

Nos. 1-09-1541, 1-10-1583 & 1-10-1584 (consolidated)

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MARY IACOVETTI, )  
 ) Appeal from the  
 ) Circuit Court of  
 Plaintiff-Appellant, ) Cook County  
 )  
 v. ) No. 04 L 10942  
 )  
 KINDERCARE LEARNING CENTERS, INC., a ) Honorable  
 Delaware corporation, ARNETTA TERRY, JOHN ) Charles R. Winkler,  
 RANIERI and CHRISTINA YARCO, ) Judge Presiding.  
 )  
 Defendants-Appellees. )  
 )

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JUSTICE STERBA delivered the judgment of the court.  
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The circuit court did not err in denying the motions to strike the summary judgment motions where the motions to strike were improper and appellant was granted leave to raise the arguments in her response to the summary judgment motions. The circuit court did not err in granting summary judgment to KinderCare and Ranieri where the allegedly defamatory statements were true statements. Similarly, the court did not err in granting summary judgment to Terry where the statements were substantially true, were privileged, and appellant did not prove that the statements were made to intentionally defame or with reckless disregard for their veracity. Finally, the circuit court did not err in denying the motions for a preliminary and permanent injunction or to

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stay the proceedings where the doctrine of *res judicata* does not apply to a timely filed Rule 137 motion for sanctions.

¶ 2 Plaintiff-appellant Mary Iacovetti filed a defamation and false light action against defendant-appellee KinderCare Learning Centers, Inc. (KinderCare), her former employer, and defendants-appellees Arnetta Terry, John Ranieri and Christine Yarco, her former coworkers. The claims against Yarco were dismissed as a result of a motion to dismiss filed pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2008)). Two motions for summary judgment were subsequently filed, one by KinderCare and Ranieri and one by Terry. The circuit court granted both motions. On appeal, Iacovetti contends that the circuit court erred in denying her emergency motions to strike the two summary judgment motions, and the court further erred in granting summary judgment because she satisfied the requirements to sustain a cause of action for defamation and genuine issues of material fact exist. Iacovetti also contends that her false light claims should have survived summary judgment because "the public" includes employees. Finally, Iacovetti contends that appellees were barred by the doctrine of *res judicata* from filing a motion for sanctions. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 **BACKGROUND**

¶ 4 From October 2002 through October 2003, Iacovetti was employed as the director at the KinderCare child care facility known as KinderCare Center 1168 (Center) located in Lombard, Illinois. Yarco was the regional director for KinderCare during this time period, Ranieri was the area manager and Iacovetti's direct superior, and Terry was Iacovetti's assistant director at the Center. On October 17, 2003, Iacovetti's employment was terminated by KinderCare on the basis

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of three incidents at the Center. The termination was documented by Ranieri in an employee conference memorandum (ECM).

¶ 5 In the first incident, a two-year-old child wandered out of a classroom and was found by the doors leading to the parking lot of the Center. The regular teacher was in another room, so Iacovetti was serving as the acting teacher at the time. At one point, Iacovetti left the classroom and stood in the hallway just outside in order to speak with a parent. Melissa Anele was the assistant teacher in the classroom at the time of the incident. Another Center employee, Nicole Post, was doing some cleaning at the Center and wheeled a mop and pail through the classroom and out into the hallway around the time of the incident. Following the incident, Iacovetti prepared an ECM for Anele's file in which she stated that Anele had the door to the classroom open while Post was moving the mop and pail and the child slipped out. No ECM was prepared for Post in connection with the incident.

¶ 6 In the second incident, Colleen Brown, a teacher at the Center, was preparing to take the children in her classroom outside. One of the children was misbehaving, so Brown took the child to Anees Hussain, another teacher, and asked Hussain to watch the child while Brown's class went outside. Hussain refused because her class was full and Brown became upset, grabbed the child under the arms, and swung the child over a gate in Hussain's classroom. Iacovetti was not present during this incident, but she was informed of the incident by Terry within 15 minutes of its occurrence. Deposition testimony established that under Center procedures, the incident should have been reported to KinderCare's customer service. Iacovetti did not report the incident to customer service and did not inform Ranieri that the incident occurred.

