected themselves into a specific public controversy. *Curry v. Blanchester*, 12th Dist. Clinton Nos. CA2009-08-010 and CA2009-08-012, 2010-Ohio-3368, ¶ 44. This also occurs where an individual has thrust themself to the forefront of a particular public controversy in order to influence the resolution of the issues involved in that controversy. *Ackison*, 2022-Ohio-3490 at ¶ 61. "Whether a person is a limited purpose public figure is determined by examining that person's participation in the controversy from which the alleged defamation arose, and whether he has attained a general notoriety in the community by reason of that participation." *Talley*, 131 Ohio App.3d at 170. To do this, "'the court must determine that there is a public controversy; ascertain that the plaintiff played a sufficiently central role in that controversy; and find that the alleged defamation was germane to the plaintiff's involvement in the controversy.'" *Daubenmire v. Sommers*, 156 Ohio App.3d 322, 2004-Ohio-914, ¶ 89 (12th Dist.), quoting *Dameron v. Washington Magazine, Inc.*, 779 F.2d 736, 741 (D.C.Cir.1985). But, even then, an individual does not become a limited-purpose public figure because the allegedly defamatory statements create a controversy; the controversy must have existed prior to the statements. *Fuchs v. Scripps Howard Broadcasting Co.*, 170 Ohio App.3d 679, 2006-Ohio-5349, ¶ 34 (1st Dist.).

{¶ 18} As noted above, Wiedeman argues Holtrey should have been considered a limited-purpose public figure for purposes of bringing his defamation claim in this case. According to Wiedeman, this is because Holtrey is a "public employee" who teaches at Springboro High School and serves as the current head coach of the high school's boys' tennis team. Wiedeman argues that this is also because Holtrey played a "significant" part in the earlier embezzlement scandal involving the Springboro School District athletic boosters given Holtrey's roles as the head coach of the school's boys' basketball team

and/or the school district's athletic director between the years 1991 to 2012. To support this claim, Wiedeman cites this court's decision in *Daubenmire*, a case in which this court affirmed a trial court's decision finding the appellant in that case, David Daubenmire, was a limited-purpose public figure "based on the claim that appellees, in concert with others, used defamatory means in the spring of 1998 in an attempt to prevent the renewal of [his] football coaching contract." *Id.*, 2004-Ohio-914 at ¶ 2.

{¶ 19} Wiedeman argues this case is analogous to *Daubenmire* in that both cases involve "nearly identical factual backgrounds" to one another. However, unlike in *Daubenmire* where the controversy giving rise to the alleged defamation was focused on just one event, i.e., whether appellant's football coaching contract would be renewed, this case involves two wholly separate and distinct controversies that took place nearly a decade apart. We therefore agree with the trial court's finding that:

> In the case at hand, the controversy from which the alleged defamation arose is not, as Wiedeman argues, the [earlier] embezzlement scandal. * * * Rather, the controversy from which the alleged defamatory statements from Wiedeman arose was Holtrey's 2020 attempt to be hired as Springboro's boys' basketball coach.

{¶ 20} We also agree with the trial court's finding that just because Holtrey might be considered a limited-purpose public figure regarding the issues surrounding that earlier embezzlement scandal does not mean Holtrey continues to be a limited-purpose public figure whenever that scandal is mentioned. The fact that a person may have once been considered a limited-purpose public figure does not necessarily mean that person will always and forever be considered a limited-purpose public figure going forward. This is particularly true in this case when considering Wiedeman appears to be the only person who mentioned the existence of the prior embezzlement scandal after Holtrey applied for the open head coaching position for the Springboro High School's boys' basketball team.

Therefore, finding no error in the trial court's decision finding Holtrey was a private person for purposes of bringing his defamation claim against Wiedeman, Wiedeman's first argument lacks merit.

(2) Did Wiedeman's Statements about Holtrey Present an Actionable Defamation Claim?

