

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

FILED
05-20-2020
Clerk of Circuit Court
Brown County, WI
2020CV000514
Honorable Tammy Jo
Hock
Branch 3

ALLISON BUCKLEY

[REDACTED]
Green Bay, WI 54313

Plaintiff,

v.

Case No: 20CV
Action Code: 30301ASHWAUBENON PUBLIC SAFETY OFFICERS ASSOCIATION
2155 Holmgren Way
Ashwaubenon, WI 54304,

ERIC PAULOWSKI

[REDACTED]
Green Bay, WI 54313,

and

MELANIE LOVATO

[REDACTED]
Green Bay, WI 54313,

Defendants.

SUMMONS

THE STATE OF WISCONSIN TO EACH PERSON NAMED ABOVE AS A DEFENDANT:

You are hereby notified that the Plaintiff named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. **The answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court of Outagamie County, 100 S. Jefferson Street, Green Bay, WI 54301, and to Herrling Clark Law Firm Ltd., attention John D. Claypool and Kyle J. Thelen, Plaintiff's attorneys, whose address is 800 North Lynndale Drive, Appleton, Wisconsin 54914.** You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and

you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 19th day of May, 2020.

HERRLING CLARK LAW FIRM LTD.

Attorneys for Plaintiff, Allison Buckley (f/k/a Allison Swanson)

BY: Electronically Signed by John D. Claypool

John D. Claypool

State Bar No. 1003743

Kyle J. Thelen

State Bar No. 1099120

800 North Lynndale Drive

Appleton, WI 54914

(920) 739-7366 (Telephone)

(920) 739-6352 (Facsimile)

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

FILED
05-20-2020
Clerk of Circuit Court
Brown County, WI
2020CV000514
Honorable Tammy Jo
Hock
Branch 3

ALLISON BUCKLEY

[REDACTED]
Green Bay, WI 54313

Plaintiff,

v.

Case No: 20CV
Action Code: 30301ASHWAUBENON PUBLIC SAFETY OFFICERS ASSOCIATION
2155 Holmgren Way
Ashwaubenon, WI 54304,

ERIC PAULOWSKI

[REDACTED]
Green Bay, WI 54313,

and

MELANIE LOVATO

[REDACTED]
Green Bay, WI 54313,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, Allison Buckley (formerly known as Allison Swanson) (“Swanson”), by and through her attorneys, Herrling Clark Law Firm Ltd., and as and for a Complaint against the Defendant, Ashwaubenon Public Safety Officers Association (“APSOA”), the Defendant, Eric Paulowski (“Paulowski”), and the Defendant, Melanie Lovato (“Lovato”), alleges as follows:

Parties / Jurisdiction

1. Swanson is an adult resident of the state of Wisconsin with an address of [REDACTED], Green Bay, WI 54313

2. The APSOA is a certified union that represents the public safety officers employed by the Village of Ashwaubenon and has an address of 2155 Holmgren Way, Ashwaubenon, WI 54304.
3. Paulowski is an adult resident of the state of Wisconsin with an address of [REDACTED], Green Bay, WI 54313.
4. Lovato is an adult resident of the state of Wisconsin with an address of [REDACTED], Green Bay, WI 54313.
5. This Court has personal jurisdiction over the APSOA pursuant to Wis. Stat. § 801.05.
6. This Court has personal jurisdiction over Lovato pursuant to Wis. Stat. § 801.05.
7. This Court has personal jurisdiction over Paulowski pursuant to Wis. Stat. § 801.05.
8. Venue is proper in this judicial district pursuant to Wis. Stat. § 801.50.

General Allegations

9. Paragraphs 1 through 8 of this Complaint are hereby incorporated by reference as if set forth fully herein.
10. Swanson is the Village Manager for the Village of Ashwaubenon (the “Village”).
11. On or around February 6, 2020, the APSOA issued a press released and held a press conference issuing a vote of no confidence against Swanson.
12. Paulowski is the President of the APSOA.
13. Lovato is the Secretary of the APSOA.
14. Paulowski and Lovato were present at the press conference on February 6, 2020 and were the co-drafters of the February 6, 2020 press release made by the APSOA.
15. Paulowski and Lovato did not consult with all members of the APSOA before issuing a no confidence vote on behalf of the APSOA.

