

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

BROCKTON DIV. SUPERIOR COURT
CIVIL NO. 1983CV00920

ANTHONY MICHAEL BRANCH

vs.

TURTLEBOY DIGITAL MARKETING, LLC & others¹

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S
AMENDED APPLICATION FOR PRELIMINARY INJUNCTION**

Plaintiff Anthony Michael Branch filed this action against the defendants alleging that they defamed him through various social media posts. For the reasons discussed below, the Plaintiff's Amended Application For Preliminary Injunction is **DENIED**.

BACKGROUND

Branch has been a Pentacostal minister since 1986 and currently holds the title of Bishop. He is a well-known civil rights activist in Brockton, Massachusetts and sits on the Southeastern Regional School District School Committee. Defendant Aidan Kearney operates and is the public face of the websites Turtleboysports.com and tbdailynews.com, which are owned by defendant Worcester Digital Marketing. Turtleboy content is published by Kearney as well as various anonymous authors using the Turtleboy blog.

On August 23, 2016, Turtleboy posted an article entitled: "Fake Bishop Tony Branch Forces Brockton High School To Change Name From 'Housemasters' to 'Deans' Because . . . Slavery." The article states, in relevant part:

¹Turtleboy Enterprises, LLC doing business as Turtleboysports.com; Worcester Digital Marketing, LLC; and Aidan T. Kearney, in his personal capacity

See, Worcester isn't the only place with fake pastors who exist for the sole purpose of bilking the taxpayers and stirring up racial tensions. Gotta love how Bishop Tony Branch calls Brockton High School a "plantation system." Because free public education and a lifetime full of involuntary brutal servitude are basically the exact same thing. Such a brilliant analogy. . . .

Anyway, this is how people like "Bishop" Tony Branch make a living. They get fake theology degrees from online schools, and then they expect special treatment from the local government because they call themselves "religious leaders." But all they're really trying to do is make money. Because there's a lot of money to be made in the racism-industrial complex.

On August 23, 2016, Kearney posted on Twitter: "Fake clergy @BranchBishop forces Brockton HS to eliminate 'housemasters' cuz it triggers slavery and is racist" with a link to the article.

Branch filed this defamation action on August 23, 2019. The defendants sought to dismiss the complaint pursuant to Mass. R. Civ. 12(b)(6) and G.L. c. 231, § 59H, the anti-SLAPP statute. The Court (Buckley, J.) denied that motion in a Memorandum of Decision and Order dated December 3, 2020. The Court concluded that Branch is a limited purpose public figure for purposes of this controversy. Kearney offered to settle the case for \$600 and removal of the post, an offer that Branch rejected. Branch later offered to settle for \$30,000, an offer that the defendants rejected.

Kearney has continued to post about Branch on YouTube and Twitter, stating that Branch has a history with underage girls, molested his ex-wife, had orders taken out against him by his children, and lied about being a Bishop for professional gain. Branch avers that none of this is true. Branch believes that Kearney is using Twitter and Facebook to harass and cyberbully him and fears that someone will physically harm him believing that he is a pedophile. Kearney has posted Branch's emails with the defendants' attorney on social media. Kearney also posted screenshots of the public electronic docket of cases in which other individuals or entities have

sued Branch. Branch avers that Kearney's posts have illegally included his license number and his child support PIN.

On March 10, 2022, Kearney emailed Branch, stating:

I'm currently working on a story about your 2017 firearms charges in this article: <https://www.enterpriseneews.com/story/news/politics/county/2017/08/18/brockton-candidate-faces-firearms-charge> I have some questions for you and wanted to give you a chance to share your side of the story.

