IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

ROWLAND TODD, Plaintiff,	)	
v.	)	Case No. 2:17-CV-04054-BCW
GREG HASTY, *et al.*, Defendants.	)	

JUDGMENT AND ORDER

Before the Court is Defendants' Motion for Summary Judgment (Doc. #138). The Court, being duly advised of the premises, grants said motion.

In this § 1983 action, Plaintiff Rowland Todd alleges he was retaliated against in violation of his rights under the First Amendment. In February 2017, Todd sent a letter to Defendants, County Commissioners of Camden County, Missouri, criticizing their oversight of the county human resources department and use of taxpayer money.

Todd's claims are these: (I) first amendment retaliation based on Defendants' 2017 hostile work environment investigation; (II) first amendment retaliation based on Defendant Greg Hasty's media statement that Todd stole county records; (III) first amendment retaliation based on the release of the Investigation Report; (IV) first amendment retaliation based on the release of surveillance video footage; (V) defamation against Defendant Hasty; and (VI) punitive damages.

UNCONTROVERTED FACTS

Plaintiff Rowland Todd was the County Clerk of Camden County, and Defendants Greg Hasty, Don Williams, and Beverly Thomas were Camden County Commissioners. Defendant

Hasty was Presiding Commissioner. Defendant Williams took office on January 1, 2017, succeeding Cliff Luber.

The County Clerk's Office was responsible for payroll and for responding to Sunshine Law requests. Before 2015, the Clerk's Office handled human resources. In 2015, the Commission made HR a separate department from the Clerk's Office. Shortly thereafter, discussions began about possibly outsourcing payroll.

Beginning in March 2015, Brianna Christensen was the HR Director for Camden County, making her an employee of the Commission. The HR department would provide documentation to the Clerk's Office to allow the Clerk's Office to perform payroll functions, including submission of retirement payments to CERF and LAGERS, as well as for health insurance benefits. For example, when a county employee was nearing retirement, HR would pull payroll records for the employee's two highest years of pay and complete a form, which the Clerk's Office would certify for CERF and LAGERS.

In late 2015, Plaintiff began complaining to Defendants that the Clerk's Office was not timely receiving paperwork from HR for the completion of payroll. The payroll clerk also complained to Plaintiff about Christensen each week because the payroll clerk could not get her work done without necessary documents from HR.

On October 11, 2016, Christensen submitted a letter of resignation to Defendants, citing a "hostile work environment created by 2nd District Commissioner Cliff Luber, County Clerk Rowland Todd and his employees." Defendants made arrangements for Christensen to work part-time, and outside of business hours to avoid dealing with Luber and/or Plaintiff and Clerk's Office employees.

When Christensen went to part-time, she asked that the payroll records, which were usually stored in the Clerk's Office, be brought to HR so that Christensen could borrow them. The payroll records were in Christensen's office beginning in at least December 2016.

At some point, the payroll clerk wanted the records back in the Clerk's Office. She and others requested permission from Defendant Hasty to get the records from the HR office. Defendant Hasty told the Clerk's Office staff that they should not got into the HR office unless Christensen was present. On two occasions, Defendant Hasty told Christensen the Clerk's Office wanted access to the records in the HR office.

On January 19, 2017, Joyce Miller, a reporter from the Lake Sun, made a Sunshine request for "any/all payroll records and/or expenditures paid as a contractor to Brianna Christensen since January 1, 2016" and "any contract Camden County has entered into with Christensen in 2016 or thus far in 2017." Plaintiff fulfilled the Sunshine request on January 23, 2017. Shortly thereafter, Defendant Hasty called Plaintiff into his office and indicated he was not happy that Plaintiff had given Miller all the requested documents.

On January 24, 2017, Christensen and the payroll clerk had a heated email exchange in which the payroll clerk claimed Christensen's attitude had changed and Christensen claimed the Clerk's Office had had a problem with Christensen "since day one," and Clerk's Office employees were trying to get Christensen fired.