{¶ 21} Next, we address the question of whether Wiedeman's statements about Holtrey presented an actionable defamation claim. Specifically, whether Wiedeman's statements that Holtrey was "at the center" of the earlier embezzlement scandal involving the Springboro School District's athletic boosters, that Holtrey was a "crook," and that Holtrey may have stolen money from the Springboro School District's concession stands were, in fact, defamatory. Wiedeman argues his statements about Holtrey were not defamatory, but were instead merely his personal opinion of Holtrey and his urging of others to "review the public records and come to their own conclusion" about Holtrey. The trial court disagreed and instead found Wiedeman's statements were defamatory in that they "imply Holtrey may be guilty of indictable criminal offenses of embezzlement and theft, which certainly involve moral turpitude," thereby properly alleging a cause of action for defamation per se where damages are presumed. We again agree with the trial court.

{¶ 22} "Defamation is a false publication that injures a person's reputation." *Ebbing v. Stewart*, 12th Dist. Butler No. CA2016-05-085, 2016-Ohio-7645, ¶ 12. "There are two forms of defamation: slander and libel." *Weidman v. Hildebrant*, 12th Dist. Warren No. CA2021-09-084, 2022-Ohio-1708, ¶ 19. "The term slander refers to spoken defamatory words and libel refers to written defamatory words." *Drone Consultants, L.L.C. v. Armstrong*, 12th Dist. Warren Nos. CA2015-11-107 and CA2015-11-108, 2016-Ohio-3222, ¶ 28, citing *Woods v. Capital Univ.*, 10th Dist. Franklin No. 09AP-166, 2009-Ohio-5672, ¶ 27. "[T]he essential elements of a defamation action, whether slander or libel, are that 'the defendant made a false statement, that the false statement was defamatory, that the false

defamatory statement was published, that the plaintiff was injured and that the defendant acted with the required degree of fault.'" *Heidel v. Amburgy*, 12th Dist. Warren No. CA2002-09-092, 2003-Ohio-3073, ¶ 14, quoting *Celebrezze v. Dayton Newspapers, Inc.*, 41 Ohio App.3d 343, 346-347 (8th Dist.1988). "To survive a motion for summary judgment in a defamation action, the plaintiff must make a sufficient showing of the existence of every element essential to his or her case." *Curry*, 2010-Ohio-3368 at ¶ 41. This includes, as set forth in the second essential element, the plaintiff making a sufficient showing that the defendant's false statements about the plaintiff were defamatory.

{¶ 23} A statement is defamatory if it "'reflects injuriously on a person's reputation, or exposes a person to public hatred, contempt, ridicule, shame or disgrace, or affects a person adversely in his or her trade, business or profession.'" (Internal brackets deleted.) *Anderson v. WBNS-TV, Inc.*, 158 Ohio St.3d 307, 2019-Ohio-5196, ¶ 80, quoting *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 7 (1995). "Defamation is either per se or per quod." *Montgomery v. Greater Cleveland Regional Transit Auth.*, 8th Dist. Cuyahoga No. 109559, 2021-Ohio-1198, ¶ 29. A statement constitutes defamation per se, and damages are presumed, where the statement consists of words that import an "indictable criminal offense involving moral turpitude or infamous punishment" or tend to "injure one in his [or her] trade or occupation." *Whiteside v. Williams*, 12th Dist. Madison No. CA2006-06-021, 2007-Ohio-1100, ¶ 5. "Whether certain statements alleged to be defamatory are actionable or not is a matter for the court to decide as a matter of law." *Webber v. Dept. of Pub. Safety*, 10th Dist. Franklin No. 17AP-323, 2017-Ohio-9199, ¶ 37. In determining whether a statement is actionable as defamation, "a court must review the totality of the circumstances, consider the statement within its context rather than in isolation, and determine whether a reasonable person would interpret that statement as defamatory. *Id.*, citing *Am. Chem. Soc. v. Leadscope, Inc.*, 133

Ohio St.3d 366, 2012-Ohio-4193, ¶ 79.