1. What is your certification for being a bishop?
2. What diocese are you in charge of?
3. Who appointed you to be a bishop?
4. What clergy do you supervise?
5. Do Bishops usually seek revenue by doing weddings?
6. Why do you have so many civil judgments against you from banks? Did you ever repay the money you owed for that?
7. What was Antonio Harris talking about when he said that you forced him into involuntary sexual relations?
8. Why did the court grant an order of protection against you?
9. The article claims that you were sharing a bedroom with a woman you were not married to. Are premarital sex and living arrangements typical of Bishops? Do they violate the church's teachings?
10. What religion are you?
11. What job did you have at Mass General, and did the 2015 gun charges have anything to do with why you work there?
12. Are you the father of the 7 month old baby that was in the house when the police charged you in 2015?
13. Why did your live in girlfriend call the police on you in the first place? Was she in fear?
14. Why didn't you hand over all ammunition in 2013, as required by the order?
15. Why did you owe \$42K in taxes?

A March 22, 2022 screenshot from Turtleboy's YouTube show appears to depict the first page of a Plymouth County Probate and Family Court decision in Branch's divorce proceedings with the caption: "Turtleboy Smokes Rian Waters in Court, Bishop Tony Branch Exposed."

One paragraph of the decision, visible in the screen shot, states: "Wife testified, emotionally, that her relationship with Husband began at Kennerley's house when she was 14, and that when she was 15, Husband 'took her virginity' on the kitchen floor at Kennerley's house . . ." This post is accompanied by pictures that appear to be screenshots of Branch's Facebook page, including one

of a child. Kearney interviewed Branch's ex-wife, Evelyn Wiggins, to confirm some of the information he obtained from public records.

On March 23, 2022, Kearney posted: "Chair of Southeastern Regional School Committee Was Accused of Sleeping With 15 Year Old Girl, Arrested on Gun Charges, Had Orders Taken Out by Children, Lied About Being Bishop For Professional Gain." This post includes a picture of Branch with his then wife and a picture of Branch at a public meeting.

An undated Turtleboy post about Branch lists "behavior that is not consistent with that of a bishop," including grooming and having sex with an underage girl, living with a vulnerable woman with a criminal record he met on the Internet, owing substantial amounts of credit card debt and unpaid taxes, violating an abuse prevention order, defrauding the government to get Section 8 and DCF benefits, lying about being a bishop, and using a Muslim name while claiming to be a Christian minister.

Another undated post states:

Tony Branch was widely praised by the media for being the first chair of the Southeastern Regional School Committee, is credited with being a civil rights leader, serves on several city boards in Brockton, and was appointed by Governor Baker to distribute \$4 billion in COVID relief funds. Except he was credibly accused of having sex with a 15 year old who he ended up marrying, his own kids got orders placed on him, he lied about being a bishop and lots of other things, he was a Muslim, he owed over \$150K, and is now in charge of a \$25 million school budget. But it's OK because, equity.

Branch tweeted on Twitter: "Massachusetts needs a doxxing law." Kearney responded by tweeting: "Nobody doxed you. You chose to file a frivolous lawsuit against me for calling you a fake Bishop. It was satirical, but upon further investigation appears to be true. We offered you \$600 to walk away but you wanted more. Now we expose your child predatory ways."

On March 25, 2022, the Superintendent of the Southeastern Regional School District sent Branch a letter informing him that the March 29 School Committee meeting agenda included an item to discuss concerns about the recent social media coverage of him.

On March 26, 2022, Branch tweeted on Twitter: “God is so good to me!” In response, Kearney tweeted: “You had sex with a 15 year old girl you groomed when you were 36. She was friends with your daughter Ronecia, who got a restraining order on you after that. God hates you.”

On March 31, Kearney followed Branch to the men’s bathroom during a break in the School Committee Meeting and yelled, “I prayed to God you stop touching little girls you pervert!”

In opposition to the motion for a preliminary injunction, the defendants have filed documents showing the following. The defendants made a public records request to the Massachusetts Secretary of State for any records of registration to perform marriages by Anthony Michael Branch or Tony Branch. The Secretary of State replied by email that its office does not have any responsive records.