On February 2, 2017, Defendants sent Plaintiff a letter seeking copies of the information that Plaintiff had provided to Joyce Miller in response to her Sunshine request. Plaintiff believed Defendants were reacting as though he had done something wrong. Plaintiff asked Miller to return the records he had provided to her. Since Miller returned the records, Plaintiff asked the county attorney, Charles McElyea, whether he should still provide a copy of what he had given Miller to

Defendants. McElyea indicated that Plaintiff should still respond to the request for copies of the documents provided. Plaintiff indicated to McElyea that he would provide the requested documents to the Commission, "with the understanding they drop it, if they don't then its personal." Thereafter, Plaintiff provided copies of the documents to Defendants, but continued to feel as though Defendants were attacking him.

On February 6, 2017, a CERF representative emailed the Plaintiff and Clerk's Office staff, indicating that employee information for 2016 needed to be submitted by a certain date in order for matching funds to be paid on all eligible employee retirement plans. Consequently, Plaintiff became concerned that HR, and specifically Christensen, would not process the CERF paperwork before the CERF submission deadline, which would result in retirees not getting employee matching funds for each of their service years. Notwithstanding, Plaintiff did not act on this concern.

One Friday evening, Christensen was working in the HR office when she noticed that a box of payroll records she needed was missing. The box of records was not located the next week, and Christensen suspected that the records were in the Clerk's Office. She told her assistant to ask the Clerk's Office for the box of records. On February 7, 2017, Christensen's assistant asked the Clerk's Office for the records, and Plaintiff returned the box to HR.

Defendant Hasty asked the maintenance supervisor, Melvin Miller, for surveillance footage because he wanted to track the box of payroll records. The surveillance video showed that around January 24, 2017, Plaintiff went into the HR office when Christensen was not there, removed the box of records, brought the box the Clerk's Office, and locked the box in a file cabinet. The video shows that the box was not removed from the file cabinet for two weeks, until Christensen's assistant asked that the payroll records be returned the HR office.

On February 10, 2017, a county employee texted Defendant Thomas, asking whether there was a problem with the CERF matching because the employee had heard a rumor that CERF was going to "drop" Camden County. The county employee knew about the CERF email because she had requested a copy of it from Plaintiff, who had provided it to her.

On February 21, 2017, Plaintiff gave Defendants a letter, expressing Plaintiff's opinion and concerns relating to Defendants' oversight of the county human resources department. Plaintiff's letter mentioned waste of taxpayer dollars and adverse impact on county efficiency. The letter says, in part, "I am writing to you as a citizen of the County and as Clerk, as my concern affects me and the taxpayers and citizens of this county." The letter was on Plaintiff's official letterhead, and is signed by Plaintiff as the county Clerk. The letter states that in 2015, the Commission decided to create a separate HR department, removing all HR duties from the purview of the Clerk's Office, except for payroll. The letter stated that HR was failing to perform its paperwork, preventing the Clerk's Office staff from performing payroll duties. The letter also stated that HR's failure to timely process required documents created the need to outsource payroll, which wastes taxpayer money, since processing and payroll were previously completed solely by the Clerk's Office. Plaintiff did not think the plan to outsource payroll was attributable to any lag in document processing by HR.

Plaintiff was not hoping that Defendants would respond publicly to the letter. Plaintiff would have provided a copy of his letter through Sunshine request if someone had asked for it, but he would not have shared the letter externally otherwise.

On February 23, 2017, the sentiments expressed in Plaintiff's letter were published in an article written by Miller in the Lake Sun news.

On February 28, 2017, Defendants hired two attorneys from Husch Blackwell, LLC to investigate Christensen's October claims of a hostile work environment and the allegations in Plaintiff's letter. In the course of their investigation, Plaintiff met with the attorneys, and had the opportunity to provide his side of the story.

The same day that the investigation was launched, the Lake Sun published an article by Miller that included statements from Plaintiff that the investigation was in retaliation for the letter.

On March 1, 2017, the Lake Expo published an article quoting Defendant Hasty stating: "[w]e have evidence to show, by film, that Plaintiff stole records out of [Christensen's] office to stop her from being able to do her job."

On March 2, 2017, Plaintiff met with Defendant Williams and the new HR administrator to work things out between payroll and HR. Plaintiff wanted Defendant Williams to "get Christensen to take care of her job" because the Clerk's Office "couldn't do [theirs] without her doing hers."