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¶ 7 In the third incident, a child was left behind when the van from the Center picked children up from the Stevenson grade school. Iacovetti was on vacation at the time of the incident and Terry was the acting director in her absence. When Ranieri spoke to Hope White, the van driver, White stated that she had not received updated rosters listing the children who were to be picked up. According to the ECM prepared by Ranieri, White said that she asked Iacovetti for van rosters the previous week and Iacovetti said she would get them. In her deposition, White testified that she should have received the updated rosters from Terry in Iacovetti's absence.

¶ 8 In the ECM prepared by Ranieri, the following statements were made about the three incidents that led to Iacovetti's termination:

"1) On Friday 10/3 Assistant [D]irector Arnetta [T]erry reported a code 1 event to [Iacovetti] regarding Colleen (2 yr old teacher) mishandling a child. [Iacovetti] did not act on the report.

2) On 10/7 a child was left behind at Stevenson School. There were no van rosters available. Hope (van driver) stated that she asked [Iacovetti] for van rosters the previous week and [Iacovetti] said she would get them.

3) On 10/2 there was a misplaced child incident. [Iacovetti] disciplined one employee and not the other."

¶ 9 Terry began working for KinderCare in 2001 at another location and was transferred to the Center in December 2002, where she reported directly to Iacovetti. Terry and Iacovetti had a positive working relationship initially, and Iacovetti gave Terry a positive performance appraisal in July 2003. However, about a month later, the relationship began to deteriorate. In September

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2003, Ranieri notified Terry that Iacovetti had reported anonymous complaints from other employees regarding Terry's attitude. Iacovetti stated that she arrived at work one morning and found a stack of unsolicited, anonymous written complaints about Terry waiting on her desk. An ECM was issued by Iacovetti, and Terry provided a written response that was included in her file. Ranieri met with Iacovetti and Terry in an attempt to improve communication between the two of them. A few days after the meeting, Iacovetti issued another ECM citing Terry for insubordination. Terry sent emails to Ranieri on September 23 and 24 about concerns related to the two ECMs and other concerns about her relationship with Iacovetti. When she did not receive a response to her emails, Terry sent a follow-up email to Ranieri, Yarco and the Human Resources Department on October 14, 2003.

¶ 10 In the October 14 email, Terry stated that she was writing because she had not received a response to her concerns regarding the two ECMs in her file and her work at KinderCare. Terry then stated:

"Nevertheless, should there ever be any excuse for employee record tampering, racial slurs to employees about prospective parents or employees, or lying to others without hesitation. I have not always been in agreement with some of my directors [*sic*] practices, but as I was told by her, I am her employee and she is the boss. So now we've come into disagreement and now lies have been told against me, and have found themselves used against me to destroy my credibility as the assistant director for [the Center]. Under no circumstances should anyone falsely document paperwork on another employee and nothing be done about it."

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¶ 11 Terry went on to discuss a separate document that was part of her personnel file. An investigation determined that the incident described in the ECM in question never happened, and a note to that effect was written on the ECM, but it remained a part of her file. Terry stated that as far as she could tell, no action had been taken against the person who was responsible for placing the unsubstantiated document in her file. Terry ended the email by asking for feedback regarding what the next steps would be to address her concerns.

¶ 12 Iacovetti filed a complaint against KinderCare, Yarco, Ranieri and Terry. Her original complaint was dismissed in its entirety and she then filed an amended complaint on May 19, 2005. Yarco was dismissed as a defendant and the only counts to survive a motion to dismiss were the defamation and false light counts based on the ECM prepared by Ranieri and the October 14 email sent by Terry.

¶ 13 KinderCare and Ranieri filed a motion for summary judgment, and Terry filed a separate motion for summary judgment. Iacovetti's emergency motion to strike both summary judgment motions was denied. On May 21, 2009, the circuit court heard arguments on both summary judgment motions. The circuit court granted the summary judgment motion filed by KinderCare and Ranieri, finding as a matter of law that the statements were made through internal communications and were substantially true. The court found that the statements were privileged and no "ill-will" was intended. The court stated that the false light claim would fall along with the defamation claim. The circuit court also granted the summary judgment motion filed by Terry, finding that Terry had the right to go to upper management with her complaint regarding her own record, and that there was no intent to state something negative about Iacovetti. The

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court found that substantial truth existed in the communications.

¶ 14 Iacovetti timely filed an appeal of the circuit court's May 21, 2009, order granting both summary judgment motions (1-09-1541). On June 19, 2009, defendants-appellees filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Iacovetti then filed numerous motions related to the sanctions motion, such as a motion to declare the sanctions motion moot, an emergency petition for the circuit court judge to recuse himself, a motion to stay the proceedings and for an injunction to restrain defendants from proceeding with any motion for sanctions, and various motions to strike and bar testimony and claims related to the sanctions motion. Appeal 1-09-1541 was dismissed twice by this court for want of prosecution and subsequently reinstated. On June 9, 2010, Iacovetti filed an interlocutory appeal (1-10-1583) and a Rule 303 appeal (1-10-1584), both related to the proceedings below. The three appeals were consolidated on appellant's motion on June 28, 2010.

¶ 15

#### ANALYSIS

¶ 16 As an initial matter, we address the issue of whether Iacovetti's appellate briefs and separate appendix comply with Illinois Supreme Court Rule 341 (eff. July 1, 2008). Pursuant to Rule 341, the appellant's brief is to contain a statement of facts "which shall contain the facts necessary to an understanding of the case." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). The appellant's brief is also to contain an argument section with the contentions of the appellant as well as the reasons and citations to authority in support of the argument, and points that are not argued are waived. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). The appendix to the brief shall include any pleadings or other materials from the record which are the basis of the appeal or

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pertinent to it. Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005).

¶ 17 Iacovetti's statement of facts does not adequately provide this court with the facts necessary to an understanding of this case. It is rambling, jumbled, and mostly incoherent. It is rife with grammatical and punctuation errors, and incomplete and run-on sentences. The argument section is a continuation of the statement of facts, with jumbled facts from the lengthy, drawn-out proceedings below interspersed with occasional case citations. Where cases are cited, there is either no explanation provided as to how the case applies, or the argument itself is so unclear that even with an explanation, this court is unable to discern how the cited case supports the argument. Finally, although the separate appendix appears to conform to Rule 342, it consists of 1819 pages and includes numerous motions with lengthy attachments. It is not clear to this court why all of this documentation was deemed appropriate for inclusion in the appendix and not simply as part of the record.

¶ 18 It is well settled that the appellate court is entitled to a well-reasoned argument, along with authority for such argument. See *People v. O'Malley*, 356 Ill. App. 3d 1038, 1046 (2005). "Mere contentions without argument or citation to authority do not merit consideration on appeal." *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994). "[A]rguments inadequately presented on appeal are waived." *Id.* A reviewing court is "not a repository into which the appellant may foist the burden of argument and research." *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). When an appellant's brief does not comply with the supreme court rules, the reviewing court has the authority to strike the brief and dismiss the appeal. See, e.g., *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 440 (2009); *Bank of*

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*Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074 (1982). However, because we are able to ascertain the relevant facts from the response brief and the record on appeal, and can decipher the gist of the arguments made by Iacovetti, we choose to reach the merits of the appeal. See *Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2011) (the court may entertain an appeal as long as it understands the issues plaintiff intends to raise and where it has "the benefit of a cogent brief of the other party").

¶ 19 Summary judgment is proper when the pleadings, depositions, and affidavits demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008); *State Farm Mutual Automobile Insurance Co. v. Coe*, 367 Ill. App. 3d 604, 607 (2006). We review *de novo* an order granting summary judgment. *Jones v. Country Mutual Insurance Co.*, 371 Ill. App. 3d 1096, 1098 (2007). In reviewing a grant of summary judgment, the appellate court will construe the record strictly against the movant and liberally in favor of the nonmoving party. *Nettleton v. Stogsdill*, 387 Ill. App. 3d 743, 748 (2008).

¶ 20 Iacovetti first argues that the circuit court erred in ruling that her emergency motions to strike the summary judgment motions were improper. Iacovetti further contends that the circuit court ignored this court's precedent in *Independent Trust Corp. v. Hurwick*, 351 Ill. App. 3d 941, 950 (2004), and based its ruling instead on an Illinois State Bar Association article. The record does not support this assertion. In the transcript of the proceedings, the circuit court denied the motions to strike as improper and merely referred to an article. In the order, the motions to strike were denied without prejudice with leave granted to raise the arguments in a response to the

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motions for summary judgment.

¶ 21 Iacovetti contends that under this court's decision in *Independent Trust*, her emergency motions to strike the motions for summary judgment were necessary in order to protect her right to challenge the affidavits and documents that were attached to the motions for summary judgment. The issue in *Independent Trust* involved motions to strike affidavits or portions of affidavits that were attached to a motion for summary judgment. *Id.* This court stated that the failure to obtain a ruling on a motion to strike an affidavit will operate as a waiver of the objections to the affidavit. *Id.* However, this court went on to state that when ruling on a motion for summary judgment, the circuit court must determine the sufficiency of the affidavits even in the absence of a motion challenging the affidavits. *Id.* Here, Iacovetti's motions were not merely to strike affidavits or portions thereof, but motions to strike the motions for summary judgment in their entirety. Moreover, we note that the arguments presented in Iacovetti's motions to strike, while nearly as difficult to decipher as the arguments in her appellate brief, are primarily a response to the motions for summary judgment and only marginally purport to be a challenge to the sufficiency of the affidavits. Thus, the circuit court correctly ruled that Iacovetti's motions to strike the summary judgment motions were improper, and her arguments should instead have been raised in her responses to the summary judgment motions.

¶ 22 We now turn to Iacovetti's remaining arguments related to the summary judgment motions. Although the arguments are randomly interspersed in Iacovetti's brief, we will address the arguments related to the KinderCare and Ranieri motion for summary judgment first, followed by the arguments related to the Terry summary judgment motion. Moreover, although

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the claims that survived the motion to dismiss included false light claims, Iacovetti devotes a mere three conclusory sentences with one case citation at the end of her 50 page brief to the false light claims. As noted above, arguments that are inadequately presented on appeal are deemed waived. Thus, Iacovetti's arguments related to her false light claims have been waived and this court will only consider the arguments presented on the defamation claims.

¶ 23 To state a claim for defamation, a plaintiff must present facts showing that (1) the defendant made a false statement about the plaintiff, (2) there was an unprivileged publication of the defamatory statement to a third party by the defendant, and (3) the publication damaged the plaintiff. *Solaia Technology, LLC v. Specialty Pub. Co.*, 221 Ill. 2d 558, 579 (2006). A statement is only actionable if it is both factual and false. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 402 (2008). A valid claim cannot be established if the statement is true, and only "substantial truth" is required. *Cianci v. Pettibone Corp.*, 298 Ill. App. 3d 419, 424 (1998). "Substantial truth" is shown when "the 'gist' or 'sting' of the allegedly defamatory material is true." *Harrison v. Chicago Sun-Times, Inc.*, 341 Ill. App. 555, 563 (2003). Moreover, statements have also been determined to not be actionable where they are: (1) capable of an innocent construction (*Chicago City Day School v. Wade*, 297 Ill. App. 3d 465, 471 (1998)); (2) opinion (*Quinn v. Jewell Food Stores, Inc.*, 276 Ill. App. 3d 861 (1995)); or (3) mere hyperbole (*Imperial Apparel*, 277 Ill. 2d at 401).

¶ 24 The defamation claims against KinderCare and Ranieri are based on the ECM prepared by Ranieri. Iacovetti contends that the circuit court erred in granting KinderCare and Ranieri's motion for summary judgment because the statements regarding Iacovetti's job performance in

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the ECM were false, and the ECM also falsely stated that Ranieri conducted an investigation into the three incidents listed in the ECM. The statement regarding Ranieri conducting an investigation, whether true or false, is not a statement about Iacovetti and thus is not actionable on its face. We will therefore only consider the statements in the ECM that are statements about Iacovetti.

¶ 25 In the first incident, involving a toddler who left the classroom unattended, the ECM states that Iacovetti disciplined one employee who was in the classroom at the time and not the other. Iacovetti focuses her argument on her view that Anele was responsible for the incident and Post was not, but she fails to establish, nor does she even attempt to establish, that the statement itself is not true. Rather, she appears to be arguing that her failure to discipline Post should not have been grounds for termination. However, this has nothing to do with whether or not the statement that she disciplined one employee and not the other is a false statement, which is what she must show to sustain a cause of action for defamation. Instead, Iacovetti herself testified that she disciplined Anele for the incident, but she did not discipline Post. Thus, the statement relating to Iacovetti's discipline of one employee and not the other was a true statement and does not establish a cause of action for defamation.