{¶ 24} In this case, Wiedeman made statements regarding Holtrey to three individuals. Those three individuals were Lisa Babb, a member of the Springboro Schools' Board of Education, and two former players who played on the Springboro High School's varsity boys' basketball team, Zach Johnson and Seth Doliboa. As noted above, the statements Wiedeman made to these three individuals included Wiedeman claiming that Holtrey was "at the center" of the aforementioned embezzlement scandal involving the Springboro School District athletic boosters. The statements also included Wiedeman claiming that Holtrey was a "crook," and that Holtrey may have stolen money from the Springboro school district's concession stands. Despite Wiedeman's claims, we agree with the trial court's decision finding these statements "imply Holtrey may be guilty of indictable criminal offenses of embezzlement and theft, which certainly involve moral turpitude," thus constituting an actionable defamation per se claim where damages are presumed. Therefore, finding no error in the trial court's decision finding Wiedeman's statements about Holtrey were, in fact, defamatory, Wiedeman's second argument also lacks merit.

(3) Were Wiedeman's Statements About Holtrey Subject to a Qualified Privilege?

{¶ 25} Lastly, we address the question of whether Wiedeman's statements about Holtrey were subject to a qualified privilege. Wiedeman argues his statements were subject to that privilege, thereby absolving him from liability as a matter of law. The trial court disagreed and so do we.

{¶ 26} "Qualified privilege does not provide immunity from suit, but rather it is an attack on the merits of a defamation * * * claim." *Morelia Group-De, L.L.C. v. Weidman*, 1st Dist. Hamilton No. C-22-0153, 2023-Ohio-386, ¶ 36. Thus, where the plaintiff establishes a prima facie case of defamation, the defendant may invoke a qualified privilege as a defense. *Scott v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 22AP-387, 2023-

Ohio-1647, ¶ 30. "The defense of qualified privilege is deeply rooted in public policy." *A & B-Abell Elevator Co.*, 73 Ohio St.3d at ¶ 8. "'The purpose of a qualified privilege is to protect speakers in circumstances where there is a need for full and unrestricted communication concerning a matter in which the parties have an interest or duty.'" *Tharp v. Hillcrest Baptist Church of Columbus*, 10th Dist. Franklin No. 22AP-231, 2022-Ohio-4695, ¶ 53, quoting *Austin v. Peterson*, 9th Dist. Medina No. 2735-M, 1999 Ohio App. LEXIS 27, *6 (Jan. 13, 1999).

{¶ 27} "'The elements necessary to establish the privilege are good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.'" *Sygula v. Regency Hosp. of Cleveland E.*, 8th Dist. Cuyahoga No. 103436, 2016-Ohio-2843, ¶ 22, quoting *Kanjuka v. MetroHealth Med. Ctr.*, 151 Ohio App.3d 183, 2002-Ohio-6803, ¶15 (8th Dist.). "'Where the circumstances of the occasion for the alleged defamatory statement are not in dispute, the determination of whether there is a qualified privilege is a question of law for the trial court.'" *Weaver v. Deevers*, 11th Dist. Portage no. 2020-P-0087, 2021-Ohio-3791, ¶ 24, quoting *Lakota Loc. School Dist. Bd. of Edn. v. Brickner*, 108 Ohio App.3d 637, 647 (6th Dist.1996).

{¶ 28} It is well established that, "[a]s a matter of public policy, educators and parents share a common interest in the training, morality and well-being of the children in their care." *McCartney v. Oblates of St. Francis deSales*, 80 Ohio App.3d 345, 356 (6th Dist.1992). Wiedeman, however, did not have any children enrolled within the Springboro School District, let alone any boys who could have potentially played on Springboro High School's varsity boys' basketball team. Wiedeman had also not taken any issue with Holtrey serving as the head coach of the Springboro boys' tennis team. The same is true as it relates to Holtrey serving as the site manager in charge of managing the games for Springboro High School's volleyball and football teams, or with Holtrey teaching the students who attended

Springboro High School during his over 31 years of service.