On March 17, 2017, the Investigation Report was released publicly, based on the investigating attorneys' recommendation. Defendants were advised not to read or review the report before its release, and they did not. The Investigation Report ultimately concluded there was no hostile work environment that could predicate a viable claim for employment discrimination against Camden County. The Investigation Report also concluded there was insufficient evidence to support a finding that Plaintiff committed a crime, failed to perform duties as the county Clerk, or violated any privacy laws by responding to the Sunshine request for Christensen's payroll records.

Plaintiff plans to run for re-election as County Clerk in 2018. Plaintiff's claims against Defendants are not alleged against Camden County.

LEGAL STANDARD

A party is entitled to summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Rafos v. Outboard Marine Corp., 1 F.3d 707, 708 (8th Cir. 1993) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)). The moving party bears the burden to establish both the lack of any genuine issue of material fact and an entitlement to judgment as a matter of law. Celotex, 477 U.S. at 323. In applying this burden, the Court affords to the non-moving party the benefit of all reasonable factual inferences. Mirax Chem. Prods. Corp. v. First Interstate Commercial Corp., 950 F.2d 566, 569 (8th Cir. 1991)).

DISCUSSION

Defendants argue there is no genuine issue of material fact and they are entitled to judgment as a matter of law on each of Plaintiff's claims. First, Defendants argue they are entitled to summary judgment because Plaintiff does not allege claims against them in their individual capacities, and the complaint does not allege facts that could give rise to liability against Defendants in their official capacities. Second, Defendants argue they are entitled to summary judgment on Plaintiff's First Amendment retaliation claims based on the predicate facts in Counts I, II, III, and IV. Third, Defendant Hasty asserts he is entitled to summary judgment on Plaintiff's claim of defamation.

As an initial matter, the Court notes the Eighth Circuit requirement that a plaintiff who intends to seek damages against a government official in his or her official and individual capacities must include in the complaint a "clear statement" of that intent. Remington v. Hoopes, 611 Fed. App'x 883, 885 (8th Cir. 2015) (citing Nix v. Norman, 879 F.2d 429, 341 (8th Cir. 1989) ("[S]ection 1983 litigants wishing to sue government agents in both capacities should simply use

the following language: 'Plaintiff sues each and all defendants in both their individual and official capacities'")). While, in this case, Plaintiff's second amended complaint does not include this language, Plaintiff's motion for leave to amend does seek to file a third amended complaint, which, as proposed, includes the requisite clear statement of Plaintiff's intent to pursue both official and individual capacity claims against Defendants. Although Plaintiff's motion for leave to amend was filed after Defendants filed the motion for summary judgment, Defendants' motion asserts a right to judgment to the extent Plaintiff alleges both official capacity and individual capacities claims. In light of the conclusions below, and in reliance on the general "judicial preference for adjudication on the merits," it would be the Court's intent to grant Plaintiff leave to file the proposed third amended complaint. Oberstar v. F.D.I.C., 987 F.2d 494, 504 (8th Cir. 1993). The Court thus considers the merits of Defendants' summary judgment motion.

A. THE MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S OFFICIAL CAPACITY CLAIMS IS GRANTED.

Defendants assert that they are entitled to summary judgment because there is no genuine issue of material fact that Camden County is not liable for Plaintiff's claims as a matter of law. Defendants argue the complaint does not include allegations to establish liability against the county under Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). Plaintiff's opposition brief does not contradict Defendants assertions.

Claims against government officials in "official-capacity suits . . . generally represent only another way of pleading an action against an entity of which an officer is an agent." Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). "[A] judgment against a public servant in his official capacity imposes liability on the entity that he represents . . . ." Id. (citing Brandon v. Holt, 469 U.S. 464, 471 (1985)). "Section 1983 liability for a constitutional violation may attach to a municipality if the violation resulted from (1) an official municipal policy, (2) and unofficial

custom, or (3) a deliberately indifferent failure to train or supervise." Atkinson v. City of Mountain View, Mo., 709 F.3d 1201, 1214 (8th Cir. 2013).

