2015 IL App (1st) 150557-U

SIXTH DIVISION
December 30, 2015

No. 1-15-0557

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SANDRA GAYNOR,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellant,	)	of Cook County.
	)	
v.	)	No. 2010 L 9129
	)	
AMERICAN ASSOCIATION OF NURSE ANESTHETISTS	)	
and BRENT SOMMER,	)	Honorable
	)	Daniel T. Gillespie,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court properly granted summary judgment in favor of defendants and against plaintiff on her claims of defamation *per se*, invasion of privacy, and intentional interference with business expectancy.

¶ 2 Plaintiff Sandra Gaynor, RN, Ph.D., filed an amended three-count complaint against defendants American Association of Nurse Anesthetists (AANA) and Brent Sommer, alleging defamation *per se*, invasion of privacy, and intentional interference with business expectancy. The circuit court granted defendants' motion for summary judgment on all three counts. Dr. Gaynor appeals, arguing that statements Sommer made during her job performance evaluation rose to the level required to establish defamation *per se* and invasion of privacy. She also asserts

the evidence supported a valid intentional interference with business expectancy claim. We disagree and affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The AANA is an Illinois not-for-profit corporation that serves to advance patient safety and excellence in anesthesia. The Council of Public Interest in Anesthesia (Council) served as an appellate body for review of several other AANA councils, as well as monitoring social and health care trends and issues from a public interest viewpoint. The Council conducted appeals involving, for example, accreditation of nursing anesthesia training programs and recertifications for nurse anesthesiologists. While the Council was technically autonomous from the AANA, the two groups had significant relationships with each other. Members of the Council were "elected and appointed by the then serving members of the Council from the slate of candidates proposed by the Council and approved by the Board of Directors of the AANA." In addition, the AANA and the Council executed a "Recognition Agreement" and a "Services Agreement," which recognized the autonomous character of the Council and set forth the services the AANA provided to the Council, including "certain professional and clerical personnel, space, equipment and other services in order to carry on its business activities." The Services Agreement also stated that the AANA "shall engage an individual selected by the Council with the consent of the AANA Executive Director to serve as Executive Director of the Council," and that the AANA "shall employ such Council Executive Director pursuant to the AANA's policies relating to employment of management-level personnel."

¶ 5 On March 3, 2008, Dr. Gaynor signed an offer letter of employment from the AANA and the Council to serve as the Council's executive director and as the director of the AANA wellness program. The offer letter specifically stated that Dr. Gaynor "retain[ed] the option, as

does the Association, of ending your employment with the Association at any time, with or without notice and with or without cause. As such, your employment with the Association is at-will and neither this letter nor any other oral or written representations may be considered a contract for any specific period of time." Dr. Gaynor began her employment with the Council on June 2, 2008, pursuant to the terms of the offer letter.

¶ 6 On June 6, 2009, the AANA board voted to create a new committee to operate the wellness program within the AANA and funding for the wellness program was moved from the Council to the AANA. As a result, the Council could no longer justify a budgetary expense for the executive director position. Dr. Gaynor's employment as executive director of the Council ended on October 2, 2009. In August 2010, the AANA board voted to dissolve the Council.

¶ 7 Dr. Gaynor filed her initial three-count complaint against defendants on August 9, 2010. The circuit court granted defendants' motion to dismiss counts I and II of the complaint and granted Dr. Gaynor leave to file an amended complaint.

¶ 8 Count I of the amended complaint alleged a defamation *per se* claim against the AANA based on the following statements Sommer "published to AANA members and/or staff" in the concierge lounge of the San Diego Marriott Hotel on August 12, 2009:

> 1. "Dr. Gaynor had not recommended or initiated any new projects for the [Council];"
>
> 2. "Dr. Gaynor was responsible for completing the Service Agreement between the AANA and the [Council], and that she had failed at that responsibility;" and
>
> 3. "[Dr. Gaynor's] written communications were 'inadequate/incomplete' and were 'often in need of substantial edits and rewrite prior to distribution.' "

¶ 9 Dr. Gaynor alleged that these public comments were unfounded and untrue, and that Sommer made the statements knowing they were false. She alleged that publication of these statements were not privileged, were made in bad faith and with actual malice, and were made with the sole purpose of causing her harm. Because Dr. Gaynor alleged defamation *per se*, she claimed general damages of "mental suffering and injury to her reputation, which arise by inference of law and need not be proved by evidence." She also alleged that Sommer acted as an agent of the Council and its parent organization, the AANA, citing the Services Agreement between the two organizations. She claimed that the AANA was vicariously liable for Sommer's conduct under the theory of *respondeat superior* because he committed the alleged defamatory conduct within the scope of his agency relationship with the AANA.

¶ 10 In count II of the amended complaint, Dr. Gaynor alleged invasion of privacy against the AANA, claiming that Sommer's statements constituted public disclosure of private information which would be highly offensive to any reasonable person. She alternatively pled that Sommer's false statements placed her in a false light. Dr. Gaynor alleged that the disclosure of private information, which was untrue, "was especially devastating to Dr. Gaynor because it concerned her professional reputation and was published to the members and staff attending the national annual meeting of an important professional organization in her industry." She alleged that, as a direct and proximate result of Sommer's invasion of her privacy, she "suffered severe emotional distress, mental suffering, injury to her reputation and lost salary and fringe benefits." In addition, Dr. Gaynor pled vicarious liability in this count, asserting that her invasion of privacy occurred within the scope of Sommer's agency relationship with the AANA.

¶ 11 Count III of the amended complaint raised a claim for intentional interference with business expectancy. In this count, Dr. Gaynor alleged she had a reasonable expectation of

entering into a contract of employment with the AANA for a period of one year, with an additional one year notice of termination. She alleged that Sommer had personal knowledge of her expectancy and that Sommer sought to retaliate against her because she had acted to limit his authority as chair of the Council. She also alleged that, due to Sommer's personal grudge against her, "Sommer intentionally and unjustifiably interfered with the expected contract between Dr. Gaynor and the AANA, which caused the AANA to refrain from entering into the year contract with Dr. Gaynor," and that Dr. Gaynor "suffered significant damage as a direct and proximate result of Sommer's interference, including but not limited to lost salary and fringe benefits and emotional distress."

¶ 12 The amended complaint included an exhibit entitled "Gaynor Employment Agreement," which Dr. Gaynor alleged was the contract that illustrated her expectancy for an additional year of employment as executive director of the Council. The unsigned document includes blank spaces in the paragraphs labeled "Term of Employment" and "Compensation and Benefits." The document included no specific beginning or ending date of employment and no definite salary amount, no signature lines for execution, nor any titles indicating the positions of the intended authorized signers.

