

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**TWO RIVERS PUBLIC CHARTER
SCHOOL, *et al.*,**

Plaintiffs,

v.

ROBERT WEILER, JR., *et al.*,

Defendants.

Civil Action No. 2015 CA 009512 B

**Civil II, Calendar No. 7
Judge Jeanette J. Clark**

**Next Court Event:
Initial Conference
March 11, 2016, 9:30 AM**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
LARRY CIRIGNANO'S SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant LARRY CIRIGNANO ("Cirignano"), pursuant to SCR Civil 12-I(e), submits this memorandum of points and authorities in support of his Special Motion to Dismiss Plaintiffs' Complaint (the "Cirignano Motion") under D.C. Code § 16-5502 (the "Anti-SLAPP Act").

PRELIMINARY STATEMENT

Cirignano incorporates herein by this reference the Memorandum of Points and Authorities in Support of Defendant Ruby Nicdao's Special Motion to Dismiss Plaintiffs' Complaint (the "Nicdao Memorandum"), in its entirety. The Nicdao Memorandum supports dismissal as to Cirignano with even greater force and effect because, as shown herein, Plaintiffs allege minimal actual conduct by Cirignano, which conduct is protected expressive activity on its face, and the Declaration of Larry Cirignano filed in support hereof (Exhibit 1, the "Cirignano Declaration") shows there was no agreement or other coordination by which any alleged conduct by any other Defendant can be imputed to Cirignano. Set forth below are points and authorities specific to the

Cirignano Motion, which points and authorities supplement the Nicdao Memorandum, and are supported by the Cirignano Declaration.²

FACTUAL BACKGROUND

Plaintiffs Complaint alleges conduct by five named Defendants and multiple unnamed Defendants, on five separate occasions. (Compl. at 11-21.) But the only specific allegation of conduct by Cirignano—in the entire Complaint—is the allegation that on November 23, 2015,

Defendant Larry Cirignano stood right near the entrance of the middle school and held a sign that measured approximately 4' by 5' that said “Not 4 Sale” and depicted a gruesome picture of an aborted fetus and various body parts.

(Compl., ¶ 54.)

Plaintiffs’ other allegations of conduct either refer only to other specific Defendants or persons, or generally refer to various, undefined groups of “Defendants” in a conclusory fashion. (*See, e.g.*, Compl., ¶ 79 (“Defendants have engaged in extreme and outrageous conduct.”), ¶ 80 (“Defendants’ conduct is unquestionably intentional”), ¶ 81 (“Defendants’ conduct has caused”).) Although Plaintiffs variously allege yelling, shouting, following, obstructing, and interfering with kids, none of these allegations include Cirignano. Without any supporting factual averments, however, Plaintiffs include a conclusory allegation that all Defendants “entered into a conspiracy.”³ (Compl., ¶ 86.)

² Cirignano will also file a standard motion to dismiss Plaintiffs’ Complaint under SCR Civil 12(b)(6) on or before his current deadline of February 5, 2016.

³ Plaintiffs’ allegations are only verified as to Plaintiffs’ activities. (Compl. at 29.) Thus, Plaintiffs’ “conspiracy” allegation is unverified, and cannot stand against Cirignano’s express, verified denial of any involvement with the alleged activities of any other Defendant or person, and express, verified denial of any agreement or coordination with any other person as to Cirignano’s own activities. (Cirignano Decl., ¶¶ 2, 7.)

Cirignano was present on the public ways adjacent or near to the Two Rivers Charter School on November 23, 2015 (Cirignano Decl., ¶ 4.) At that time, Cirignano stood “in place, displaying a sign comprising a photograph accurately depicting a human baby who had been killed and partially dismembered by the practice of abortion (Cirignano Decl., ¶ 6), a fact which Plaintiffs do not dispute (*see* Compl., ¶ 54). Cirignano also “spoke to occasional passers-by.” (Cirignano Decl., ¶ 6.) Cirignano’s activities, however, were his own; he “did not enter into any agreement or otherwise coordinate with any other person either the method or the content of [his] or any other person’s expressive activities” (Cirignano Decl., ¶ 7.) Furthermore, Cirignano was not present on any of the other days on which other Defendants are alleged to have been at the school, and had no involvement in any of their alleged conduct. (Cirignano Decl., ¶ 2.)

Cirignano’s purpose on November 23, 2015, was to “exercise [his] right of advocacy on issues of public interest: the construction of a new Planned Parenthood facility . . . and Planned Parenthood’s practice of killing innocent children in the womb.” (Cirignano Decl., ¶ 4.) “The goals of [his] expressive activities were to advocate against Planned Parenthood and the killing of innocent children by the practice of abortion, to inform the community surrounding the new facility of the record and practices of Planned Parenthood, and to encourage the community to likewise advocate against Planned Parenthood.” (Cirignano Decl., ¶ 5.)