In a July 5, 2016 decision on the parties’ divorce complaint in *Anthony Michael Branch v. Evelyn Wiggins Branch*, PL13D0641DR, Justice Lisa Roberts of the Plymouth Division of the Probate and Family Court Department found that Branch met his wife at age 14 when she was at a family friend’s house to play with Branch’s daughter Ronecia and “[w]ife testified, emotionally, that her relationship with Husband began at Kennerley’s house when she was 14, and that when she was 15, Husband ‘took her virginity’ on the kitchen floor at Kennerley’s house . . .” The judge further found that Branch and his wife first lived together when she was 18 and that “Husband’s denial of any sexual relationship with Wife before [then] is not credible.”

The judge found that Branch had obtained a Section 8 housing voucher for them and “admitted that he had not been reporting his income accurately.” The judge found that when Branch proposed marriage, “Husband then was a Muslim, and had been using the name Anthony Malik Shabazz since approximately 1988. Wife told him she would not marry him if he were a Muslim, so they started going to Zion Fire Church together.”

In addition, the judge in the divorce proceeding found that “Wife had been receiving case tuition benefits from DCF while attending BSU. The marriage was going to cause the termination of those benefits, so Husband, Wife, and Wife’s family agreed that no one would inform DCF of the marriage so that Wife would continue to receive the benefits, and they would share them.” The judge further found: “Husband and Wife opened their own church, the Apostolic Meeting House of Brockton” at the marital home and “[h]usband became re-involved in the ‘Refuge and Relief Ministries,’ an apostolic Pentecostal church founded by his aunt in which he had been ‘ordained’ as a minister in or about 1986.” Another finding states: “By October, 2012, Husband had assumed the title of bishop, a title he admitted that he used even before he was ‘sanctioned’ in public.” The judge found that after Branch caught his wife having an affair with her boss, that man applied for and received a harassment prevention order in District Court to prevent Branch from contacting him. In addition, the judge found that in May of 2013, Branch’s wife obtained a Chapter 209A abuse prevention order against Branch but this order later was vacated following a hearing. Branch’s wife obtained a second Chapter 209A order in July of 2013 that was extended for a year in 2014. Thereafter, Branch became involved with a 22-year-old woman with a baby and that woman sought and received a Chapter 209A order against him, although it expired after two weeks.

In financial documents filed in the divorce proceedings, Branch claimed \$126,095 in unsecured credit card debt. Bankruptcy Court records from *In re Anthony Michael Branch*, Case 16-10039 in the United States Bankruptcy Court for the District of Massachusetts, show that Branch listed numerous banks and credit card companies as creditors and claimed to owe \$42,436 to the IRS for taxes. Plymouth County Superior Court records from *Branch v. Massachusetts Department of Revenue, Child Support Enforcement Division*, Civil Action 1783CV99366, indicate that the Registry of Motor Vehicles suspended Branch's driver's license for unpaid child support.

DISCUSSION

A party seeking a preliminary injunction must demonstrate a likelihood of success on the merits of his legal claims, that irreparable harm will result from the denial of an injunction, and that in light of his likelihood of success on the merits, the risk of irreparable harm to him outweighs the potential harm to the non-moving party in granting the injunction. *Doe v. Worcester Pub. Sch.*, 484 Mass. 598, 601 (2020); *Garcia v. Department of Housing and Community Develop.*, 480 Mass. 736, 747 (2018). The granting of an injunction lies in the sound discretion of the court. *Foster v. Commissioner of Corr.*, 488 Mass. 643, 551 (2021).

Branch seeks a preliminary injunction enjoining the defendants from further disseminating statements about him, contacting or harassing him, or disclosing his personal information. Branch also seeks an order that the defendants retract the materials about him on various social media sites, including certain YouTube videos.