¶ 13 Defendants moved for summary judgment, arguing that none of these claims were actionable. The motion was fully briefed and argued. In support of their positions, the parties submitted excerpts of deposition transcripts, corresponding exhibits, and other communications relating to Dr. Gaynor's employment. We summarize the evidence contained in these documents and in the parties' admissions which are most relevant to the issues presented in this appeal.

¶ 14 Dr. Gaynor has a Ph.D. in nursing and worked in that profession for nearly 40 years. Dr. Gaynor testified that the offer letter she received, and knowingly signed, stated that she was

an at-will employee of the Council and, therefore, she should have no expectation of an employment contract. She began working for the Council on June 2, 2008 and received an annual salary and benefits worth over $150,000. During her employment, Sommer served as the chair and vice chair of the Council's executive committee.

¶ 15 Dr. Gaynor testified that, in April 2009, the Council board, including Sommer, gave her a favorable annual performance review and told her that the Council was pleased with her work. During the same month, she spoke to the Council's attorney, Jonathan Rothschild, who told her that, under the Services Agreement, the executive director was supposed to have an employment contract. Dr. Gaynor requested a contract from Laura Good, the AANA's human resources director, who gave her a copy of an employment contract belonging to the previous executive director. Defense counsel asked Dr. Gaynor questions about the alleged contract, referencing the document entitled "Gaynor Employment Agreement," which was attached to Dr. Gaynor's amended complaint. Dr. Gaynor stated that Good prepared the document and that it served as the basis of her expectation to receive an employment contract. Dr. Gaynor never received a subsequent version of the document. Good advised Dr. Gaynor that she would "probably need to have [Sommer] and John Garde [interim executive director of the AANA] sign it because of the wellness piece." Good emailed the document to Sommer for his signature. Dr. Gaynor believed she spoke to Sommer about signing the employment agreement. Sommer told her, " 'We'll take care of that at the end of the meeting in San Diego.' " Dr. Gaynor never spoke to Garde regarding the employment agreement.

¶ 16 Dr. Gaynor specifically testified that no one ever promised her that she would remain employed at the Council for a set period of time. She also testified that a majority vote of the Council would be required to implement the employment agreement.

¶ 17 In June 2009, Sommer attempted to send a letter to the Federal Drug Administration (FDA) regarding the drug Propofol on behalf of the AANA without receiving prior approval for the contents of the letter from AANA leadership ("Propofol letter"). Dr. Gaynor alerted the AANA's leaders to Sommer's plan to send the Propofol letter, and it was not sent. At the AANA's request, Dr. Gaynor spoke to Sommer about his inappropriate behavior in trying to send the Propofol letter and the importance of the AANA sending a coherent message on issues of public interest. Sommer yelled at Dr. Gaynor and blamed her for preventing him from sending the Propofol letter to the FDA.

¶ 18 In August 2009, the AANA held its annual meeting in San Diego, California, an event that draws key figures from the nurse anesthetist industry. At the time of this meeting, Sommer still had not signed the written employment agreement.

¶ 19 On August 12, 2009, Sommer convened a meeting that included himself, Dr. Gaynor, and Darlene Homa, the Council vice chair, to give Dr. Gaynor a detailed review of her job performance, including discussion of a written evaluation he prepared. Sommer conducted the performance evaluation in the concierge lounge of the San Diego Marriott Hotel. According to Dr. Gaynor, Sommer's evaluation contained numerous criticisms and negative remarks about her that were untrue, including that the Council and AANA were dissatisfied with Dr. Gaynor's performance of her duties.

¶ 20 Dr. Gaynor testified that Sommer made a false statement when he said during the performance evaluation that she had not recommended or initiated any new projects for the Council. She stated that she recommended a number of projects, including projects involving confidential reporting, going "green," and going digital, among others. She also testified that Sommer made a false statement when he said that she failed to complete a service agreement

between the AANA and the Council. She stated that she "just made the assumption that the Council lawyer and the AANA lawyer had drafted that [service] agreement together, or at least they both had seen it."

¶ 21 Dr. Gaynor testified that, to her knowledge, the alleged defamatory statements made by Sommer did not interfere with her efforts to find a new job. She believed the most damaging statement concerned the quality of her writing. Defense counsel provided Dr. Gaynor with a red-lined copy of her writing wherein Sommer had made edits and additions to her original draft. Dr. Gaynor stated that she was not personally offended by Sommer's edits and that she agreed the edits were not incorrect or inappropriate. She also agreed that some of the edits could have been added by Sommer as a matter of personal style and preference.

¶ 22 Defense counsel asked Dr. Gaynor whether she was aware of anyone else who specifically heard the alleged defamatory statements. She responded, "I think Steve Alves and Debbie Malina may have heard it," but she was unsure. Alves and Malina sat behind her at the beginning, but not the end, of the performance evaluation. Dr. Gaynor could not recall at what point Alves and Malina left the area while she received her performance evaluation. Defense counsel asked, "you don't know one way or another whether they were there when the statement in question was made, do you?" Dr. Gaynor responded, "I don't know." Defense counsel then asked Dr. Gaynor whether she had "any other information or documentation or evidence of any kind that would suggest either Steve or Debbie actually heard the statements that you've summarized being made by Mr. Sommer?" Dr. Gaynor stated that Alves approached her later that evening and asked her if she was alright "because of the fact [she] appeared to be in a tense conversation." Alves did not tell Dr. Gaynor that he specifically heard what Sommer had said during the performance evaluation. Dr. Gaynor testified that she also had no evidence,

information, or documentation to suggest that Malina heard any of the comments allegedly made by Sommer during the performance evaluation.

¶ 23 Dr. Gaynor identified Roberta Bothwell as another person who potentially heard the alleged defamatory statements, but she admitted that she had no knowledge as to what Bothwell might have heard during the relevant time frame. Maureen Shekleton, Bothwell's sister, told Dr. Gaynor that Bothwell had entered the lounge to get something out of the refrigerator while "somebody was getting their evaluation done in the lounge" and "a man was speaking in a very loud voice." Dr. Gaynor never spoke to Bothwell to determine what she might have heard. Dr. Gaynor agreed she had no evidence or information suggesting that Bothwell overheard Sommer making the alleged defamatory statements during her performance evaluation.