{¶ 29} Rather, as the record indicates, Wiedeman was only concerned with whether Holtrey would be rehired as the head coach of Springboro High School's varsity boys' basketball team because he did not think Holtrey was a good basketball coach. Wiedeman admitted as much as part of his deposition testimony. Specifically, as Wiedeman testified during his deposition:

> I didn't think he was a very good basketball coach. I had watched him enough coaching over, you know, 20-some years that he just made a lot of questionable decisions, weren't very smart decisions, misplayed players. Always seemed to lose games we should have won.

{¶ 30} Given this testimony, the trial court determined that Wiedeman was unable to establish a qualified privilege because "Wiedeman's publication was made in a manner with a clear intention of preventing Mr. Holtrey from being hired and not to protect the sanctity of Springboro Schools." We agree. Therefore, finding no error in the trial court's decision finding Wiedeman's statements about Holtrey were not subject to a qualified privilege, Holtrey's third argument likewise lacks merit. Accordingly, having found no merit to any of the three arguments raised by Wiedeman herein, Wiedeman's first assignment of error lacks merit and is overruled.

Assignment of Error No. 2:

{¶ 31} THE TRIAL COURT INCORRECTLY ORDERED PRIOR RESTRAINT OF WIEDEMAN'S FIRST AMENDMENT RIGHTS.

{¶ 32} In his second assignment of error, Wiedeman argues the trial court erred by granting Holtrey's request for a permanent injunction forever enjoining him from:

> publicizing any statements regarding [Holtrey] engaging in any criminal or improper conduct involving the stealing or misappropriating of any money during his career as head coach of the Springboro Boys' Basketball team or Athletic Director with the Springboro School District from 1991 to 2012.

To support this claim, Wiedeman argues the trial court's injunction places an unconstitutional prior restraint upon his First Amendment right to the freedom of speech. We disagree.

Permanent Injunction Rule of Law and Standard of Review

{¶ 33} "Injunctive relief is an equitable remedy that is available only where there is no adequate remedy at law." *Dunning v. Varnau*, 12th Dist. Brown Nos. CA2016-09-017 and CA2016-10-018, 2017-Ohio-7207, ¶ 26, citing *Haig v. Ohio State Bd. of Edn.*, 62 Ohio St.3d 507, 510 (1992). In order to obtain a permanent injunction, the applicant must show by clear and convincing evidence that immediate and irreparable harm will result to the applicant. *McNamara v. Wilson*, 12th Dist. Butler No. CA2013-12-239, 2014-Ohio-4520, ¶ 43, citing *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267-268 (1st Dist.2000). This requires the trial court to "engage in a balancing process designed to weigh the equities between the parties in determining whether or not injunctive relief is appropriate." *Skinkiss v. Gleeson*, 12th Dist. Warren Nos. CA2006-12-143 and CA2006-12-147, 2008-Ohio-356, ¶ 12. This analysis involves the trial court "considering and weighing 'the relative conveniences and comparative injuries to the parties which would result from the granting or refusal of injunctive relief.'" *Id.*, quoting *Miller v. West Carrollton*, 91 Ohio App.3d 291, 296 (2d Dist.1993).

{¶ 34} "The decision whether to grant or deny a permanent injunction rests within the sound discretion of the trial court and depends upon the facts and circumstances present in each individual case." *Busch v. Vosler*, 12th Dist. Preble No. CA9609-014, 1997 Ohio App. LEXIS 2231, *6 (May 27, 1997), citing *Garono v. State*, 37 Ohio St.3d 171, 173 (1988); and *Lemley v. Stevenson*, 104 Ohio App.3d 126, 136 (6th Dist.1995). "An abuse of discretion 'implies not merely an error of judgment, but perversity of will, passion, prejudice,

partiality, or moral delinquency.'" *State ex rel. Fisher v. Rose Chevrolet*, 98 Ohio App.3d 611, 613 (12th Dist.1994), quoting *State ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster*, 22 Ohio St.3d 191, 193 (1986). Thus, "[a] decision constitutes an abuse of discretion when the trial court acted unreasonably, arbitrarily, or unconscionably." *Wells Fargo Bank v. Maxfield*, 12th Dist. Butler No. CA2016-05-089, 2016-Ohio-8102, ¶ 32, citing *Bank of Am., N.A. v. Jackson*, 12th Dist. Warren No. CA2014-01-018, 2014-Ohio-2480, ¶ 9. "'A decision is unreasonable if there is no sound reasoning process that would support that decision.'" *Stidham v. Wallace*, 12th Dist. Madison No. CA2012-10-022, 2013-Ohio-2640, ¶ 8, quoting *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990).