Likelihood of Success on the Merits

Based on the abbreviated record before this Court, Branch has not established a strong likelihood of success on the merits of his defamation claim. Defamation requires proof that the defendant made a statement of and concerning the plaintiff to a third party, the statement could damage the plaintiff's reputation in the community, the defendant was at fault for making the statement, and the statement caused economic loss or is actionable without such loss. *Scholtz v. Delp*, 473 Mass. 242, 249 (2015), cert. den., 578 U.S. 1023 (2016). Given that Branch is a limited public figure, he must prove that the challenged statements were made with malice: knowledge that they were false or reckless disregard for their falsity. *Id.* at 249 n.8; *Lane v. MPG Newspapers*, 438 Mass. 476, 485 (2003). Reckless disregard means serious doubt as to the truth of the statement. *Milgroom v. News Group Boston, Inc.*, 412 Mass. 9, 11 (1992). "The inquiry is a subjective one as to the defendant's attitude toward the truth or falsity of the statement rather than the defendant's attitude toward the plaintiff." *Rotkiewicz v. Sadowsky*, 431 Mass. 748, 755 (2000).

To be actionable, a statement must be a false statement of fact rather than an opinion, because statements of pure opinion are constitutionally protected. *Scholtz v. Delp*, 473 Mass. at 249-250. An opinion which implies the existence of undisclosed defamatory facts may be actionable, but an opinion based on disclosed or assumed nondefamatory facts is not actionable no matter how unjustified it may be or how derogatory it is. *Id.* at 252-253; *Dulgarian v. Stone*, 420 Mass. 843, 849 (1995). In determining whether a statement constitutes opinion, the court examines the statement in the context in which it was published, considering all the words used and the medium by which it was disseminated. *Lyons v. Globe Newspaper Co.*, 415 Mass. 258, 263 (1993). See *Tuvell v. Marshall*, 2019 WL 5654950 at *2-3 (Mass. App. Ct. Rule 1:28), rev.

den., 483 Mass. 1108 (2019) (noting that blog is forum generally understood to reflect personal views of writer, implying commentary rather than statement of objective facts).

The August 23, 2016 article describing Branch as a fake pastor arguably constitutes an opinion based on a disclosed fact: that he received a theology degree from an online school. See *Scholtz v. Delp*, 473 Mass. at 253 (statement is not actionable if logical nexus between facts and opinion is sufficiently apparent to render unreasonable inference that derogatory opinion was based on undisclosed facts). Similarly, the statement that Bishop uses his fake position as a pastor for financial gain arguably is one of opinion.

Moreover, to recover for defamation with respect to a matter of public concern, the plaintiff must prove not only that the statements were defamatory but also that they were false. *Dulgarian v. Stone*, 420 Mass. at 847. “This requirement insulates from liability statements that are not provable as false.” *Id.* To prove a statement false, the plaintiff must show there is no possibility, however slight, that it was true. *Id.* See also *Milgroom v. News Group Boston, Inc.*, 412 Mass. at 13 (there is no liability for defamation if statements are substantially true); *Reilly v. The Associated Press*, 59 Mass. App. Ct. 764, 770 (2003), rev. den., 441 Mass. 1103 (2004) (factual statement need not state precise truth and minor inaccuracy will not support defamation claim). The statements that Branch has a history with underage girls, molested his ex-wife, had orders taken out against him by family members, had substantial amounts of credit card debt and unpaid taxes, violated an abuse prevention order, defrauded the government to get Section 8 and DCF benefits, and used a Muslim name while claiming to be a Christian minister are based largely on information set forth in court records and other public documents and appear to be substantially true.