¶ 24 Dr. Gaynor also stated that Homa heard the statements, but admitted that Homa was participating in the performance evaluation as vice chair of the Council. In addition, Dr. Gaynor acknowledged that the performance evaluation was not final but merely a work in process. Dr. Gaynor was invited to provide her own input and response to follow up the performance evaluation.

¶ 25 Later that evening, Christopher Bettin, the AANA's senior director of public relations, took Dr. Gaynor aside to ask her if she was all right. Bettin told Dr. Gaynor that he was at a party and heard Sommer discuss her performance evaluation. Bettin told Dr. Gaynor he heard Sommer say that "he was going to get" Dr. Gaynor. Defense counsel next asked how Sommer's alleged defamatory statements damaged her. Dr. Gaynor responded that "[t]hey made me feel bad, made me feel inferior, and that he was just trying to intimidate me." She also responded that the statements were damaging because they were on her written evaluation, which "is a reflection of my work in what I do and who I am." Dr. Gaynor observed that the written

evaluation had been placed in her personnel file. She stated that the comments from the performance evaluation caused her to lose her job as executive director of the Council. When next asked if it was her testimony that “the nonfinal evaluation comments regarding asserted deficiencies in your writing caused you to lose your job at the [Council],” Dr. Gaynor responded “no.”

¶ 26 Dr. Gaynor testified that in August 2009, one week after she received her performance review, Jackie Rowles, the AANA’s president at that time, met with her, apologized, and told her that Sommer would not be renewing her contract. Rowles told Dr. Gaynor that she was sorry for everything that happened and that the AANA board had no idea that Sommer was not going to renew her employment contract. At that point in her testimony, Dr. Gaynor noted a telephone conference from June 2009, during which the incoming AANA president, Jim Walker, stated that the AANA was removing its wellness program from the Council and putting it back under the umbrella of the AANA. Rowles asked Dr. Gaynor “to stay on and get the new [wellness] committee going.” Rowles told Dr. Gaynor that the position for head of the wellness committee was a half-time position and that there was a practice analysis position open. Dr. Gaynor told Rowles that she did not have the background necessary to work in the practice analysis position. Dr. Gaynor agreed that no one ever terminated her from her position as the AANA’s director of the wellness program. She also agreed that once the AANA withdrew the wellness program from the Council, “there was no longer money available for the Council budget to appoint an executive director.”

¶ 27 Dr. Gaynor described her working relationship with Sommer as “difficult.” She stated that “[w]e had different visions as to what and how the activities the Council should be involved in.” She felt that Sommer held a personal grudge against her because she attempted to control

Council expenditures and she prevented him from submitting the Propofol letter to the FDA, using AANA and Council letterheads without the AANA's approval and allegedly in violation of AANA protocol. Dr. Gaynor believed that she had good relationships with everyone at the Council except with Sommer and Homa.

¶ 28 Sommer, a certified registered nurse anesthetist from San Francisco, California, testified that he served as chair of the Council from 2007 to 2009. Sommer stated that the Council was autonomous and independent of the AANA because the Council had its own bylaws and administered its own projects.

¶ 29 At the April 2009 meeting, the Council board members agreed that Dr. Gaynor was doing a good job and that she should continue as the executive director of the Council. Sommer recalled receiving an evaluation form from Good and distributed it to Homa and another member of the Council's executive committee, Patty Hayes, to prepare a written performance evaluation of Dr. Gaynor. Homa and Hayes expressed to Sommer that Dr. Gaynor had difficulties preparing a budget. Homa also expressed that Dr. Gaynor's communication skills were not as effective as they could have been. Sommer agreed with Homa's and Hayes's evaluation. Sommer typed up a draft of Dr. Gaynor's evaluation. According to Sommer, the input for the draft was solicited from all of the Council's board members who attended the April meeting, as well as from Homa and Hayes after the meeting.

¶ 30 Sommer testified that he met with Dr. Gaynor and Homa to discuss the draft evaluation during the afternoon of August 12, 2009 at the hotel lounge, sitting at a corner table at one end of the room. Sommer could not recall how many people were in the room when the performance evaluation began. He described the room as quiet and that maybe one or two people were in the lounge in total. Sommer stated that it was "impossible" for anyone else to have overheard the

performance evaluation because "[t]here was no one within the entire end of the room [from] 60 to 80 feet–that I could even recognize." The performance evaluation lasted for one hour and during the course of the meeting, more people entered the lounge. Sommer did not regard the draft evaluation as a negative review of Dr. Gaynor's performance. Dr. Gaynor became visibly upset during the meeting and wanted to end it. Sommer asked Dr. Gaynor to complete or expand upon anything she felt needed to be included in her performance review.

¶ 31 Sommer told Dr. Gaynor that she acted inappropriately by disclosing to the AANA board his attempt to submit the Propofol letter to the FDA. Sommer expected Dr. Gaynor to confer with Council leadership (consisting of Sommer, Homa, and Hayes) before speaking to the AANA.

¶ 32 Sommer acknowledged receiving an email from Good in April 2009 regarding a draft of Dr. Gaynor's employment agreement. Sommer recalled the document "with blanks on it that referred to the position of executive director of Council for Public Interest." He stated the document was not a contract because it had "no content" and "no numbers." He did not sign the employment agreement because it lacked sufficient information. He never saw a complete contract. He was not against signing an employment contract, if appropriate. Sommer did not recall speaking to Dr. Gaynor about the contract. He stated it was his understanding that Dr. Gaynor never had a written employment contract with the Council and he never personally guaranteed that she would receive an employment contract with the Council. He lacked the personal authority to decide who received an employment contract. According to Sommer, Dr. Gaynor's position as executive director of the Council ceased once the AANA terminated the Services Agreement and dissolved the Council.

¶ 33 Rowles testified that she met with Dr. Gaynor after the Council determined that it would no longer require an executive director. Rowles believed the Council discontinued the executive director position because of "the lack of ongoing work within the [Council] to justify such a position." The Council ceased to exist because the AANA board asked Council leadership to submit an action plan of items or initiatives for funding following a fall meeting in 2009 and the Council board members failed to submit "substantial work." Rowles offered Dr. Gaynor another full-time position in one of the practice departments of the AANA, but she declined the offer because the salary was unsatisfactory.