¶ 26 In relation to the second incident, the ECM states that Terry reported a code 1 event involving the mishandling of a child by a teacher to Iacovetti, and Iacovetti failed to act on the report. Iacovetti contends that because she did not personally witness the incident, it was Terry's responsibility to notify the customer care department and report the code 1 event. Again, this is an argument that challenges the disciplinary action against Iacovetti, not the veracity of the

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statement itself. Iacovetti also contends that she acted on the report by commencing interviews with the two teachers involved and asking them both to prepare statements regarding the incident. Iacovetti further contends that she acted on the report by instructing Terry to continue the investigation and call customer care to report the incident.

¶ 27 According to KinderCare policy, an incident involving the mishandling or potential mishandling of a child by a teacher is to be immediately reported to the customer care department. The customer care department will then notify the appropriate management personnel and will provide guidance on how to conduct an investigation of the incident. Iacovetti testified that she was away from the Center at the time of the incident, but that Terry reported the incident to her when she returned. Thus, Iacovetti's testimony established that Terry did, in fact, report the incident to her and that portion of the statement is true.

¶ 28 Iacovetti appears to interpret part of the statement as stating that Terry actually used the words "code 1 event" when reporting the incident to Iacovetti. Iacovetti contends that because Terry did not actually characterize the incident as a code 1 event, the statement is false. However, the statement does not clearly state that Terry herself used the designation "code 1 event," merely that a code 1 event was reported. KinderCare's policies establish that the mishandling of a child is considered a code 1 event, so that portion of the statement, while it may be perceived as incorrect if it is interpreted to mean that Terry herself classified the incident as a code 1 event, is substantially true in that the incident is one that would be considered a code 1 event under KinderCare policy.

¶ 29 The final portion of the statement is that Iacovetti failed to act on the report. It was

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established that under KinderCare policy, the action that should have been taken was to contact customer care. Although Iacovetti testified that she immediately went to Brown and Hussain and asked each of them to write a statement detailing the incident, and that she instructed Terry to contact customer care and conduct an investigation, those are not the actions outlined in the KinderCare policy. Iacovetti testified that customer care should have been contacted and that she did not, in fact, contact customer care. Thus, because the established policy was to contact customer care, the statement that Iacovetti failed to act on the report is substantially true, and the fact that Iacovetti believes Terry is the one who should have contacted customer care is irrelevant. The statement itself is not false and thus does not support a cause of action for defamation.

¶ 30 Finally, regarding the third incident in which a child was left at the school, the ECM states that the van driver said there were no van rosters available and that she had asked Iacovetti for the van rosters the week before and Iacovetti said she would get them. Iacovetti argues that she was on vacation at the time of the incident and that Terry was responsible for providing the updated van rosters. Again, Iacovetti's argument is a challenge to her termination on the grounds that she believes Terry was responsible for providing the updated roster to the van driver in Iacovetti's absence. However, testimony established that the statement itself is true. Thus, it does not support a cause of action for defamation.

¶ 31 Iacovetti argues that when there are two or more differing views of the facts, the matter raises genuine issues of material fact and must be determined by a jury, citing *Parker v. House O'Lite Corp.*, 324 Ill. App. 3d 1014, 1026-27 (2001). Iacovetti misses the point completely. The

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differing views of the facts in this case are related to the incidents themselves and who was responsible for the incidents, not to the actual statements. In order to sustain a cause of action for defamation, the allegedly defamatory statements must be factual and false. As discussed above, none of the statements about Iacovetti in the ECM are false. Iacovetti merely has a different view of who was responsible for the actual incidents and disagrees with the employment action that was taken against her as a result of the incidents. However, this does not constitute a genuine issue of material fact regarding the statements. Because the statements in the ECM were not false, Iacovetti's cause of action against KinderCare and Ranieri cannot survive a motion for summary judgment and we need not address whether the statements in the ECM were also privileged.