Under the uncontroverted facts of this case, Camden County is not a party to this suit. Therefore, the county is liable only if Plaintiff establishes liability against the individual Commissioners in their official capacities. Both the second amended complaint and proposed third amended complaint allege that county policy required investigations into employee complaints not be disclosed to the public, and Defendants acted contrary to that policy. Even with all reasonable inferences drawn in Plaintiff's favor, deviation from an established policy does not give rise to entity liability because a deviation from policy does not equate to an official policy. Bolderson v. City of Wentzville, Mo., 840 F.3d 982, 986 (8th Cir. 2016). Further, a single instance does not constitute a custom. Id. Finally, Plaintiff does not allege facts to establish liability against the county based on deliberate indifference or failure to train. Consequently, there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law to the extent Plaintiff alleges claims against them in their official capacities, and/or against Camden County. Defendants' motion for summary judgment on Plaintiff's official capacity claims is granted.

B. THE MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S FIRST AMENDMENT RETALIATION CLAIMS IS GRANTED.

Defendants argue there is no genuine issue of material fact and they are entitled to judgment as a matter of law on Plaintiff's claims for First Amendment retaliation alleged in Counts I, II, III, and IV. Plaintiff's Count I is predicated on Defendant Hasty's public statements that Plaintiff was being investigated related to Christensen's claims of a hostile work environment. Plaintiff's Count II is predicated on Defendant Hasty's public statements that Plaintiff "stole records." Count III is predicated on the publication of the Investigation Report. Count IV is predicated on the publication of the surveillance video of Plaintiff removing the payroll records from HR. Plaintiff argues that

Defendants' conduct described in Counts I through IV was in retaliation for the letter Plaintiff gave to Defendants on February 21, 2017.

> To succeed on a First Amendment retaliation claim, a public employee plaintiff must show: (1) he engaged in protected speech, that is, speech on matter of public concern; (2) his interest as a citizen in commenting on the issue outweighs the public employer's interest in promoting efficient public service; and (3) his speech was a motivating factor in the action taken against him.

Bailey v. Dep't of Elementary & Secondary Educ., 451 F.3d 514, 522 n.2 (8th Cir. 2006) (citing Howard v. Columbia Pub. Sch. Dist., 363 F.3d 797, 801 (8th Cir. 2004)).

1. The expressions is Plaintiff's letter are not protected speech.

Defendants argue they are entitled to summary judgment because Plaintiff's expressions in the letter are not protected speech because Plaintiff was speaking as a public official. Plaintiff counters that he engaged in constitutionally-protected activity when he criticized the Defendants' oversight of HR and use of taxpayer funds.

"The First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens." Garcetti v. Ceballos, 547 U.S. 410, 419 (2006). In addition, however, "[w]hen a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom." Id. (citing Waters v. Churchill, 511 U.S. 661, 671 (8th Cir. 1994)).

"A public employee retains a degree of First Amendment protection when [he or] she speaks as a citizen addressing matters of public concern." Bonn v. City of Omaha, 623 F.3d 587, 592 (8th Cir. 2010) (citing Garcetti, 547 U.S. at 417). "So long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are

necessary for their employers to operate efficiently and effectively." Bailey v. Dep't of Elementary & Secondary Educ., 451 F.3d 514, 518 (8th Cir. 2006) (citing Garcetti, 547 U.S. at 418).

By contrast, however, if the speech at issue is beyond the scope of "speak[ing] as a citizen addressing matters of public concern," "then the employee has no First Amendment cause of action based on his or her employer's reaction to the speech." Id. "In particular, 'when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.'" Id.

Two questions "guide interpretation of the constitutional protections accorded to public employee speech." Garcetti, 547 U.S. at 418. First, the Court must determine whether "the employee spoke as a citizen on a matter of public concern." Id. (citing Pickering v. Bd. of Educ. of Township High Sch. Dist. 205, Will Cty., 391 U.S. 563, 586 (1968)). "If the answer is no, the employee has no First Amendment cause of action based on his or her employer's reaction to the speech." Id. (citing Connick v. Myers, 461 U.S. 138, 147 (1983)). "If the answer is yes, then the possibility of a First Amendment claim arises," and the Court must determine, second, whether the public employer "had an adequate justification for treating the employee differently from any other member of the general public." Garcetti, 547 at 418 (citing Pickering, 381 U.S. at 568). "These questions are matters of law for the court to resolve." Kincade v. City of Blue Springs, Mo., 64 F.3d 389, 395 (8th Cir. 1995).