¶ 34 Bettin testified that he remembered a conversation with Sommer involving Dr. Gaynor's work performance during the annual meeting. Bettin attended a gathering in the hotel for Jim Walker's presidential party. Bettin stated "[t]hey were fairly general comments by [Sommer] along the lines of expressing dissatisfaction in [Dr. Gaynor's] abilities." Sommer told Bettin that he didn't think Dr. Gaynor "could do the job." Sommer did not provide any detail explaining how or why she "couldn't do the job." Sommer did not discuss Dr. Gaynor's communication skills, writing skills, or character. Bettin characterized Sommer's comments as "very broad." No one else was present during the conversation.

¶ 35 The evidence in the record at the summary judgment stage also included the meeting minutes from a June 11, 2009 teleconference between AANA leadership and Council board members. The AANA's president-elect, interim executive director, and vice president all attended the meeting. Sommer, as chair, Homa and Hayes attended, along with other Council board members. Dr. Gaynor was not present at this meeting. According to the minutes, Walker, the AANA's president-elect, "explained that the purpose of the call was to provide the Council time to dialog about the decision the [AANA] Board of Directors made at the June 6, 2009

meeting" to terminate the Services Agreement dated September 1, 2007 regarding the provision of services for the AANA wellness program. When Homa asked about Council staffing, Walker replied that Garde, the AANA's executive director, would be dealing with that issue. Garde replied that Dr. Gaynor "will staff the wellness committee for the AANA." In response to a Council member's question regarding what caused the AANA board to suddenly terminate the Services Agreement, Walker responded that the board "began looking at the function of the wellness program with the Propofol statement process, which was given high priority to move through the evidence based process. Despite the adjusted priorities for the [AANA board] and the Practice Committee to accommodate this, Council leadership approached the FDA. The Council is autonomous in matters dealing with the appellate process but any communications regarding government regulations would require AANA [board] involvement." The AANA's vice president, P. Santoro, further explained that AANA board members already had conversations with Council leadership regarding activities that violated the service agreement.

¶ 36 The verbiage in the minutes implies that the AANA board disapproved of Sommer's attempt to submit the Propofol letter to the FDA without proper AANA board approval. Sommer apparently attempted to circumvent the AANA board and submit the letter on the afternoon of Friday, June 5, 2009. Dr. Gaynor contacted Rowles to report the situation and the letter was not sent. The AANA board met on June 6, 2009 and voted to terminate the Services Agreement.

¶ 37 The June 11, 2009 minutes also reflect that Walker requested the Council to conduct "due diligence" regarding expenses that required AANA funding. The AANA required the Council to "develop [a] list of what is needed to commit resources at the September meeting," and that for specific project funding requests, the Council could submit proposals to the AANA. Homa stated that the Council agenda for September would include discussions on redefining job

descriptions and reviewing the bylaws for revisions due to the wellness contract termination. In short, the meeting minutes show that the AANA board began the process of cutting significant funding to the Council well before Sommer made the alleged defamatory statements on August 12, 2009.

¶ 38 On July 30, 2014, the circuit court heard argument on defendants' motion for summary judgment. The circuit court issued a detailed written opinion granting defendants' motion on September 30, 2014.[1]

¶ 39 The circuit court found that Sommer's statements did not rise to the level of defamation *per se*, finding the words used in the statements were "[not] so obviously and materially harmful to the plaintiff that injury to h[er] reputation may be presumed." The court concluded that none of the statements imputed a lack of qualification or skill required to perform as the executive director of the Council or as a nurse. The court found that Sommer's statement regarding the quality of Dr. Gaynor's writing was a non-actionable opinion and that all of the statements were non-actionable under the innocent construction rule. Because the court ruled that Sommer did not make any defamatory statements, Dr. Gaynor could not establish liability against the AANA under the doctrine of *respondeat superior*.

¶ 40 The circuit court also rejected Dr. Gaynor's invasion of privacy claim because none of the statements identified by her constituted defamation *per se*, and beyond that, she was required to plead special damages for invasion of privacy and failed to do so. The court also found that Dr. Gaynor failed to satisfy the "publicity" requirement to establish invasion of privacy. In

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[1] In addition to granting defendants' motion for summary judgment, the circuit court denied Dr. Gaynor's motion for sanctions under Illinois Supreme Court Rule 219(c) (Ill. S. Ct. R. 219(c) (eff. July 1, 2002)) and defendants' cross-motion for sanctions under Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)). The court also declined to disturb a previous ruling denying Sommer's motion to dismiss for lack of personal jurisdiction.

addition, the court concluded that Sommer's statements would not be offensive to the reasonable person. Because Dr. Gaynor failed to establish her claim for invasion of privacy, the court ruled that the AANA was not liable under the doctrine of *respondeat superior*.

¶ 41 Finally, the circuit court held that Dr. Gaynor's intentional interference with business expectancy claim failed because she could not establish the existence of a sufficiently strong expectancy or that both parties would have been willing and desirous of continuing the employment relationship for an indefinite period of time. Further, the court found that, because the Council ceased to exist, there could be no employment relationship or expectancy between Dr. Gaynor and the dissolved Council.

¶ 42 On October 27, 2014, Dr. Gaynor moved for reconsideration of the circuit court's summary judgment ruling. In support of her motion, Dr. Gaynor submitted her own affidavit under the rubric of "new evidence." The affidavit stated that: (1) in her capacity as executive director of the Council and director of the AANA wellness program, she was not at any time involved in the nursing profession and instead worked as a senior executive involved in administrative leadership; (2) she developed six new projects for the Council while serving as the executive director; (3) Sommer falsely stated that she was responsible for completing the Services Agreement between the AANA and Council because "[t]he responsibility for that inaction rested with Mr. Gene Blumenreich, the outside private attorney for AANA" and that Blumenreich apologized to her for not having the Services Agreement ready and signed prior to the commencement of the AANA 2009 annual meeting; (4) her writing was a fundamental and critical part of her work for the AANA and Council and that "[a]t no time during my employment at the AANA were any of the written materials identified above deemed to be inadequate or incomplete by Brent Sommer or any other CPIA Council member," listing

numerous examples of reports and presentations she authored while employed as executive director of the Council; and (5) she declined the job offered by Rowles as a practice analyst "because [she] believed that [she] did not have the technical educational qualifications and professional expertise to handle that job capably," and "did not regard the Practice Analyst position as one that was comparable to my senior executive position at the Association, either in terms of scope of responsibility or salary."

¶ 43 The circuit court denied the motion for reconsideration after full briefing and argument. The court found that Dr. Gaynor failed to justify any need for substantive reconsideration, including that she failed to present any "new" arguments, evidence, or changes in the law that could have been presented earlier in the litigation. The court also specifically ordered that Dr. Gaynor's affidavit should be included as part of the record on appeal. This appeal followed.