Cirignano never trespassed on private property, or otherwise broke any laws. Nor did Cirignano chase, follow, or otherwise target his expressive activities towards, children. (Cirignano Decl., ¶ 8.) Rather, Cirignano’s intended audience was the entire community surrounding the Planned Parenthood facility under construction between the school buildings. (Cirignano Decl., ¶¶ 4, 5.)

ARGUMENT

As demonstrated in the Nicdao Memorandum, expressive activities like the undisputed activities of Cirignano are protected by both the Anti-SLAPP Act and the First Amendment. (Nicdao Mem. at 3-6, § I.) The fact that the allegedly offending activity of Cirignano was the display of a pictorial sign with text, as distinguished from the alleged verbal speech and leafletting of Defendant Nicdao, makes no legal difference. (*See* Nicdao Mem. at 6.) In *Snyder v. Phelps*, 562 U.S. 443 (2011), the Supreme Court held that the respondents’ “signs” or “placards” were “entitled to ‘special protection’ under the First Amendment” because the speech conveyed by the signs “was at a public place on a matter of public concern.” 562 U.S. at 454, 458. Whether considered under the Anti-SLAPP Act or the First Amendment, Cirignano’s standing in a public place, displaying his sign addressing a matter of public concern, is protected speech. And the Anti-SLAPP Act in particular requires the immediate dismissal of Plaintiffs’ claims which target that protected speech unless Plaintiffs can show a likelihood of success on the merits of their claims.

As also demonstrated by the Nicdao Memorandum, however, Plaintiffs cannot show a likelihood of success on the merits. (Nicdao Mem. at 6-15, § II.) As a threshold matter, Plaintiffs cannot establish standing to assert claims of intentional infliction of emotional distress (“IIED”) on behalf of their students, and the failure of the IIED claim necessarily means the failure of Plaintiffs’ private nuisance claim as well. (Nicdao Mem. at 7, 12, §§ II.A, II.B.2.) Beyond this threshold matter, even if Plaintiffs could reinvent standing and proceed, Cirignano’s expressive activities are not actionable on an IIED or nuisance theory as a matter of law, for the same reasons given by Nicdao as to her activities. (Nicdao Mem. at 7-13, §§ B.1, 2.) To be sure, Plaintiffs’ likelihood of success is even lower with respect to their purported IIED and nuisance claims against Cirignano.

Actionable IIED requires proof of “extreme and outrageous conduct” which causes “severe emotional distress.” *Ortberg v. Goldman Sachs Grp.*, 64 A.3d 158, 163 (D.C. 2013). No reasonable reading of the Complaint connects Cirignano to any allegation of either. The single instance of a child allegedly feeling “sick,” which is the only allegation even approaching the level of “severe emotional distress” required to support an IIED claim, was tied specifically to a particular “incident” not even alleged to involve Cirignano: “One student was so upset by **this incident** that he began to feel sick and had to go home.” (Compl., ¶ 61 (emphasis added).) The “incident” referred to was described two paragraphs before: “**Other individuals** held large signs on the narrow sidewalk between the alley and a driveway, making it difficult for parents and students to pass by and enter the middle school building.” (Compl., ¶ 59 (emphasis added).) There is no connection between “the incident” involving unnamed “individuals” and Cirignano’s conduct. Thus, the sole alleged instance of physical illness cannot form the basis of an IIED claim against Cirignano.

Furthermore, even if Plaintiffs’ could somehow reimagine Cirignano’s expressive activity as “extreme and outrageous conduct,” *see Ortberg*, 64 A.3d at 164, it nonetheless could not advance their IIED claim because of the special First Amendment protection enjoyed by Cirignano’s activity. Where speech occurs at a “public place on a matter of public concern, that speech is entitled to ‘special protection’ under the First Amendment.” *Snyder*, 562 U.S. at 458. Where such “special protection” under the First Amendment applies, “that protection cannot be overcome” by a finding that the expression was outrageous. *Id.*

Finally, for the same reasons applied by Nicdao as to her conduct, Plaintiffs cannot establish “substantial harm” to their school as a result of Cirignano’s expressive activities, such as would be required to support a claim for nuisance (Nicdao Mem. at 12-13, § II.B.2.), and any

injunction against Cirignano's expressive conduct would be an unconstitutional prior restraint on speech (Nicdao Mem. at 14-15, § II.C).

CONCLUSION

For all of the foregoing reasons, the Cirignano Motion should be granted, and Plaintiffs' claims dismissed, with prejudice, as to Cirignano.

DATED this February 1, 2016

Respectfully submitted:

/s/ Mathew D. Staver

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