The Court thus must first determine whether Plaintiff was speaking as a citizen on a matter of public concern in the letter. "An employee's speech touches upon a matter of public concern when it is a matter of political, social, or other concern to the community at large." Kincade, 64 F.3d at 396 (internal quotations omitted). Whether the speech touches a matter of public concern

requires examination of the speech's "content, form, and context . . . given the record as a whole," focused on the role of the employee. Kincade, 64 F.3d at 396 (citing Connick, 461 U.S. at 146); Bailey, 451 F.3d at 518. "If the speech was mostly intended to further the employee's private interests rather than to raise issues of public concern, [the] speech is not protected, even if the public might have an interest in the topic of [the] speech." Bailey, 451 F.3d at 518 (citing Schilcher v. Univ. of Ark., 387 F.3d 959, 963 (8th Cir. 2004)).

In this case, Plaintiff's letter was on official county letterhead, and stated he was writing about concerns both as a citizen of the county, and as Clerk. Plaintiff's letter posits that the removal of HR duties from the Clerk's Office has resulted in waste of tax dollars, inefficiency, and harm to County employees. The letter states explicitly, "[t]he issues expressed to you are matters of public concern adversely affecting the citizens of our county." (Doc. #1-1). Finally, the letter is signed by Plaintiff as the Camden County Clerk.

Generally, speech relating to the use of public funds touches upon a matter of public concern. Kincade, 64 F.3d at 396. Additionally, speech that criticizes an official's discharge of duties also touches a matter of public concern. Belk v. City of Eldon, 228 F.3d 872, 878 (8th Cir. 2000). Notwithstanding these generalities, and notwithstanding Plaintiff's assertion that the letter was written in his capacity as a citizen, the letter is protected speech only if the statements in it were not made pursuant to Plaintiff's official duties as County Clerk.

"Speech is pursuant to an employee's duties if it is "part-and-parcel of" the employee's concerns about his ability to properly execute his duties." Lyons v. Vaught, 875 F.3d 1168, 1174 (8th Cir. 2017) (internal quotations omitted). "[S]peech can be pursuant to a public employee's official job duties even though it is not required by, or included in, the employee's job description, or in response to a request by the employer." Id. (citing Weintraub v. Bd. of Educ., 593 F.3d 196,

203 (2d Cir. 2010). "A public employee's speech is not protected by the First Amendment if it owes its existence to his professional responsibilities." McGee v. Pub. Water Supply, 471 F.3d 918, 921 (8th Cir. 2006).

Such is the case with respect to Plaintiff's letter. The concerns expressed in Plaintiff's letter arise from Plaintiff's role as Clerk, and his inside knowledge of the internal county office functions. The letter discusses the Clerk's role in discharging its duty to supervise county payroll, and the obstacles presented by the introduction of the separate HR office. The concerns and criticisms raised point to HR's interference with the Clerk's efficient discharge of official duties. Moreover, under the uncontroverted facts, the letter reflects the same concerns about HR that Plaintiff expressed to Defendants in the time leading up to February 2017. Additionally, Plaintiff said he would have provided a copy of his letter in response to a Sunshine request, which suggests Plaintiff considered the letter to be subject to public disclosure as an official county document. Therefore, the Court concludes the letter owed its existence to Plaintiff's official role as the Camden County Clerk.

Even if the letter includes matters of public concern, as well as matters of personal interest relating to Plaintiff's official role as Clerk, the content, form, and context of letter establishes that Plaintiff was acting primarily as an employee. Bailey, 451 F.3d 15 518. Because the record establishes that the letter was mostly intended to further Plaintiff's interests in his ability to fulfill his role as Clerk, the concerns expressed in the letter are not protected speech, even if the public may have a general interest in the concerns presented. Id.

For all of these reasons, the Court concludes that Plaintiff's letter does not amount to speech from Plaintiff as a citizen speaking on a matter of public concern. Because there is no genuine issue material that the letter is not speech from a citizen on a matter of public concern, Plaintiff

does not have a viable First Amended cause of action based on Defendants' reactions to the letter as a matter of law. The Court's analysis of Counts I through IV need not proceed further, and Defendants are entitled to summary judgment on Plaintiff's claims for First Amendment retaliation.