The statements that Bishop is a predator or pervert appear to be opinion or hyperbole that is not actionable, as those terms are subjective and ambiguous. See *Cole v. Westinghouse Broadcasting Co., Inc.*, 396 Mass. 303, 310, cert. den., 459 U.S. 1037 (1982) (epithets, hyperbole, and fiery rhetoric generally are not actionable). See also *Simpson v. Burrows*, 90 F.Supp.2d 1108, 1126 (D. Or. 2000) (calling one a “pervert” is opinion incapable of being proven true or false).² Thus, Branch has failed to show a likelihood of success on the merits of his defamation claim.³

Irreparable Harm

Nor has Branch demonstrated that the balance of harm weighs in favor of a preliminary injunction. Irreparable harm is that harm which is not capable of vindication by a final judgment rendered at law or equity. *Packaging Indust. Group, Inc. v. Cheney*, 380 Mass. 609, 617 n.11 (1980). In assessing irreparable harm, what matters as to each party is not the raw amount of irreparable harm they might conceivably suffer, but rather the risk of such harm in light of the party’s chance of success on the merits. *Seimens Build. Tech., Inc. v. Division of Capital Asset Mgmt.*, 439 Mass. 759, 762 (2003); *Packaging Indust. Group, Inc. v. Cheney*, 380 Mass. at 617. See also *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996)

²It is not clear that Turtleboy ever called Branch a pedophile. See *Albright v. Morton*, 321 F. Supp.2d 130, 136 n.7 (D. Mass. 2004), aff’d, 410 F.3d 69 (1st Cir. 2005) (accusation that one is a pedophile is defamatory per se). Nonetheless, there is an argument in this case that the epithet “pedophile” is substantially true based on the court testimony of Branch’s ex-wife that he had sex with her while she was under the age of legal consent.

³To the extent that Branch asserts a vague claim of harassment, General Laws Chapter 258E, authorizing harassment prevention orders, excludes constitutionally protected speech and limits the constitutionally unprotected speech that may qualify as harassment to fighting words and true threats. *Kareem K. v. Ida I.*, 100 Mass. App. Ct. 902, 904 (2022). Chapter 258E does not apply to defamation or other speech that is harassing, intimidating, or abusive in the colloquial sense. *Id.*

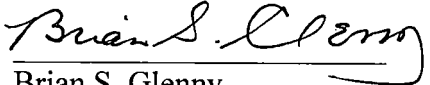
(irreparable harm cannot be evaluated in a vacuum; predicted harm and likelihood of success must be weighed in tandem). Given Branch's failure to show a likelihood of success on his claim of defamation, any harm to his personal reputation or livelihood does not entitle him to a preliminary injunction. See *Foster v. Commissioner of Corr.*, 488 Mass. at 650 (likelihood of success is touchstone of inquiry and "if the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity.").

Moreover, the injunctive relief requested by Branch is exceptionally broad, as he seeks not only the retraction of the defendants' social media posts but also to enjoin the defendants from further disseminating statements about him. "Any injunction that forbids speech activities is a classic example of a prior restraint." *Care and Protection of Edith*, 421 Mass. 703, 705 (1996). A prior restraint forbidding certain communications in advance is an extraordinary remedy that violates the First Amendment unless the harm is truly exceptional, all but certain, and cannot be mitigated by less restrictive means. *Shak v. Shak*, 484 Mass. 658, 661-662 (2020); *Care and Protection of Edith*, 421 Mass. at 705.

"[E]ven allegedly false and defamatory statements are protected from prior injunctive restraint by the First Amendment and art. 16." *Nyer v. Munoz-Mendoza*, 385 Mass. 184, 188 (1982) (concluding that intrusion on one's privacy is not adequate basis for broad prior restraint on free speech). See also *Krebiozen Research Foundation v. Beacon Press, Inc.*, 334 Mass. 86, 95 (1956) ("our law thinks it better to let the defamed plaintiff take his damages for what they are worth than to [e]ntrust a single judge (or even a jury) with the power to put a sharp check on the spread of possible truth."). The relief Branch seeks poses a serious threat to free speech that is unjustified by some compelling State need to protect against a grave threat of harm. See *Shak v. Shak*, 484 Mass. at 663. Thus, the equities weigh against injunctive relief.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Plaintiff's Amended Application For Preliminary Injunction be **DENIED**.



Brian S. Glenny
Justice of the Superior Court

DATED: April 25, 2022