Permanent Injunction as a Prior Restraint Upon One's Freedom of Speech

{¶ 35} "Like statutes that regulate speech, court-ordered injunctions that regulate speech are also subject to First Amendment scrutiny." *Bey v. Rasawehr*, 161 Ohio St.3d 79, 2020-Ohio-3301, ¶ 24. This type of injunction is generally referred to as a "prior restraint" upon one's freedom of speech. "The term 'prior restraint' is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.'" *Alexander v. United States*, 509 U.S. 544, 550, 113 S.Ct. 2766, quoting Nimmer, *Nimmer on Freedom of Speech*, Section 4.03, 4-14 (1984). Permanent injunctions, i.e., court orders that actually forbid speech activities, are "classic examples" of prior restraints upon one's speech. *Seven Hills v. Nations*, 76 Ohio St.3d 304, 307 (1996). "Although prior restraints are not unconstitutional per se, there is a heavy presumption against their constitutional validity." *State ex rel. Toledo Blade Co. v. Henry Cty. Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533, ¶ 21. This is because "'prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.'" *Tory v. Cochran*,

544 U.S. 734, 738, 125 S.Ct. 2108 (2005), quoting *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559, 96 S.Ct. 2791 (1976).

Wiedeman's Argument and Analysis

{¶ 36} As noted above, Wiedeman argues the trial court's decision granting Holtrey's request for a permanent injunction places an unconstitutional prior restraint upon his First Amendment right to the freedom of speech. However, while the trial court's decision undoubtedly placed a prior restraint upon Wiedeman's speech, the injunction issued by the trial court in this case was extremely limited and narrowly tailored so that it merely enjoined Wiedeman from ever again:

> publicizing any statements regarding [Holtrey] engaging in any criminal or improper conduct involving the stealing or misappropriating of any money during his career as head coach of the Springboro Boys' Basketball team or Athletic Director with the Springboro School District from 1991 to 2012.

{¶ 37} That is to say, the trial court's decision and resulting injunction did nothing more than bar Wiedeman from continuing to defame Holtrey in the same manner the jury had already found him liable. This was not an error for it is well established that "the First Amendment does not protect any individual who knowingly makes false statements or expresses opinions that imply false statements of fact." *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 2003-Ohio-4048, ¶ 15. It is equally well established that "actionable categories of defamation are 'not within the area of constitutionally protected speech.'" *Gibson Bros. v. Oberlin College,* 9th Dist. Lorain Nos. 19CA011563 and 20CA011632, 2022-Ohio-1079, ¶ 5, quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 382, 112 S.Ct. 2538 (1992).

{¶ 38} Moreover, as noted by the Ohio Supreme Court, "before a court may enjoin the future publication of allegedly defamatory statements based on their content, there must first be a judicial determination that the subject statements were in fact defamatory." *Bey*, 2020-Ohio-3301 at ¶ 44, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio

St.2d 242, 246 (1975). That is exactly what occurred here. Therefore, because we can find no error in the trial court's decision granting Holtrey's request for a permanent injunction forever enjoining Wiedeman in the manner that it did, Wiedeman's second assignment of error also lacks merit and is overruled.

Conclusion

{¶ 39} For the reasons outlined above, and finding no merit to any of the arguments raised by Wiedeman herein in support of either of his two assignments of error, Wiedeman's appeal is denied.

{¶ 40} Judgment affirmed.

PIPER, J., concurs.

BYRNE, J., concurs in judgment only.