¶ 32 We now address the Terry summary judgment motion. Iacovetti first contends the circuit court committed reversible error in granting the summary judgment motion filed by Terry because the motion was based on the wrong email. This argument has no merit. The original email sent by Terry was apparently forwarded to other people. The email that was attached to the summary judgment motion contained a line at the top with a note to another individual that seems to indicate it was being forwarded, followed by the full text of the original email, including the address list for the original email. Iacovetti's counsel conceded at the hearing that the text of the forwarded email was identical to the text of Terry's original email. Thus, the grant of summary judgment was not based on the "wrong email" but on the text of Terry's original email.

¶ 33 Iacovetti's next argument, made in several places throughout her brief, is that the defenses

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of innocent construction and opinion were not available to Terry at the time she filed her motion for summary judgment. This argument is presented under several different headings in the brief, and in such a convoluted way, that it is difficult to decipher the gist of the argument. First, Iacovetti states that the circuit court based its ruling on Terry's summary judgment motion on innocent construction and opinion. Iacovetti then goes on to argue that because of two prior court orders in the case, one order related to a section 2-615 motion to dismiss and the other related to a motion to strike defendants' affirmative defenses, the defenses of innocent construction and opinion were no longer available to Terry. Iacovetti then claims that on this basis, the defenses of innocent construction and opinion are required to be stricken from the motion for summary judgment, and that the motion for summary judgment itself is required to be stricken as a matter of law. Iacovetti also appears to be arguing that this court's accepted "method" of raising the defenses of innocent construction and opinion is solely through a section 2-615 motion and, by implication, these defenses cannot be raised in a motion for summary judgment. Finally, Iacovetti appears to be arguing in the alternative that even if the defenses were not barred, the statements in the email were not opinion and cannot be innocently construed.

¶ 34 We first address Iacovetti's contention that the circuit court based its ruling on Terry's summary judgment motion on innocent construction and opinion. This contention is not supported by the record. At the close of the hearing on the summary judgment motions, the circuit court announced its order by addressing the KinderCare and Ranieri summary judgment motion first, followed by comments specifically addressing Terry's summary judgment motion.

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In its comments related to the Terry motion, the court noted that although no direct reference was made to Iacovetti in Terry's email, the court could infer that some of the comments in the email were referring to Iacovetti. The court then turned to the issue of intent and noted that the email was from an employee, addressed to upper management, for the purpose of resolving a complaint regarding that employee's record. The court stated that Terry had a right to do that, she clearly stated her basis for doing it, and her statements substantially constituted a correct record and not an intent to state something negative about Iacovetti. The court then made some statements that appear to relate to both summary judgment motions, and clearly stated its finding that substantial truth existed in "these communications." We note that nothing in this language supports Iacovetti's contention that the circuit court based its ruling on innocent construction and opinion. This language instead supports the interpretation that the circuit court based its ruling on the substantial truth of the statements. Moreover, the language relating to intent supports an interpretation that the court also found the statements were privileged and Iacovetti failed to show an abuse of that privilege. Thus, we will first examine whether the statements were substantially true and, even if they were false, whether they were privileged.

¶ 35 As the circuit court noted, the email sent by Terry does not mention Iacovetti by name. However, in the second paragraph, Terry mentions employee record tampering, racial slurs to employees about prospective parents or employers, and lying to others without hesitation. In the very next sentence, she states that she has not always been in agreement with her director's practices but has been told that Terry is the employee and "she" is the boss. "She" can be interpreted to mean Iacovetti in this context, because Iacovetti was Terry's direct supervisor.

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Terry goes on to state that they have now disagreed and lies have been told against Terry. The email then makes reference to someone falsely documenting paperwork on another employee.

¶ 36 Iacovetti contends that the statements in the email were false. She mentions the employee record tampering statement, the statement about racial slurs, and the statement about lying to others in this section of her argument. However, Iacovetti then goes on to devote the bulk of her argument to discussing testimony related to a disagreement between Terry and Iacovetti over a "PCard," something that is not even mentioned in the October 14th email but, according to the record, was raised in a previous email. In addressing the three statements in the October 14th email that are the subject of the defamation claim, she merely states that the statements are false and that Terry failed to present any admissible evidence that the statements were substantially true.

¶ 37 Again, as previously noted, "[m]ere contentions without argument or citation to authority do not merit consideration on appeal." *Eckiss*, 261 Ill. App. 3d at 786. These statements are not discussed with any degree of specificity by either party. Our review of the record discloses that each of the statements has a basis in an actual event, and thus, supports the circuit court's conclusion that the statements are substantially true and therefore cannot sustain a cause of action for defamation.

¶ 38 Assuming, *arguendo*, that one or more of the statements was false, a communication that would otherwise be defamatory is afforded a qualified privilege when made in certain situations or under certain circumstances. *Kuwik v. Starmakr Star Marketing and Administration, Inc.*, 156 Ill. 2d 16, 24 (1993). The following three classes of communications are conditionally

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privileged: (1) those involving some interest of the person who published the defamatory matter; (2) those involving some interest of the person to whom the matter is published or to a third party; and (3) those involving a recognized public interest. *Id.* at 25-27; *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 401 (1999). To determine whether a qualified privilege has been established, courts look for the following elements: (1) good faith by the defendant in making the statement; (2) an interest or duty to uphold; (3) a statement limited in scope to that purpose; (4) a proper occasion; and (5) publication in a proper manner and to proper parties only. *Kuwik*, 156 Ill. 2d at 25. "[O]nce a defendant establishes a qualified privilege, the plaintiff must prove that the defendant either intentionally published the material while knowing the matter was false, or displayed a reckless disregard as to the matter's falseness." *Id.* at 24.

¶ 39 Here, it is clear that Terry had an interest in resolving issues surrounding the two ECMs that had been issued regarding her work performance, another ECM that remained in her personnel file even after it was determined that the events detailed in the ECM never happened, and her professional reputation. It is equally clear that Ranieri, Yarco and the Human Resources Department at KinderCare had an interest in resolving these issues. The statements were made in good faith for a proper purpose and to the proper parties in response to recent additions to Terry's personnel file and an ongoing conflict with her direct supervisor. Thus, the statements were privileged and there is no evidence in the record to suggest that Iacovetti has proven that the material was known to be false and intentionally published, or that it was published in reckless disregard as to the matter's falseness. Therefore, the circuit court did not err in granting Terry's motion for summary judgment and we need not address Iacovetti's arguments regarding innocent

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construction and opinion.

¶ 40 Finally, Iacovetti argues that appellees are "forever absolutely barred" from litigating their Rule 137 and Rule 219 motions due to *res judicata*. Relying on *Hudson v. City of Chicago*, 228 Ill. 2d 462 (2008), Iacovetti argues that because appellees had filed two previous motions for Rule 137 and Rule 219 sanctions and those motions had never been ruled on, and because the order entered on May 21, 2009, stated that all pending motions were denied, appellees were barred from filing a new Rule 137 motion for sanctions within 30 days of the May 21 order. This reliance is misplaced and this argument has no basis in law. Motions filed under Rule 137 must be filed within 30 days of the entry of final judgment. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). To argue that Rule 137 motions are barred by *res judicata* simply because a previous Rule 137 motion had been filed and the final order denied all pending motions demonstrates a glaring misapprehension of both Rule 137 and the doctrine of *res judicata*.

¶ 41 Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Hudson*, 228 Ill. 2d at 467. A motion for sanctions pursuant to Rule 137 is not a "subsequent action" between the parties, rather, it is part of the same action and the only limitation is that it must be filed within 30 days of the final judgment. Here, the Rule 137 motion was timely filed. Thus, the circuit court properly denied Iacovetti's motions for a preliminary and permanent injunction and a stay of the proceedings.

¶ 42 In conclusion, we note that this appeal is frivolous and completely lacking in legal merit. Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994) provides that if a reviewing court

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determines that an appeal is frivolous, or that it was not taken in good faith or for an improper purpose, an appropriate sanction may be imposed upon the party or the attorney of the party. The imposition of sanctions is a matter left strictly to the appellate court's discretion. *Residential Carpentry, Inc. v. Worker's Compensation Comm'n*, 389 Ill. App. 3d 975, 976 (2009). In the exercise of this discretion, although tempted, we decline to impose sanctions in the instant appeal. However, we suggest that plaintiff and her counsel be much more circumspect in bringing matters before this court. While a party has a right to appeal, that right should not be abused and does not justify the filing of frivolous appeals.

¶ 43 Affirmed.