¶ 44 ANALYSIS

¶ 45 Dr. Gaynor argues on appeal that the circuit court improperly granted summary judgment on her defamation *per se*, invasion of privacy, and intentional interference with business expectancy claims. We begin by noting that courts are not arbiters of workplace personality conflicts. We have carefully reviewed the record in this case, and while one can acknowledge Dr. Gaynor's frustration, our task is solely to determine whether there are material issues of fact supporting the causes of action in her amended complaint.

¶ 46 Standard of Review

¶ 47 Summary judgment "shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2–1005 (West 2012); *State Farm Mutual Automobile Insurance Co. v. Coe*, 367 Ill. App. 3d

604, 607 (2006). The purpose of summary judgment is not to try a question of fact but to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 416-17 (2008). To determine whether a genuine issue of material fact exists, a court construes the pleadings liberally in favor of the nonmoving party. *Id.* at 417. Summary judgment should not be granted unless the movant's right to judgment is free and clear from doubt. *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 111 (2008). "However, summary judgment requires the responding party to come forward with the evidence that it has – it is the put up or shut up moment in a lawsuit."[2] (internal quotation marks omitted.) *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 14. Our review of an order granting summary judgment is *de novo*. *Jones v. Country Mutual Insurance Co.*, 371 Ill. App. 3d 1096, 1098 (2007).

¶ 48 Vicarious Liability Under the Doctrine of *Respondeat Superior*

¶ 49 In her defamation *per se* and invasion of privacy claims, Dr. Gaynor alleges the AANA is vicariously liable for three statements Sommer made during the August 12, 2009 performance evaluation. Generally, a person injured by the negligence of another must seek his or her remedy from the person who caused the injury. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007). "The relation of employer and employee is an exception to this rule." *Id.* Under the doctrine of *respondeat superior*, "an employer can be liable for the torts of an employee, but only for those torts that are committed within the scope of the employment." *Id.* In such cases, " 'liability is entirely derivative.' " *Alms v. Baum*, 343 Ill. App. 3d 67, 74 (2003) (quoting *Kirk*

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[2] This litigation proceeded for four years. At times, Dr. Gaynor aggressively pursued the case and, at other times, the case inexplicably fell dormant for so long that defendants moved to dismiss the case for want of prosecution. The record establishes that Dr. Gaynor had ample time to engage in comprehensive fact discovery, particularly to produce persons who actually heard Sommer make the alleged defamatory statements that are the subject of this litigation.

v. Michael Reese Hospital & Medical Center, 117 Ill. 2d 507, 533 (1987)). However, if the employee was not liable, it necessarily follows that no liability can be imputed to the employer. *Kirk*, 117 Ill. 2d at 533. It logically follows that no further analysis of the agency relationship is required if the alleged employee is not liable. Accordingly, we first address whether Sommer's conduct rose to the level required to establish Dr. Gaynor's defamation *per se* and invasion of privacy claims.

¶ 50 Defamation *Per Se*

¶ 51 Dr. Gaynor argues the circuit court erred when it granted summary judgment in favor of defendants on her defamation *per se* claim. She asserts that she established the elements of defamation *per se* because Sommer: (1) made false statements against her while purportedly conducting a performance evaluation in a hotel bar in the presence of her colleagues; (2) imputed her inability to perform her job responsibilities; and (3) prejudiced her in her professional work. According to Dr. Gaynor, the context of Sommer's false statements regarding her job performance is critical to her claim of defamation *per se*. She contends the court should consider: (1) the August 12, 2009 performance evaluation Sommer conducted only a few months after he agreed, along with all other Council members in April 2009, that her contract should be renewed; (2) the incident involving the Propofol letter in June 2009, which resulted in the AANA board voting to remove funding for the wellness program from the Council; and (3) that Sommer conducted the performance evaluation in a loud voice in the bar of a hotel during the AANA's annual meeting, in the presence of Homa and members of AANA staff, several of whom later expressed their sympathy to Dr. Gaynor.

¶ 52 To state a defamation claim, a plaintiff must present sufficient facts establishing that: (1) the defendant made a false statement about the plaintiff; (2) the defendant made an unprivileged

publication of that statement to a third party; and (3) the publication caused damages. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). A defamatory statement is one that harms the plaintiff's reputation to the extent it lowers the person in the eyes of the community or deters the community from associating with her or him. *Id.* The preliminary construction of an allegedly defamatory statement is a question of law. *Id.* at 492.

¶ 53 A statement is defamatory *per se* if the harm is "obvious and apparent on its face." *Id.* at 491. Our supreme court has recognized four categories of statements that are considered defamatory *per se*, two of which are relevant here: "(1) words which impute the commission of a criminal offense; (2) words that impute infection with a loathsome communicable disease; (3) words that impute an inability to perform or want of integrity in the discharge of duties of office or employment; or (4) words that prejudice a party, or impute lack of ability in his or he trade, profession or business." *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 10 (1992). A defamation *per se* claim must be pled "with a heightened level of precision and particularity." *Green*, 234 Ill. 2d at 495.

¶ 54 Dr. Gaynor argues that the following three statements by Sommer constitute defamation *per se*:

> (1) she "had not recommended or initiated any new projects for the [Council];"
>
> (2) she "was responsible for completing the Service Agreement between the AANA and the [Council] and that she had failed at that responsibility;" and
>
> (3) "her written communications were 'inadequate/incomplete' and were 'often in need of substantial edits and rewrite prior to distribution.' "

Thus, Dr. Gaynor contends these comments impute an inability to perform or want of integrity in the discharge of duties of office or employment, and imputes a lack of ability in her trade, profession, or business. See *Kolegas*, 154 Ill. 2d at 10.

¶ 55 Even if a statement falls into one of these categories, it is not defamatory *per se* if it is reasonably capable of an innocent construction. *Id.* at 11. Under the innocent construction rule, a court must consider the statement in context and give its words, and any implications arising from them, their natural and obvious meaning. *Green*, 234 Ill. 2d at 499. While a court "should not strain to see an inoffensive gloss" where the defendant "clearly intended and unmistakably conveyed a defamatory meaning," if the statement in context is reasonably capable of a nondefamatory interpretation, it should be interpreted as such. *Id.* at 500. "The rigorous standard of the modified innocent construction rule favors defendants in *per se* actions in that a nondefamatory interpretation *must be adopted* if it is *reasonable*." (Emphasis added and in original.) *Mittleman v. Witous*, 135 Ill. 2d 220, 234 (1990), *abrogated on other grounds by Kuwik v. Starmark Star Marketing and Administration, Inc.*, 156 Ill. 2d 16, 30 (1993). "The tougher standard is warranted because of the presumption of damages in *per se* actions." *Id.* Whether a statement is reasonably susceptible to an innocent construction is a question of law. *Kolegas*, 154 Ill. 2d at 11; see also *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 413 (1996).