16. There were several members of the APSOA that were not consulted regarding the decision to issue a vote of no confidence prior to the APSOA's vote of no confidence being issued.
17. The statements made by the APSOA referenced in this Complaint were made by Paulowski and / or Lovato.
18. As part of the aforementioned vote of no confidence, the APSOA, Paulowski, and / or Lovato made several accusations of wrongdoing on the part of Swanson.
19. The Village hired an independent attorney, Attorney James R. Macy ("Macy"), to serve in the role as investigator regarding the accusations made by the APSOA, Paulowski, and / or Lovato in the APSOA's vote of no confidence against Swanson.
20. Several, if not all, of the accusations made against Swanson by the APSOA, Paulowski, and / or Lovato are false.
21. Several, if not all, of the accusations made by the APSOA, Paulowski, and / or Lovato were made either knowing the same were false or with a reckless disregard for the truthfulness of said accusations.
22. Lovato stated that "[t]he facts will show that Village Manager Swanson has not allowed the department heads of any village department to fully function in their position."
23. The allegation made by the Lovato and referenced in Paragraph 22 of this Complaint is not true.
24. The Village Attorney, the Director of Public Works, the Director of Parks, Recreation, and Forestry, the Clerk-Treasurer, the Community Development Director, and the Director of Finance all submitted statements refuting the statement / allegation referenced in Paragraph 22 of this Complaint.

25. Macy, in his report dated March 24, 2020 following his investigation (“Macy’s Report”), confirmed that no department heads believe that Swanson is prohibiting them from fully functioning in their respective positions.
26. Macy’s Report also explains that no management staff have noted leaving employment with the Village due to strained relationships with Swanson.
27. Regarding the statement / allegation made by the APSOA identified in Paragraph 22 of this Complaint, Macy’s Report states that his investigation into the same revealed no wrongdoing on the part of Swanson.
28. The APSOA, Paulowski, and / or Lovato stated that “Ms. Swanson terminated a Lieutenant and demoted two additional supervisors (Captain and Lieutenant by stripping them of their seniority) without Police and Fire Commissions approval or involvement.”
29. The Lieutenant termination referred to by the APSOA, Paulowski, and / or Lovato in the allegation outlined in Paragraph 28 of this Complaint was a decision made by the Village Board, not Swanson.
30. The demotions referred to by the APSOA, Paulowski, and / or Lovato in the allegation contained in Paragraph 28 of this Complaint were not the result of any conduct on the part of Swanson.
31. One of said demotions was done at the request of the Captain involved and was approved by the Village’s Police and Fire Commission.
32. One of said demotions was the result of a restructuring and reassignment of lieutenant duties among existing lieutenants as assigned by conducted by department management, not Swanson.

33. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 28 of this Complaint, Macy's Report states that Macy's investigation of the same revealed no wrongdoing on the part of Swanson.
34. The APSOA, Paulowski, and / or Lovato stated that "Ms. Swanson recommended a change to the Village's anti-nepotism clause as she was involved with a personal relationship that violated the then existing anti-nepotism policy."
35. Swanson's husband worked as a public safety officer before Swanson was hired in the position of Village Manager.
36. The nepotism policy mirrors the Village's nepotism ordinances.
37. The nepotism ordinances predate Swanson's employment at the Village.
38. The Village's anti-nepotism policy applies to individuals working in the same department.
39. Swanson and her husband do not work in the same department.
40. The Village's anti-nepotism policy does not apply to Swanson and her husband.
41. Swanson never requested a change in the nepotism policy.
42. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 34 of this Complaint, Macy's Report states that Macy's investigation of the same revealed no wrongdoing on the part of Swanson.
43. The APSOA, Paulowski, and / or Lovato stated that "[c]onservative estimates reflect a Village investment of over 13 million dollars in Capital Park, yet this measure never went to the Finance Committee or referendum."
44. The APSOA, through its statement identified in Paragraph 43 of this Complaint, implied that Swanson committed the Village to the Capital Park project unilaterally and spent Village money with proper authorization.

45. As a result of the statement / allegation identified in Paragraph 43 of this Complaint, the media reported that Swanson spent Village money without proper authorization, an allegation proven to be untrue.
46. The Capital Park project was discussed between the developer and several Village officials before it was submitted to the Village Board for discussion, negotiation, and consideration.
47. The Village Board subsequently discussed, negotiated, and considered the Capital Park project.
48. The Village Board ultimately voted in favor of proceeding with the Capital Park project.
49. Other Village committees were involved through the approval of the Capital Park project as necessary.
50. Swanson did not unilaterally approve the Capital Park project.
51. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 43 of this Complaint, Macy's Report states that "[i]nformation indicates that all appropriate procedures were followed including the proper use of development agreements; Finance Committee and Village Board involvement in bonding; Plan Commission and Public Works & Protection Committee involvement; and proper public bidding processes. To allege that the Finance Committee was not involved is simply not accurate. To suggest a referendum was required, without further substance, is inaccurate."
52. The APSOA stated that "Swanson has approved significant expenditures in the purchase and subsequent clean-up of Schneider lot on S. Broadway without involvement from Finance Committee. The only involvement from the Finance Committee was to approve the final budget. Capital Park and Schneider purchases were never brought as a line item

to the Finance Committee; At least one member of the Finance Committee feels that it would have been normal practice to involve the committee in these types of expenditures.”

