

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

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

Plaintiffs,

v.

ROBERT WEILER, JR., et al.,
3203 Maygreen Ave
Forestville, MD 20747
(301) 310-2798
weilerrobertjr@gmail.com

Defendants.

Case No.: 2015 CA 009512 B

Judge: Judge Jeanette J Clark

Next Event: Initial Conference
March 11, 2016

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT
ROBERT WEILER JR.'S SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendant Robert Weiler, Jr., *pro se*, submits this Memorandum of Points and Authorities in support of his Special Motion to Dismiss Plaintiffs' Complaint.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are the Two Rivers Public Charter School and its Board of Trustees. (Compl. At Page 2.) They bring two claims, one for intentional infliction of emotional distress and one for private nuisance/conspiracy to commit private nuisance. (*Id. at Page 1.*) They assert that their purpose is "to protect the well-being of the students" of the school from the Defendants' demonstrations against the construction of a Planned Parenthood facility across the street from the Two Rivers Middle School and next door to Two Rivers Elementary School. (*Id. at Page 2.*) The Complaint alleges that on four occasions, August 27, 2015, November 16, 2015, November 23, 2015, and December 07, 2015, a few individuals have appeared on the public ways nears the

schools and displayed signs, distributed leaflets, and orally expressed their opposition to Planned Parenthood, its practices of offering abortions, and the erection of the facility at that location. (*Id.* at Paragraphs 33-66.) Significantly, Weiler was present on only one of those four days, November 16, 2015, and he is substantively mentioned only once in the entire Complaint¹ (See *id.* at ¶ 41).

The Complaint alleges that Weiler held “A banner measuring approximately 8’ by 3’ [that] read: ‘The kill babies nearby! Tell your parents to stop them.’” (See *id.* at ¶¶ 40&41). Weiler never yelled anything at any person on this occasion, nor does the complaint allege that he did. Weiler never held a sign graphically depicting a dead fetus on this occasion, nor does the complaint allege that he did. Holding a banner on a public sidewalk is the only action directly attributed Weiler in the complaint.

Moreover, Weiler was not even present on August 27, November 23, or December 2 2015, and he had nothing to do with the alleged actions of those who were alleged to have been present on those days. Accordingly, the activities alleged to have occurred on those days cannot be held against Weiler.²

Weiler’s activities were constitutionally protected speech and expressive conduct in a traditional public forum. Plaintiffs’ attempt to censor him by means of a content-based restriction on speech is a direct violation of the District of Columbia’s Anti-SLAPP Act. For this reason, and

¹ The mentions of Weiler’s previous convictions and arrests have no bearing on this case, are entirely irrelevant, and clearly mentioned to attempt to vilify Weiler, and by association, the other defendants in this case.

² Plaintiffs’ naked allegation of conspiracy, without more, is insufficient as a matter of law. See, e.g., *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007).

because Plaintiffs lack standing and are otherwise unable to show a likelihood of success on the merits, Plaintiffs' injunction should be denied and their Complaint dismissed with prejudice.

ARGUMENT

Weiler incorporates herein by this reference the Memorandums of Points and Authorities in Support of Special Motions to Dismiss filed by Defendants Larry Cirignano and Ruby Nicdao, through their attorneys (hereafter "Cirignano Memo." and "Nicdao Memo.").

The Nicdao and Cirignano Memorandums support dismissal as to Weiler with even greater force and effect as the Plaintiffs' allegations specific to Weiler pale in comparison to those leveled against Cirignano and Nicdao. Weiler has not been accused of following or shouting at or to any person, as Ms. Nicdao has (*See Compl.* ¶¶ 57-58), or of holding any graphic sign as Mr. Cirignano has (*See Id.* ¶ 54). The only allegation specific to Weiler is in Paragraphs 40 and 41 of the Plaintiffs' complaint and consists of Weiler holding a text based banner on a public sidewalk.

Weilers' Declaration attached hereto as "Exhibit 1" establishes a prima facie showing that his activity was in furtherance of his right to advocacy on an issue of public interest, and therefore entitled to the protections of the Anti-SLAPP Act (District of Columbia Code § 16-5502). It is therefore incumbent on the Plaintiffs to show a likelihood of success on the merits or the Court must dismiss the Complaint, with prejudice. The Points and Authorities for this are contained in Ms. Nicdao's Memorandum and are incorporated here by reference. (*See Nicdao Memo.* Section I (on pages 3-6))

For the reasons set forth in the Cirignano and Nicdao Memorandums, incorporated here by reference, the Plaintiffs cannot show a likelihood of success on the merits. (*See Cirignano Memo.* Page 4; also *see Nicdao Memo.* Section II (on Pages 6-15)). In fact, Plaintiffs are even less

able to show a likelihood of success against Weiler. Since the Plaintiffs will be unable to meet the high bar of their IIED claim, and do not have standing to assert such claims on behalf of their students, their claim of nuisance necessarily fails (*See Nicdao Memo. at 6-15 (§II)*).

Actionable IIED claims require 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 Weiler 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 Weiler, and occurred on a date that Weiler is not even alleged to have been present (*See Compl. ¶¶ 59-61*).

Furthermore, even if the Plaintiffs somehow redefine “extreme and outrageous conduct” to include holding a banner on a public sidewalk, it would still fail to advance their IIED claim because of the special protection afforded to Weiler’s conduct by the First Amendment. Speech occurring in a “public place on a matter of public concern” is “entitled to ‘special protection’ under the First Amendment.” *Snyder v. Phelps* 562 U.S. at 458. “[T]hat protection cannot be overcome” by a finding that the expression was outrageous. *Id.*

Finally, for the same reasons expressed by Nicdao and Cirignano as to their conduct, Plaintiffs cannot establish “substantial harm” to their school as a result of Weiler’s expressive activities, and any injunction against Weiler’s expressive conduct would be unconstitutional. (*Nicdao Memo. at 14-15, §II.C*).

Conclusion

For the various reasons listed above, Weiler's Special Motion should be granted and the Plaintiffs' Complaint dismissed, with prejudice, as to Weiler.

DATED February 04, 2016.

Respectfully Submitted:

/s/ Robert Weiler, Jr.

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Certification of Service

I certify that a true and correct copy of the forgoing was filed through the Court's authorized eFiling system, which will provide a courtesy copy to Chambers and effect eService upon the following parties or counsel of record:

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