¶ 56 In *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 1, the circuit court dismissed the plaintiff's amended complaint which alleged, among other things, defamation *per se*. The plaintiff, Louis Antonacci, alleged an email authored by his supervising partner, Anita Ponder, and sent to several members of the defendant law firm's human resources staff, included the following defamatory statements: (1) "he was incapable of performing his job as evidenced by the missed deadlines, his lack of enthusiasm for projects Ms. Ponder assigned to him, and his

lack of time management skills;" (2) "he misrepresented that 'he could waive into the bar of the State of Illinois prior to' being hired;" (3) "he failed to show up for work on a day he was supposed to meet with Ms. Ponder about the city project;" and (4) "he concealed the fact that he had spoken to [the law firm's] pro bono director." *Antonacci*, 2015 IL App (1st) 142372, ¶ 25.

¶ 57 The *Antonacci* court found that the alleged statements were capable of an innocent construction when read in context of the email as a whole and given the purpose of the correspondence. *Antonacci*, 2015 IL App (1st) 142372, ¶ 28. According to the court, the email, "read as a whole, addressed Mr. Antonacci's working relationship with [Ponder] and his fit as an employee of Seyfarth." *Id.* Each of the statements "was specifically confined to the context of Mr. Antonacci's working relationship with Ms. Ponder and his fit with Seyfarth, and the audience for the email was limited to several human resources personnel." *Id.* ¶ 30. The court found that "[i]n this context, we cannot reasonably conclude that Ms. Ponder's statements accused Mr. Antonacci of actions and misconduct that imputes a general lack of integrity in the performance of his duties as a lawyer or prejudices him. Rather, the more reasonable conclusion is that Ms. Ponder stated her belief that Mr. Antonacci was not a good fit with Seyfarth and did not work well with her." *Id.* The court held that the statements were reasonably capable of an innocent construction and were not defamatory *per se*. *Id.*

¶ 58 In *Anderson*, the plaintiff alleged that she was defamed by the defendant's statement to a potential employer that she could not get along with her coworkers and that she did not follow up on assignments. The *Anderson* court found that the defendant's alleged comment regarding the plaintiff's failure to follow up on assignments "may be innocently construed and hence may not form the basis for a *per se* action." *Anderson*, 172 Ill. 2d at 413. The statement, "construed in context, may be understood to mean simply that the plaintiff did not fit in with the organization

of the employer making the assessment and failed to perform well in that particular job setting, and not as a comment on her ability to perform in other, future positions." *Id.* See also, *e.g.*, *Valentine v. North American Co. for Life & Health Insurance*, 60 Ill. 2d 168, 170-71 (1974) (supreme court found the defendant's statement that the plaintiff was a "lousy agent," could be innocently construed because "in context [it] does not necessarily imply [the] plaintiff's lack of qualifications or skill in his calling"); *Taradash v. Adelet/Scott-Fetzer Co.*, 260 Ill. App. 3d 313, 317-18 (1993) (finding the innocent construction rule applied to a comment that an employee was terminated for "lack of performance"); *Marczak v. Drexel National Bank*, 186 Ill. App. 3d 640, 643-45 (1989) (holding the innocent construction rule applied where an employee termination report stated that the plaintiff " 'did not perform up to the high standards expected of officers of the Bank,' " had problems getting along with others, was at times uncooperative, and refused to perform a task); *Kakuris v. Klein*, 88 Ill. App. 3d 597, 600 (1980) (reviewing court found the innocent construction rule applied to an employer's statements that the employee exhibited a " '[l]ack of achievement in basic goals' " and " 'did not have the qualifications needed to achieve the objectives of the profession' ").

¶ 59 Dr. Gaynor also relies on *Mittleman* in support of her argument. In *Mittleman*, however, a law firm partner's comment blaming an associate for the mishandling of an important case and, in essence, charging the associate with professional negligence, could not be innocently construed as merely a negative evaluation of the associate's strategic approach to the matter. See *Mittleman*, 135 Ill. 2d at 247-48. None of the three statements made by Sommer allege that Dr. Gaynor committed or potentially committed professional negligence of any kind.

¶ 60 In this case, the alleged defamatory character of the three statements is not facially apparent. *Kolegas*, 154 Ill. 2d at 10. In other words, the three statements at issue are not "so

obviously and materially harmful to the plaintiff that injury to [her] reputation may be presumed." *Id*. We agree with the circuit court's assessment that none of the statements identified imputed a lack of qualification or skill in Dr. Gaynor's employment as executive director of the Council, director of the AANA's wellness program, or as a nurse. *Anderson*, 172 Ill. 2d at 414. The statements that Dr. Gaynor failed to recommend or initiate new projects for the Council and to complete the Service Agreement between the AANA and Council do not impute her inability to perform her employment duties. These statements refer to Dr. Gaynor's failure to complete certain specific tasks, which in no way would lead a reasonable person to conclude that she was incapable of performing her job as executive director of the Council. The statement regarding Dr. Gaynor's inadequate written communications likewise does not impute a lack of ability to discharge her employment duties as executive director of the Council. Further, these statements may reasonably be understood as signifying nothing more than that Dr. Gaynor did not perform those particular tasks well, considering the entire performance evaluation as a whole. We believe that all three statements made by Sommer may reasonably be given an innocent construction and, therefore, we must conclude that those statements do not support an action for defamation *per se*. *Anderson*, 172 Ill. 2d at 416; *Antonacci*, 2015 IL App (1st) 142372, ¶ 30.

¶ 61 In addition, statements that are capable of being proven true or false are actionable, but opinions are not. *Moriarty v. Greene*, 315 Ill. App. 3d 225, 233 (2000). The test for determining whether an allegedly defamatory statement is actionable is "whether the statement contains an objectively verifiable assertion." *Wynne v. Loyola University of Chicago*, 318 Ill. App. 3d 443, 452 (2000). "While in one sense all opinions imply facts, the question of whether a statement of opinion is actionable as defamation is one of degree; the vaguer and more generalized the

opinion, the more likely the opinion is nonactionable as a matter of law." *Id*. Sommer's statement that Dr. Gaynor's written communications were "inadequate" and were "often in need of substantial edits and rewrite prior to distribution," constitutes a non-actionable opinion. *Seitz-Partridge v. Loyola University of Chicago*, 2013 IL App (1st) 113409, ¶ 30 (finding statements made in a written critique of the plaintiff's preliminary examination were nonactionable opinions). The characterization of Dr. Gaynor's writing as "inadequate" and "in need of substantial edits" is vague and generalized. To be sure, the measure of quality for written communications differs from person to person. *Id*.; see also *Green v. Trinity International University*, 344 Ill. App. 3d 1079, 1093 (2003). We find Sommer's statement regarding Dr. Gaynor's written communication skills was a non-actionable opinion.

¶ 62 We also hold that Dr. Gaynor's defamation *per se* claim fails because she never presented any evidence that the three statements at issue were published to a third party. Throughout this litigation, Dr. Gaynor alleged that the statements were published to Homa, who, as vice chair of the Council, contributed to and participated in the performance evaluation. Considering Homa's position and role in the performance review, it was proper for her to participate. Although she did not speak during the performance review, Homa was entitled to participate as one of Dr. Gaynor's supervisors and express her concerns as to what she believed, correctly or not, to be an employee's poor performance or failure to perform expected tasks.

¶ 63 Dr. Gaynor continually emphasized throughout this litigation that Sommer made the statements in a loud voice in a hotel bar. Despite pursuing her case for four years, she never produced even one person who actually heard Sommer's alleged defamatory statements on August 12, 2009, nor any evidence that Sommer's alleged defamatory statements were published

to a third person. As such, she failed to establish the publication element of her defamation *per se* claim.

¶ 64 We acknowledge that Sommer could have chosen a more understated manner and location in which to deliver the performance evaluation, but we must find that his conduct did not rise to the level of defamation *per se* under Illinois law. We conclude that the circuit court properly granted summary judgment on Dr. Gaynor's defamation *per se* claim.[3]

¶ 65 Invasion of Privacy

¶ 66 Dr. Gaynor next argues that the circuit court improperly granted summary judgment on her invasion of privacy claim because Sommer's statements placed her in a false light before persons in a special relationship with her. She asserts that Sommer's statements were made in a manner that would be highly offensive to a reasonable person and that their context demonstrated actual malice that motivated the remarks.

¶ 67 A claim of false light invasion of privacy serves to protect "one's interest in being let alone from offensive publicity." *Schaffer v. Zekman*, 196 Ill. App. 3d 727, 734 (1990). The three elements required to establish a cause of action for false light invasion of privacy include: (1) the plaintiff was placed in a false light before the public as a result of the defendant's actions; (2) the false light in which the plaintiff was placed would be highly offensive to a reasonable person; and (3) the defendant acted with actual malice, meaning "with knowledge that the statements were false or with reckless disregard for whether the statements were true or false."

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[3] We also note that defendants argued in response that the alleged statements were protected by qualified privilege. In support of their argument that the statements were protected by a qualified privilege, defendants improperly cited *Ogbolumani v. Young*, 2015 IL App (1st) 141930-U, an unpublished order pursuant to Illinois Supreme Court Rule 23 (Ill. S. Ct. R. 23 (eff. July 1, 2013)). We admonish attorneys that Rule 23 orders may not be cited in appellate briefs. We need not, however, address this argument directly because we already found the statements did not constitute defamation *per se* and were never published to a third party.

Kirchner v. Greene, 294 Ill. App. 3d 672, 682 (1998) (citing *Kolegas*, 154 Ill. 2d at 17-18). In addition, if a false light invasion of privacy claim is based on statements that are not defamatory *per se*, a plaintiff must allege that he or she suffered special damages. *Schaffer*, 196 Ill. App. 3d at 736.

¶ 68 The *Kirchner* court noted that "[a]lthough the causes of action of false light and defamation overlap somewhat, they are different." *Kirchner*, 294 Ill. App. 3d at 682. Our supreme court has recognized that the existence of defamation is not a requirement for false light claims. See *Lovgren v. Citizens First National Bank*, 126 Ill. 2d 411, 421 (1989) ("[A]ll defamation cases can be analyzed as false-light cases, but not all false-light cases are defamation cases."). This court has held, however, that where the plaintiff has failed to state a cause of action for defamation *per se*, the count "alleging invasion of privacy (false light), must fail as well." *Harte v. Chicago Council of Lawyers*, 220 Ill. App. 3d 255, 263 (1991). See also *Kapotas v. Better Government Association*, 2015 IL App (1st) 140534, ¶ 75 ("where the plaintiff fails to state a cause of action for defamation *per se*, a count alleging false-light invasion of privacy based on the allegedly inherently defamatory statements must fail as well"); *Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124, 139 (2007) ("because the plaintiff's unsuccessful defamation *per se* claim is the basis of his false-light claim, plaintiff's false-light invasion of privacy claim fails as well"). In this case, Dr. Gaynor failed to establish the elements necessary to sustain her claim for defamation *per se* and, therefore, her false light invasion of privacy claim must fail as well. *Seith*, 371 Ill. App. 3d at 139; *Tuite*, 358 Ill. App. 3d at 899; *Harte*, 220 Ill. App. 3d at 263.

¶ 69 Although Dr. Gaynor specifically pled a claim of defamation *per se* and not defamation *per quod*, we nevertheless find she did not properly plead special damages in her invasion of

privacy claim. In cases where the statements at issue do not constitute defamation *per se*, special damages must be pled with particularity in a claim of false light invasion of privacy. *Schaffer*, 196 Ill. App. 3d at 735 (the plaintiff's failure to plead special damages was fatal to his false light invasion of privacy claim). General allegations of "damage to an individual's health or reputation, economic loss, and emotional distress are insufficient" to plead special damages. *Id.* at 733. Here, Dr. Gaynor pled as damages in her invasion of privacy claim that she "suffered severe emotional distress, mental suffering, injury to her reputation and lost salary and fringe benefits." Because Dr. Gaynor pled no more than allegations of damages to her health, reputation, economic loss, and emotional distress, she failed to plead special damages with sufficient particularity to sustain her false light invasion of privacy claim. *Schaffer*, 196 Ill. App. 3d at 735.

¶ 70 Furthermore, Dr. Gaynor also failed to establish the publicity requirement. Similar to her defamation *per se* claim, Dr. Gaynor has not produced one person during the course of this litigation who actually heard the alleged statements at issue. Therefore, it follows that she could not have been placed in a false light "before the public" as a result of Sommer's actions. *Roehrborn v. Lambert*, 277 Ill. App. 3d 181, 185 (1995) (the defendant disclosed the test results and evaluations to one person who had a legitimate interest in the subject matter and, therefore, the plaintiff did not satisfy the publicity requirement for public disclosure of private facts). We conclude Dr. Gaynor failed to establish the elements necessary to sustain invasion of privacy (false light) and, therefore, the circuit court properly granted summary judgment on this claim.

¶ 71 We conclude that Sommer's statements did not constitute either defamation *per se* or invasion of privacy. Therefore, it follows that no vicarious liability can be imputed from Sommer's conduct to the AANA under the doctrine of *respondeat superior*.

¶ 72 Intentional Interference With Business Expectancy

¶ 73 Finally, Dr. Gaynor argues that the circuit court improperly granted summary judgment on her intentional interference with business expectancy claim because Sommer's alleged decision to not renew her employment as Council executive director, based on his alleged defamatory evaluation of her, was contrary to the agreement of every Council member to renew her employment. Dr. Gaynor asserts that the "contract" attached to her amended complaint is evidence of the AANA's intent to renew her employment.

¶ 74 Our supreme court has held that to state a cause of action for intentional interference with business expectancy, a plaintiff must allege: "(1) a reasonable expectancy of entering into a valid business relationship, (2) the defendant's knowledge of the expectancy, (3) an intentional and unjustified interference by the defendant that induced or caused a breach or termination of the expectancy, and (4) damage to the plaintiff resulting from the defendant's interference." *Anderson*, 172 Ill. 2d at 406-07. "The hope of receiving a job offer is not a sufficient expectancy." *Id.* at 408. "The plaintiff must specifically identify the person with whom the plaintiff expected to contract and allege specific acts of interference." *Kapotas*, 2015 IL App (1st) 140534, ¶ 79. "The focus of the analysis is not on the conduct of the person terminating the relationship, but on the conduct of the party inducing the breach or interfering with the expectancy." *Id.* "Moreover, to prevail on the claim, a plaintiff must show not merely that the defendant has succeeded in ending the relationship or interfering with the expectancy, but 'purposeful interference' – that the defendant has committed some impropriety doing so." *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 485 (1998). In addition, favorable comments regarding job performance "should not be regarded as giving rise to a legally protectible expectancy." *Anderson*, 172 Ill. 2d at 408.

¶ 75 First, because we already have rejected Dr. Gaynor's defamation *per se* and invasion of privacy claims, those actions can no longer serve as a basis for her intentional interference with business expectancy claim. See *Antonacci*, 2015 IL App (1st) 142372, ¶ 33 (dismissal of the plaintiff's defamation *per se* claim meant that the plaintiff also could not maintain his claim for intentional interference with prospective economic advantage); *Jacobson v. CBS Broadcasting, Inc.*, 2014 IL App (1st) 132480, ¶ 54 ("In light of the fact that plaintiff's actions for defamation, false light, and invasion of privacy have been rejected, those actions can no longer serve as a basis for her claims of *** tortious interference with a business expectation."). Even if we considered Dr. Gaynor's intentional interference with business expectancy claim on the merits, her claim would still fail.

¶ 76 Initially, we note that Dr. Gaynor acknowledged in her deposition that the offer letter she received stated that she was an at-will employee of the Council and, therefore, she had no expectation of an employment contract. However, the fact that the employment relationship is at-will is immaterial to whether there exists a valid contractual relationship or prospective business relationship in tortious interference actions. *Chapman v. Crown Glass Corp.*, 197 Ill. App. 3d 995, 1009 (1990). A plaintiff "need show only that both parties would have been willing and desirous of continuing the employment relationship for an indefinite period of time." *Id.*

¶ 77 Dr. Gaynor relies on the "contract" attached to her amended complaint as evidence that she had an expectation of continued employment. In general, a party seeking to enforce an agreement has the burden of establishing the existence of the agreement. *Reese v. Forsythe Mergers Group, Inc.*, 288 Ill. App. 3d 972, 979 (1997). To form a valid contract between two parties, there must be mutual assent by the contracting parties on the essential terms and

conditions of the subject about which they are contracting. *Id.* Accordingly, when determining whether an enforceable contract exists, we must look at the intent of the parties, as evidenced by the language of the document. *Id.* While a contract may be enforced even though some contract terms may be missing or left to be agreed upon, if the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract. *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991); see also *Shults v. Griffin-Rahn Insurance Agency, Inc.*, 193 Ill. App. 3d 453, 457 (1990) (for a contract to be binding and enforceable, its terms must be definite and certain). In short, a contract is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do. *Cheever*, 144 Ill. 2d at 29.

¶ 78 In this case, despite Dr. Gaynor's repeated protestations to the contrary, the document attached to her amended complaint does not constitute a contract, as it is missing vital information, including the terms of employment and salary. The document Dr. Gaynor claims is a contract does not show that the AANA or Council was "willing and desirous of continuing the employment for an indefinite period of time." *Chapman*, 197 Ill. 2d at 1009. Dr. Gaynor never received a second version of the contract with more definite terms. She claims that the document was emailed to Sommer for his signature, but that Sommer and Garde, the interim executive director of the AANA, would both need to sign the document. There is no evidence that Dr. Gaynor contacted Garde or any other member of the AANA leadership regarding the execution of that document. Further, there is no evidence that this document was reviewed or considered for execution by either AANA or Council leadership. Dr. Gaynor specifically testified that no one ever promised her that she would remain employed at the Council for a set period of time.

She also acknowledged that a majority vote of Council membership would need to implement an employment agreement. In addition, Dr. Gaynor agreed in her deposition testimony that once the AANA withdrew the wellness program from the Council, "there was no longer money available for the [Council] budget to appoint an executive director."

¶ 79 Because Dr. Gaynor could not establish that she had a reasonable expectancy of entering into a valid business relationship, her intentional interference with business expectancy claim also fails on the merits.

¶ 80 CONCLUSION

¶ 81 The circuit court properly granted summary judgment in favor of defendants and against plaintiff on her claims of defamation *per se*, invasion of privacy, and intentional interference with business expectation. Accordingly, we need not address defendants' alternative argument that the circuit court erred in determining that Sommer had sufficient contacts in Illinois to be sued here.

¶ 82 Affirmed.