53. The Schneider lot project was discussed amongst several Village officials before it was submitted to the Village Board for discussion, negotiation, and consideration.

54. The Village Board subsequently discussed, negotiated, and considered the Schneider lot project.

55. The Village Board ultimately voted in favor of proceeding with the Schneider lot project.

56. Other Village committees were involved through the approval of the Schneider lot project as necessary.

57. Swanson did not unilaterally approve the Schneider lot project.

58. Regarding the allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 52 of this Complaint, Macy’s Report states that “[i]nformation indicates that all appropriate procedures were followed including the proper use of development agreements; Finance Committee and Village Board involvement in bonding; Plan Commission and Public Works & Protection Committee involvement; and proper public bidding processes. To allege that the Finance Committee was not involved is simply not accurate.”

59. There is no requirement that the development projects be approved by the finance committee.

60. The general process is that development projects are discussed by the Village Board in closed session.

61. Regarding the financial statements / allegations made by the APSOA, Paulowski, and / or Lovato identified in Paragraphs 43 and 52 of this Complaint, Macy's Report finds no wrongdoing on the part of Swanson.
62. The APSOA, Paulowski, and / or Lovato stated that "Officer's (sic) retirement pay out structure changed without negotiations or advance notice to the Association to do so. Ms. Swanson simply changed the retirement payout amount to retiring Officers costing the average officer \$15,000-\$50,000 each upon retirement."
63. Swanson discovered an inaccuracy in the way that officers supporting their requests for retirement payouts.
64. The Village Board reviewed the way compensation was calculated for purposes of officers' retirement payouts.
65. The Village Board determined there was a discrepancy in the way that compensation was calculated for purposes of officers' retirement payouts.
66. The Village Board voted in favor of a policy clarifying how compensation would be calculated for purposes of officers' retirement payouts.
67. Swanson did not unilaterally change any officers' retirement payout.
68. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 62 of this Complaint, Macy's Report states that Macy's investigation of the same revealed no wrongdoing on the part of Swanson.
69. The APSOA stated that "Ms. Swanson suddenly removed a long serving member from the Police and Fire Commission (PFC) when the member did not agree with Ms. Swanson on a particular topic. Swanson did this in the context of changing the residency requirement for PFC members. Swanson was then able to fill the open seat with her own appointment."

70. The Police and Fire Commission member referred to in Paragraph 69 of this Complaint moved out of the Village.
71. The Village President determined that it was more appropriate for members of the Police and Fire Commission to be residents of the Village.
72. Village Ordinance Chapter 2, Section 2-2-337(A) establishes that members of the Village Police and Fire Commission shall be citizens of the Village.
73. The Police and Fire Commission member referred to in Paragraph 69 of this Complaint was allowed to fulfill the rest of that member's respective term and was not terminated at all, let alone by Swanson.
74. Any vacancy in the Police and Fire Commission is filled by nomination by the Village President and confirmation by the Village Board.
75. The vacancy created by a Police and Fire Commission member moving out of the Village of Ashwaubenon was filled using the process identified in Paragraph 69 of this Complaint.
76. Swanson did not fill, with her own appointment, the vacancy created by a Police and Fire Commission member moving out of the Village.
77. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 69 of this Complaint, Macy's Report states "[t]o make allegations against the Village Manager in this situation not only misstates the facts, but unfortunately also demonstrates a lack of understanding of the law."
78. The APSOA, Paulowski, and / or Lovato stated that "Ms. Swanson arbitrarily changed the pay of officers in violation of the collective bargaining agreement in 2016-2017. The Association filed a grievance in 2017 for contract violations. Ms. Swanson settled with the Union just prior to the arbitration hearing, acknowledging the contract and pay scales.

Officers were not paid back fully for previous lost wages. The Association agreed to settle with all members losing hundreds of thousands of dollars each and had significant legal defense fees despite a very clear contract violation.”

79. In the 2016-2017 salary negotiations, the APSOA alleged that the formula for percentage pay increases was not being applied properly, but approved the same formula that has been used since 2012.

80. The APSOA filed a grievance and the issue was resolved.

81. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 78 of this Complaint, Macy’s Report states that “[t]o now claim some fault by the Village may indicate [the APSOA] [has] buyer’s remorse and did not negotiate effectively for their members, but that is certainly not the fault of the Village Manager or Village.”

82. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 78 of this Complaint, Macy’s Report states that “[t]his allegation has no merit.”

83. The APSOA, Paulowski, and / or Lovato stated that “[a]n officer signed up for vision insurance by error in November of 2015. Ms. Swanson refused to cancel coverage. The insurance company acknowledged the insurance could be cancelled. After significant requests, Ms. Swanson eventually cancelled the coverage.”

84. The officer referred to in Paragraph 83 is Lovato.

85. In or around late November or early December of 2015, Lovato enrolled for vision insurance for her and her husband through the Village.

86. On December 3, 2015, Lovato told Swanson, via e-mail, she wanted to cancel her enrollment in vision insurance.
87. In October 2015, DeltaVision, the vision insurance provider, distributed an FAQ document that stated, in pertinent part, “[y]ou can enroll by completing the paper enrollment form that must be submitted to administration by the end of open enrollment which occurs in November of each year. You must remain enrolled for one year. In other words, you can’t go get glasses and an exam and then drop the enrollment.”
88. This FAQ document was distributed to Village employees in October 2015.
89. Relying on this FAQ, Swanson responded to Lovato’s request to cancel her vision insurance enrollment and instructed Lovato she could not disenroll until the next enrollment period.
90. Eventually, after discussions with DeltaVision, DeltaVision was willing to allow Lovato to disenroll from the vision insurance coverage because coverage had not yet started, despite it’s general mandate that all participants be enrolled for one year.
91. Nevertheless, Lovato’s husband subsequently e-mailed Swanson on December 3, 2015, and told Swanson that he wished to remain enrolled in the vision insurance.
92. Swanson did absolutely nothing wrong in regard to Lovato’s initial enrollment in vision insurance, subsequent decision to try to disenroll, and then further decision to remain enrolled.
93. Regarding the statement / allegation made by the APSOA, Paulowski, and / or Lovato identified in Paragraph 83 of this Complaint, Macy’s Report states that “[t]his allegation is really incredible in that the Village is accused of some wrongdoing when, despite the officer’s error, the Village Manager actually helped the officer out. The allegation is

misplaced at best. It clearly does not demonstrate any wrongdoing by the Village Manager or Village.”

94. The APSOA, Paulowski, and / or Lovato stated that “Ms. Swanson personally disregarded criminal charges recommended by an Internal Affairs investigation related to a Village Board member’s conduct in September of 2019. Battery & Disorderly Conduct charges were recommended and Ms. Swanson stated in an email to the Head of Internal Affairs that she was ‘comfortable with no action being taken,’ despite the fact that her position has no law enforcement or prosecutorial component.”

95. The APSOA, Paulowski and / or Lovato, through the statement identified in Paragraph 94 above, recognizes that Swanson has no influence over decisions by law enforcement or a district attorney to issue citations or prosecute charges on behalf of the Village.

96. There was no internal affairs investigation requested or completed.

97. The matter referenced in Paragraph 94 of this Complaint was never recommended by anyone for a charge of battery or disorderly conduct.

98. The matter referenced in Paragraph 94 of this Complaint was reviewed by the Village Attorney, Police Chief Jeff Lade, Interim Police Chiefs Tom Rolling and Randy Tews, and Captain Crocker.

99. The individuals referenced in Paragraph 98 of this Complaint also determined that it was appropriate not to issue a citation in the matter referenced in Paragraph 94 of the Complaint.

100. The claim that Swanson “personally disregarded criminal charges recommended by an Internal Affairs investigation related to a Village Board member’s conduct in September of 2019” is false.

101. Had the Village Public Safety Department wanted to press charges for the matter referenced in Paragraph 94 of this Complaint, the Village Public Safety Department could have done so, regardless of what Swanson's opinion was on the matter.
102. In regard to the statement / allegation made by the APSOA, Paulowski, and / or Lovato referenced in Paragraph 98 of this Complaint, the Macy Report indicates that "[t]his allegation does not demonstrate any wrongdoing by the Village Manager or Village."
103. There are several other statements that were made by the APSOA, Paulowski, and / or Lovato that the Macy Report determined were false, had no merit, and / or did not evidence any wrongdoing on the part of Swanson.
104. The APSOA, Paulowski, and / or Lovato made the aforementioned statements against Swanson in an attempt to smear, defame, and otherwise damage Swanson's reputation.
105. The APSOA, Paulowski, and / or Lovato made the aforementioned statements against Swanson in an attempt to influence the Village Board to terminate Swanson.
106. The APSOA, Paulowski, and / or Lovato made the aforementioned statements against Swanson to make it difficult, if not impossible, for Swanson to find employment in other municipalities as a Village Manager.
107. The APSOA, Paulowski, and / or Lovato made the aforementioned statements in an attempt to influence the general public to react negatively towards Swanson and treat her negatively.
108. Since the APSOA, Paulowski, and / or Lovato made the aforementioned false statements, Swanson has been treated negatively by members of the general public.

109. The APSOA, Paulowski, and / or Lovato made the aforementioned statements against Swanson in an attempt to make Swanson's work environment intolerable such that Swanson would resign.
110. The statements made by the APSOA, Paulowski, and / or Lovato have caused other Village employees to treat Swanson negatively and have created an unpleasant work environment for Swanson.
111. The APSOA, Paulowski, and / or Lovato made the aforementioned statements with an intent to defame Swanson.
112. The APSOA, Paulowski, and / or Lovato have also made several open records requests to the Village regarding the aforementioned statements after February 6, 2020 (the date the press release and press conference were held).
113. The APSOA, Paulowski, and / or Lovato have intentionally distributed redacted and incomplete versions of records received in response to open records request to local news media in further attempt to create the impression that Swanson is guilty of some wrongdoing.
114. The APSOA, Paulowski, and / or Lovato took the actions outlined in Paragraph 113 of this Complaint in an attempt to encourage the local news media to publish stories that further defame Swanson.
115. Through the present, the APSOA, Paulowski, and / or Lovato continue to make open records requests to the Village regarding Swanson.
116. Upon information and belief, the APSOA, Paulowski, and / or Lovato plan to continue to redact and / or withhold portions of the records provided to it pursuant to its open records requests to continue to mislead the local news media.

FIRST CAUSE OF ACTION
Defamation

117. Paragraphs 1 through 116 of this Complaint are hereby incorporated by reference as if set forth fully herein.
118. The aforementioned statements outlined above, in addition to other statements not expressly identified, made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference were false.
119. The false statements made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference were made, verbally and in writing, and were published with the intention that the same be communicated to, and reviewed by, third parties.
120. The false statements made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference were received and reviewed by third parties.
121. The APSOA, Paulowski, and / or Lovato had no legal or other applicable privilege entitling them to make said aforementioned false statements in the aforementioned February 6, 2020 press release and / or press conference.
122. The false statements made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference harmed Swanson's reputation as a Village Manager so as to lower her in the estimation of the community.

123. The false statements made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference have deterred third persons from associating or dealing with Swanson.
124. The false statements made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference were made by the APSOA, Paulowski, and / or Lovato with actual malice.
125. The APSOA, Paulowski, and / or Lovato made the false statements in the aforementioned February 6, 2020 press release and / or press conference despite either knowing the same were false or with a reckless disregard for the truthfulness of the same.
126. The false statements made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference were made in an attempt to subject Swanson to hatred, degradation, ridicule, or contempt.
127. The false statements made by the APSOA, Paulowski, and / or Lovato in the aforementioned February 6, 2020 press release and / or press conference have damaged Swanson in an amount to be determined by a trier of fact.
128. Based on the foregoing, Swanson is entitled to a judgment against the APSOA, Paulowski, and / or Lovato in an amount to be determined by a trier of fact.

SECOND CAUSE OF ACTION
Punitive Damages

129. Paragraphs 1 through 128 of this Complaint are hereby incorporated by reference as if set forth fully herein.
130. The actions and inactions of the APSOA, Paulowski, and / or Lovato as set forth herein constitute an intentional disregard of Swanson's rights, entitling Swanson to punitive

damages, pursuant to Wis. Stat. § 895.043, in an amount to be determined by a trier of fact.

WHEREFORE, Swanson hereby demands the following relief:

1. An award of damages against the APSOA, Paulowski, and / or Lovato in an amount to be determined by a trier of fact based on the defamation of Swanson committed by the APSOA, Paulowski, and / or Lovato as outlined above;
2. Punitive damages in an amount to be determined by a trier of fact pursuant to Wis. Stat. § 895.043.
3. Interest.
4. Statutory costs and disbursements.
5. Actual and reasonable attorneys' fees.
6. Such further and additional relief as the Court deems just and equitable.

Respectfully submitted this 19th day of May, 2020.

HERRLING CLARK LAW FIRM LTD.

Attorneys for Plaintiff, Allison Buckley (f/k/a Allison Swanson)

BY: Electronically Signed by John D. Claypool

John D. Claypool

State Bar No. 1003743

Kyle J. Thelen

State Bar No. 1099120

800 North Lynndale Drive

Appleton, WI 54914

(920) 739-7366 (Telephone)

(920) 739-6352 (Facsimile)