

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D.,)	
)	
Plaintiff,)	Case No. 2012 CA 008263 B
)	
v.)	Judge Natalia M. Combs Greene
)	Calendar Ten
NATIONAL REVIEW, INC., et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court on Defendants Competitive Enterprise Institute and Rand Simberg’s (the “CE Defendants”) Motion for Reconsideration (the “Motion”) and Opposition thereto. Upon consideration, the Motion is denied.¹

Standard

“A motion for reconsideration, by that designation, is unknown to the Superior Court’s Civil Rules. The term has been used loosely to describe two different kinds of motions . . . brought pursuant to” Rule 59 (e) and Rule 60 (b). *Kibunja v. Alturas, LLC*, 856 A.2d 1120, 1128 n.8 (D.C. 2004). Motions under either rule are committed to the broad discretion of the trial judge. *Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801, 810 (D.C. 1984). Rule 60 (b) provides that “the Court may relieve a party or a party’s legal representative from . . . an order for the following reasons. . . (1) mistake, inadvertence, surprise, or excusable neglect . . . ;

¹ The memorandum of points and authorities (as well as the caption of the Motion) includes arguments in support of the CE Defendants’ Motion for Reconsideration as well as the Special Motion to Dismiss Plaintiff’s Amended Complaint pursuant to the District of Columbia’s Anti-SLAPP Act and the Motion to Dismiss Plaintiff’s Amended Complaint pursuant to D.C. Super. Ct. R. 12(b)(6). The Civil Rules do not permit parties to combine different motions. Accordingly, this Order only addresses the Motion for Reconsideration, specifically the CE Defendants’ arguments that the Court gave “short shrift to First Amendment values...” The case has (now) been transferred to Judge Weisberg who presides over one of the two Civil I calendars and therefore the remainder of the issues raised by the Motion may be considered by Judge Weisberg.

or (6) any other reason justifying relief from the operation of the judgment.” Rule 59 (e) provides that “[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.” This time period cannot be extended and is jurisdictional. *Circle Liquors, Inc. v. Cohen*, 670 A.2d 381 (D.C. 1996). A timely motion asserting that the Court committed an error of law is normally treated under Rule 59 (e). *In re Tyree*, 493 A.2d 314, 317 n.15 (D.C. 1985).

A defamatory statement is one that “injure[s] the plaintiff in his trade, profession or community standing, or lower[s] him in the estimation of the community.” *Payne v. Clark*, 25 A.3d 918, 924 (D.C. 2011) (citing *Clawson v. St. Louis Post-Dispatch, LLC.*, 906 A.2d 308, 313 (D.C. 2006)). A plaintiff presents a *prima facie* case of defamation where the following elements are met: “(1) Defendant made a false or defamatory statement concerning the plaintiff; (2) . . . defendant published the statement *without privilege* to the third party; (3) . . . defendant’s fault in publishing the statement amounted to at least negligence; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.” *Payne*, 25 A.3d at 924.

The Court notes that upon review, the record was unclear regarding which Defendants induced the EPA to investigate Plaintiff and the length of time that the CE Defendants had engaged in harsh criticism of Plaintiff. Nonetheless, the Court finds that the confusion of facts does not amount to a material mistake nor does it change the Court’s analysis because the Court’s ruling was not based on these facts. The Court incorporates its earlier ruling and reiterates it herein.

The Court finds that there is sufficient evidence in the record to demonstrate that Plaintiff is likely to succeed on the merits. Further, the Court is in agreement with and adopts the

arguments advanced by Plaintiff in the Opposition. Upon review of its decision, the Motion for Reconsideration and Opposition, the Court finds no reason to change its ruling. Accordingly, it is this 20th day of September 20 hereby,

ORDERED, that the Motion is **DENIED**.

SO ORDERED.



Natalia M. Combs Greene
(Signed in Chambers)

Copies to:

The Honorable Frederick H. Weisberg

Parties