C. THE MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S DEFAMATION CLAIM IS GRANTED.

Plaintiff's Count V alleges a claim of defamation against Defendant Hasty based on a statement to the media that Plaintiff stole county records. Defendant Hasty argues there is no genuine issue of material fact that Plaintiff cannot establish actual malice, such that Defendant Hasty is entitled to judgment as a matter of law. Plaintiff counters that genuine issues of material fact preclude summary judgment for Defendant Hasty on Count V.

The Court should grant the motion for summary judgment if there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law with respect to each of the following elements: (1) publication; (2) of a defamatory statement; (3) that identifies Plaintiff; (4) that is false; (5) that is published with the requisite degree of fault; and (5) damage to Plaintiff's reputation. Overcast v. Billings Mut. Ins. Co., 11 S.W.3d 62, 70 (Mo. 2000) (citing Nazeri v. Mo. Valley Coll., 860 S.W.2d 303 (Mo. 1992). With respect to the element of the degree of fault, "where a public figure is the subject of the defamatory publication, then under New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L.Ed.2d 686 (1964), proof of actual malice is required even for liability of actual damages." Englezos v. The Newspress & Gazette Co., 980 S.W.2d 25, 30 (Mo. Ct. App. 1998). A defamatory statement is considered made with actual malice if it was made "with knowledge that it was false or with reckless disregard of whether it was false or not." St. Amant v. Thompson, 390 U.S. 727, 728 (1968). Further, recovery of the punitive

damages sought in Count VI requires clear and convincing evidence of actual malice. Id. (citing Gertz v. Robert Welch, Inc., 418 U.S. 323, 347-48 (1974)).

Under the uncontroverted facts and with factual inferences drawn in Plaintiff's favor, Plaintiff has established that Defendant Hasty made statements to the media that Plaintiff had stolen payroll records, which is untrue. Ribaudo v. Bauer, 982 S.W.2d 701, 705 (Mo. Ct. App. 1998) ("A charge of criminal conduct is generally not a statement of an opinion, but rather an assertion of fact."). However, the First Amendment protects false statements, "except the knowing or reckless falsehood." In re Westfall, 808 S.W.2d 829, 846 (1991).

> [R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for the truth or falsity and demonstrates actual malice.

Id. (citing St. Amant, 390 U.S. at 731).

In this case, at issue is Defendant Hasty's March 2017 statement to the Lake Expo that the County had video evidence that depicted Plaintiff removing records from the HR office, "to stop [Christensen] from doing her job." At the time of this statement, the investigation of Christensen's hostile work environment claim and the allegations in Plaintiff's letter to Defendants was ongoing. The Investigation Report, concluding that there was insufficient evidence to find that Plaintiff had committed a crime, was released to the public on March 17, 2017. Under the uncontroverted facts, Defendants did not read the Investigation Report until after it was publicly released. These facts give rise to the factual inference that Defendant Hasty did not know definitively that the evidence did not support that Plaintiff had stolen records until after he made the subject statement to the Lake Expo. While possible that Defendant Hasty was aware of the investigative findings while the investigation was ongoing, Plaintiff has not adduced evidence to give rise to the factual inference

that Defendant Hasty knew that evidence did not support the implication that Plaintiff had stolen records. To the contrary, the statement at issue indicates the true statement that the County had video evidence of Plaintiff removing records from HR. Defendant Hasty's assertion that Plaintiff removed the records to prevent Christensen from doing her job was based on Defendant Hasty's perception of the circumstances overall, even though that perception was not confirmed by the Investigation Report. The Court thus concludes that, based on the record, at the time Defendant Hasty made the subject statement, he did not have serious doubt as to the statement's truth. St. Amant, 390 U.S. at 730-31. Although the issue of malice is generally a question for the jury, the uncontroverted facts of this case do not give rise to the inference that Defendant Hasty's statements were made with reckless disregard for the truth. Estes v. Lawton-Byrne-Bruner Ins. Agency Co., 437 S.W.2d 685, 691 (Mo. Ct. App. 1969). Therefore, Defendant Hasty is entitled to summary judgment on Plaintiff's defamation claim.

Because the conclusions above are dispositive of Plaintiff's claims, the Court declines to undertake analysis of the other issues raised by Defendants' motion. Accordingly, it is hereby

ORDERED Defendants' Motion for Summary Judgment (Doc. #138) is GRANTED.

IT IS SO ORDERED.

DATE: June 6, 2018

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT