Victoria Robinson v. 21st Century Charter School at Gary, Angela West, in her official and individua

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MEMORANDUM DECISION

ATTORNEY FOR APPELLANT Brenda J. Marcus Merrillville, Indiana ATTORNEY FOR APPELLEE Alexandra M. Curlin Curlin & Clay Law Association of Attorneys Indianapolis, Indiana

I N T H E COURT OF APPEALS OF INDIANA

Victoria Robinson, Appellant-Defendant,

v.

21st Century Charter School at Gary, Angela West, in her official and individual capacity, Dana (Johnson) Teasley, in her official and individual capacity, Board of Directors of 21st Century Charter Schools, and Greater Educational Opportunities Foundation, Appellees-Plaintiffs. December 31, 2018 Court of Appeals Case No. 45A04-1710-CT-2441 Appeal from the Lake Superior Court The Honorable Bruce D. Parent, Judge Trial Court Cause No. 45D04-1202-CT-65

Kirsch, Judge. [1] , an office manager with 21st Century Charter

, was fired from her position in March 2009, after

the School found that public funds under were missing. In

July 2010, the Indiana Attorney General filed suit against Robinson to recover

the missing public funds. In August 2012, Robinson filed a separate, but

related, ten-count amended complaint against Principal, Ang Appellees , alleging multiple claims, including breach of

employment contract, indemnity, interference with employment contract,

wrongful termination, defamation, defamation per se, breach of duty by the

Board, negligence, and intentional infliction of emotional distress. In August

2014, Senior Judge Thomas Webber, Sr., summarizing the issues as being either

employment-related issues or defamation-related issues, granted summary

judgment in favor of School Appellees on the employment-related issues but

denied summary judgment on the defamation-related issues (. 1

In September 2017, following discovery and in response to School Appellees

second motion for summary judgment, Judge Bruce Parent decided all pending

1 The defamation-related issues included claims of libel, slander, defamation, defamation per se, breach of duty by the Board, negligence, and intentional infliction of emotional distress. motions and granted summary judgment to School Appellees on the remaining

defamation-related issues .

[2] On appeal, Robinson raises the following consolidated and restated issues:

I. Whether the trial court abused its discretion when it denied second motion for summary judgment, thereby allowing the trial court to modify the non-final 2014 Order and grant summary judgment in favor of School Appellees on a previously denied motion for summary judgment on the defamation-related claims;

II. Whether the trial court abused its discretion when it struck a police Offense Report, which School Appellees had attached as an exhibit to their 2017 motion for summary judgment;

III. Whether the trial court abused its discretion when it struck two affidavits that supported -related claims;

IV. Whether the trial court abused its discretion when it denied motion for leave to file a second amended complaint; and

V. Whether the trial court erred in granting summary judgment in favor of School Appellees on -count complaint.

[3] We affirm. 2

2 We thank Judge Parent for the thoroughness of his 2017 Order, which aided in our understanding and analysis of this case. Facts and Procedural History 3

[4] GEO Foundation runs the School. From late August 2007 through March

2009, the School employed Robinson. In connection with her employment,

Robinson entered into a contract with the

School. As Office Manager,

money for extra-curricular a

ledger, and depositing that money .

[5] During employ, School Principal West and Treasurer Johnson

found that money was missing from the ECA Account. On February 23, 2009,

West filed an ontrol were missing. . Vol. X at 182. On

March 23, 2009, the School terminated Robinson

because funds received into the [ECA Account] had not been properly

App. Vol. III at 2. Four days after the School terminated Robinson, she filed a

3 The procedural history of this case was complicated, in part, by the fact that a series of judges presided over the proceedings, which School Appellees described as follows: A complicating factor in this matter is the progression of judges that have presided over this Appellees] was originally presided over by Judge Svetanoff. Right around the time [School Appellees] filed their first motion for summary judgment, Judge Svetanoff fell ill, and Senior ry unfortunate death of the most Honorable Svetanoff, Judge Parent became the presiding judge in Superior 4. By the time Judge Parent became judge, Robinson had filed voluminous pleadings and had attached what she believed supported her claims. Br. at 5 n.2. claim with the Gary Human Rights Commission. V at 87.

performed an

audit at the School and

App. Vol. III at 2. The SBOA reported the missing funds to the Indiana

Attorney General.

[6] In October 2009, a local newspaper article reported that the School that an Offense

Report had been filed with the police

Vol. VI at 165. found Victoria Robinson, the [S]chool office manager, failed between August

Ayanna Burns did

not deposit $1,461.12 between August 2006 and August 2007. 4 Id. The article

reported that Johnson stated that Burns should not have to repay the money

because the School did not have formal cash handling policies until Burns left.

at 165. Robinson believed that she was defamed by the

article and was again defamed at a School staff meeting, held at the start of the

2009-2010 school year, when West told the staff that she saw [Robinson] in

Walm . Vol. IV at 90.

4 Ayanna Burns, who Office Manager from August 16, 2006 to August 22, 2007, was also accused of mismanaging public funds. at 232. [7] In July 2010, the Attorney General filed a collection action 5 against Robinson and Burns 6

to recover missing public funds. The AG Action

alleged that Robinson and Burns had a duty to account for and deposit all funds

into the ECA Account, assure that the expenditure therefrom was authorized

by law, . Vol. IX at 237. In March 2011, Robinson filed a counterclaim

in the AG Action against School Appellees. However, because School

Appellees were not parties to the AG Action, the trial court dismissed the

counterclaim without prejudice in January 2012. at 32. 7

Rather than pursue her claims against School Appellees as part of the AG

Action, on August 22, 2012, Robinson filed her first amended ten-count

complaint 8 against School Appellees in the instant action and attached thereto,

as Exhibit A, pertinent portions of the Employment Contract, which stated that

at will and that the School could modify its

policies at any time. at 114-15.

[8] centered around her belief that School Appellees

mismanaged the School, that she was wrongfully terminated, that the

5 The AG Action was initially filed as a civil collection case, Cause No. 45D10-1008-CC-223. Thereafter, the designation of the case changed to civil plenary and the cause number changed to 45D10-1011-PL-111. 6 Burns, however, is not a party to the instant action. 7 Mediation among the parties in the AG Action resulted in Robinson settling the case with the Attorney General and agreeing to repay an undisclosed amount to the State. 8 February 2012. The trial court dismissed that complaint without prejudice, and with the trial Robinson filed the first amended complaint in August 2012. and that School

Appellees had caused the State to file the AG Action against her in an effort to

retaliate against her for telling them about financial mismanagement.

Specifically, Robinson raised: Count I, Breach of Employment Contract;

Count II, Indemnity; Count III, Interference with Employment Contract;

Count IV, Wrongful Discharge; Count V, Retaliation; Count VI; Defamation;

Count VII, Defamation Per Se; Count VIII, Breach of Duty by the Board; Count

IX, Negligence; and Count X, Infliction of Emotional Distress. Vol. X at 17-30. In October 2012, School Appellees filed their response and

nothing more was filed until March 2013.

[9] A June 2013 telephonic status conference was held, during which School

Appellees, who had already responded to the first amended complaint, were

granted the right to file a motion for summary judgment, which they did on

August 5, 2013. s App. Vol. VII at 179-92. Citing to the terms in the

Employment Contract, School Appellees summarized their argument as

follows:

previous claims which have now twice been dismissed. [Her] claims have no merit because (1) [Robinson] was an at will employee who could be terminated at any time with or without cause; (2) [School Appellees] owed [Robinson] no fiduciary duty; (3) [Robinson has] not plead[ed] any facts that would merit relief even if true; and (4) [Robinson] has settled her case with the State of Indiana and is now paying back funds to [the State], therefore[,] any claim [Robinson] may have had is now moot. For all these reasons, this case should be dismissed with prejudice. Appel . Vol. VII at 182 (emphasis added).

[10] On January 8, 2014, Robinson responded to School motion for

Summary Judgment failed to state a claim. at 150-79. That same day,

Robinson also responded to School motion for summary judgment,

attaching thereto designated evidence, including a copy of the Employment

Contract and of the Employee Handbook. l. IV at 181-221.

The Employee Handbook included the following language, which was

capitalized and underlined:

Our School is an at-will employer. This means that regardless of any provision in this Employee Handbook, either you or the School may terminate the employment relationship at any time for any reason with or without cause or notice. Nothing in this Employee Handbook or in any document or statement written or oral, shall limit the right to terminate employment-at-will. No officer, employee, or representative of the School is authorized to enter into an agreement -- express or

implied with any employee for employment other than at-will.

. Vol. VI at 222 (emphasis added).

[11] After the parties filed additional pleadings, the trial court entered the 2014

Order on August 22, 2014. As to the defamation claim, Senior Judge Webber

noted: (1) Johnson had not informed the newspaper that financial issues were

the responsibility of the Treasurer; (2) Johnson ot believe Robinson stole

money ; and (3) sometime in 2009-2010, during a staff meeting, West said that she saw Robinson in Walm Vol. III at 19. Entering its order, the trial court reasoned:

It appears from the superfluous voluminous pages of paper submitted by the parties that there are many issues for the court to consider. However, even with the pounds of paper the court wit:

1. Whether Robinson can maintain her defamation complaint against the [School Appellees]?

2. Whether [School Appellees], pursuant to the [E]mployment [C]

. Vol. III at 18-19. 9 Pertaining to

discharge and or [t]

granted School motion for summary judgment, finding that

and that her termination was not a breach of contract. Id. at 20. The trial

court denied summary judgment as to the defamation-related claims, finding

issues of material fact. Id. In October 2014, the trial court denied Robinson

motion to reconsider or correct error.

9 ategorization of the claims created confusion for the parties about which issues survived for purposes of discovery. In December 2015, Judge Bruce Parent entered an order to provide guidance; however, that order appeared to resurrect some of the previously-decided employment-related issues. . Vol. III at 15-17. [12] Robinson took no further action until June 2015, when she requested a case

management conference. At that point in the proceedings, the parties had not

exchanged discovery. In September 2015, following a hearing, the trial court

ordered that discovery would be cut off by December 31, 2015 with a

dispositive motion deadline of January 29, 2016. at 37.

Immediately, the parties began to argue about discovery. Robinson wanted to

depose individuals from the State, with the goal of determining what prompted

the financial audits. In other words, Robinson wanted to explore whether the

School had retaliated against her, arguing that School Appellees had prompted

the State to file the AG Action. School Appellees, however, argued that the

trial court had disposed all employment-related issues, so only defamation allegations had yet to be resolved. Accordingly, on November 30,

2015, School Appellees filed a motion to quash any discovery pertaining to

employment-related issues. Appellees Vol. 2 at 5-6. 10 After

a hearing on the matter, Judge Parent entered his December 21, 2015 order

, stating his then-understanding regarding the issues that

remained unresolved after the 2014 Order that could be the subject of discovery.

Neither party sought interlocutory appeal.

[13] On November 3, 2016, more than four years after Robinson filed her first

amended complaint, Robinson sought leave to file a second amended complaint

10 Thi because there is an index volume, for ease of reference we will refer to it as . to both add new claims and to add as a defendant.

School Appellees objected, claiming that they would be unduly prejudiced. The

trial court agreed and . A . Vol. III at 10.

[14] In March 2017, the trial court ordered that any motions pertaining to

outstanding discovery be filed by June 2017. School Appellees filed their second motion for summary judgment on May 30,

2017. Robinson responded by filing two motions on June 29, 2017 one to

strike School second motion for summary judgment and a separate

motion to strike the four exhibits attached thereto. Robinson also filed a

response to School second motion for summary judgment, and

School Appellees filed their reply.

[15] On August 29, 2017, the trial court held a hearing on the second motion for

summary judgment.

School Appellees had prompted the AG Action and that, but for School

mismanagement of the School, the State would not have brought the

AG Action. School Appellees argued that Robinson should have raised those

allegations in the AG Action. Furthermore, School Appellees argued that no

facts had been discovered that would substantiate allegations, even

when viewed in a light most favorable to her. Agreeing with School Appellees,

the trial court entered the 2017 Order, granting them summary judgment on the

remaining counts. Robinson now appeals. Discussion and Decision

[16] The issues before us arise from: (1) the 2014 grant of summary

judgment in favor of School Appellees on Counts I through V, the employment-

related issues; (2) the 2017 grant of summary judgment in favor of

School Appellees on Counts VI through X, the defamation-related issues; and

certain pleadings. At the start of August 2017

hearing, the trial succinctly summarized the pleadings in this third category:

I have us set today on [School Motion for Summary Judgment, which was filed May 30th of this year [2017]. I have a response from [Robinson]. I have a reply [from School Appellees].

I also have us set for Appellees Motion for Summary Judgment filed on June 29[, 2017] to which [School Appellees] ha[ve] filed a response in opposition. I have Appellees Exhibits filed on June 29[, 2017]. I have [School

Mot filed on August 11[, 2017]. And finally, I have [School] Motion for Sanctions filed on August 11[, 2017] and 11

Tr. at 4 (emphasis added).

11 School Personnel filed a motion for sanctions on August 11, 2017, and Robinson filed a motion for sanctions on August 25, 2017. . Vol. II at 5. The trial court denied both motions for sanctions in its 2017 Order. The parties do not raise that issue on appeal. [17] Here, the trial court issued findings of fact and conclusions on the 2014 Order

and 2017 Order. Special findings are neither required nor binding on appeal of

a summary judgment. New Albany Historic Preserv. Co n v. Bradford Realty,

Inc., 965 N.E.2d 79, 84 (Ind. Ct. App. 2012), trans. denied. However, the

findings offer valuab s rationale and help facilitate

our review. Id.

Motion

[18] Robinson first contends that it was error for the trial court to grant summary

judgment in favor of School Appellees on defamation-related claims

in the 2017 Order, when Senior Judge Webber had denied summary judgment on those same claims in the 2014 Order. Specifically, Robinson argues that the 2017 Order improperly reflected the consideration of evidence that had not been before the trial court when the 2014 Order was entered. Robinson made the same argument in her motion to strike School Appellees second motion for summary judgment. As such, Robinson is claiming that Judge Parent erred when he denied her motion to strike School second motion for summary judgment. Then, as now, Robinson argues that by ruling on School second d with and vacated the clear ruling of the prior senior judge who determined that genuine issues of material fact precluded the granting of summary judgment to [School Appellees defamation per se 12 App . at 18.

[19] In support of her claim that a second motion for summary judgment was improper, and therefore the trial court erred in denying her motion to strike that motion, Robinson cites to Trial Rules 54(B) and 56(C) and our Supreme Mitchell v. 10th & The Bypass, LLC, 3 N.E.3d 967, 973 (Ind. 2014). In Mitchell, brought an environmental legal action against a dry-cleaning business and its owner, Mitchell, alleging that defendants had caused or contributed to the release of a hazardous substance into the subsurface soil or groundwater. 3 N.E.3d at 969. Mitchell, individually, moved for partial summary judgment and designated an affidavit swearing that he had not caused or contributed to

the release of a hazardous substance. LLC did not respon s

motion for summary judgment; instead, LLC filed its own motion for summary

judgment. Finding no evidence that Mitchell caused the spill, the trial court

granted partial summary judgment s favor. Id. at 969-70.

12 In the 2017 Order, Judge Parent, noting his improper expansion of issues available for discovery, provided mea culpa at 39- Mea Culpa . at 17. We disagree with mea culpa pertained to discovery issues only. Judge Parent was apologizing for nothing more than allowing Robinson to pursue discovery on already settled issues. The 2015 Order had no negative impact on the case and, in fact, that Order allowed Robinson to pursue discovery on issues that had already been settled by the 2014 Order. [20] About one year later, but prior to the order being final, Mitchell s employee

swore an affidavit stating that she had seen Mitchell spill a hazardous substance

at his place of business.

evidence establish[ing] order was not final, LLC filed a motion pursuant to Indiana Trial Rule 54(B) to

s order granting parti s

favor and attached the employee s affidavit thereto. Id. at 970. Mitchell did not

refute the veracity of s affidavit; instead, he

argued that the affidavit could not be considere

Rule 56 newly discovered evidence must be properly designated and timely

submitted Id.

[21] Our Supreme Court explained how Trial Rule 54 and Trial Rule 56 work

together. Trial Rule 54 allows courts to modify any non-final order. Id. at 973.

However, Trial Rule 56 and the case law interpreting it, strictly prohibit trial

courts from considering any evidence submitted later than thirty days after the

request for summary judgment has been submitted. Id. The question presented in Mitchell was: If the court has the power to modify a non-final summary judgment order but it cannot consider evidence submitted outside the thirty-day timeline to respond, how does it follow that the court has absolute authority to modify non-final orders? The Supreme Court answered that question by specifying that a non-final summary judgment order can be modified as long as the evidence considered in modifying it is the same evidence that was considered when the summary judgment order was made in the first place. Id. [22] Here, we find Mitchell to be distinguishable from the present case and, therefore, summary judgment allowed the improper modification of a non-final order. Unlike Mitchell, Senior Judge Webber did not rely on any evidence outside the pleadings when he granted summary judgment in favor of School Appellees on the employment-related claims. School Appellees, initially, filed a motion to dismiss. In support of their motion to dismiss the employment-related claims, School Appellees relied on the at-will language in the Employment Contract, a copy of which Robinson had attached to her first amended complaint. In response, Robinson filed innumerable exhibits; however, because discovery had not commenced, none of those exhibits were the product of discovery. Here, employment-related claims without relying on any evidence outside the complaint. See Ind. Trial Rule 12(B) (a motion to dismiss for failure to state a outside the pleading are presented to and not excluded .

Nevertheless, apparently recognizing the voluminous filings before the court,

the trial court captioned the 2014 Order as a grant of summary judgment on the

employment-related issues.

[23] Following the entry of the 2014 Order, discovery commenced, and School

Appellees filed their second motion for summary judgment only after discovery

had closed. At the hearing on the second motion for summary judgment,

School Appellees made clear that the second motion for summary judgment related only to the defamation-related issues. 13 conclusion that, judgment as a request for the [trial court] to reconsider a motion for summary

judgment that had been granted in part and denied in part by Judge Webber in

. Vol. III at 7. From 2014, when Senior Judge Webber

entered his order, until discovery closed in September 2016, there was

consistent discovery back and forth between the parties.

at 7. Notably, Robinson herself supports her defamation-related claims using

affidavits obtained after the 2014 Order. second motion

for summary judgment. Accordingly, considering the evidence found during

discovery, the trial court did not err when it granted summary judgment in

favor of School Appellees on the defamation-related claims.

[24] Attached to School Appellees second motion for summary judgment were four

exhibits: (1) a February 2009 , setting

13

During the hearing on the second motion for summary judgment, counsel for School Appellees made

the following clarification:

remained in its [2015 Order]. Those issues remained after discovery and this case is ripe for summary judgment at this point because summary judgment has been closed. There are no pending summary judgment issues. There are no pending summary judgment motions and so therefore this case, in our opinion and pursuant to our response, is ripe for summary judgment. Tr. Vol. II at 6-7. affidavit, stating that she did not say during a staff meeting that she saw

and (3) portions of

, in which Robinson said she learned that

a friend of a friend had heard West say in a staff meeting that Robinson was

fired because she stole money. at 34-36. The fourth

exhibit consisted of portions of interrogatories counsel, which pertained to defamation, libel, slander, and defamation per se.

On June 29, 2017, Robinson filed a motion to strike those exhibits. The trial

court grante Offense Report, but

denied her motion on the remaining three exhibits.

[25] grant of her motion to

strike the Offense Report. Claiming that her motion was based now other evidence referencing the Offense Report the content or the substance of

the report was capable of being presented in a form that would be admissible at

tri . at 45. Robinson now urges the admission of this report,

saying, it cause by the Gary Police Department, served as a critical b [A]ction against Robinson Id. Assuming without deciding that the trial court

abused its discretion report, we can provide no relief on Robinson invited invite error, then later argue that the error supports reversal, because error

Booher v. State, 773 N.E.2d 814, 822 (Ind. 2002) (citing Ellis v. State, 707 N.E.2d 797, 803 (Ind.

1999) (quoting Kingery v. State, 659 N.E.2d 490, 494 (Ind. 1995), trans. denied),

trans. denied). Robinson cannot now complain that the trial court abused its

discretion by granting her motion to strike the Offense Report.

III. School Appellees

[26] Robinson next contends that the trial court abused its discretion when it granted

School

defamation-related claims

denying a motion to Auto-Owners Ins. Co. v. Bill Gaddis Chrysler Dodge,

Inc., 973 N.E.2d 1179, 1182 (Ind. Ct. App. 2012), trans. denied

Id.

[27] Robinson argues that the trial court should not have stricken the affidavits of

Lawrence Keilman and Leslie Christian; two affidavits that Robinson

, where West denied saying that Robinson

During the 2017 hearing on School

second motion for summary judgment, School Appellees asserted

that the affidavits should be stricken because School Appellees had asked

what were the claims, what were the statements, whether they were made, who

Tr. at 46;

. Vol. XI at 124 having to file a motion to compel on that and we got that information. And Id.

[28] Following the hearing, the trial court found:

Counsel for Robinson conceded that the identification of the witnesses Lawrence Keilman and Leslie

Christian and the substance of their respective affidavits was known to her and purposefully not provided to counsel for [School Appellees] the Court that she was hoping to keep these witnesses/employees

of [the School] out of it for fear of reprisals.

at 40-41. We note that, although Christian stopped

working for the School in 2010, and Keilman stopped working for the School

on July 31, 2011, discovery did not close until September 2016. at Vol. XI at 83, 202. It is hard to imagine how Christian and Keilman could be

ey were no longer in

Based on this evidence, the trial court did not abuse its

discretion when it struck the affidavits of Christian and Keilman.

IV. Motion for Leave to file Second Amended Complaint

[29] Robinson contends that the trial court abused its discretion when it denied her

motion for leave to file a second amended complaint. Trial Rule

15(A) provides that a party may amend [her] pleading once as a matter of

course if within a certain time frame. Rusnak v. Brent Wagner Architects, 55

N.E.3d 834, 842 (Ind. Ct. App. 2016), trans. denied. Otherwise a party may

amend [her] pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires. Id. (quoting Ind.

Trial Rule 15(A)). Amendments to pleadings are to be liberally allowed, but

the trial court retains broad discretion to grant or deny motions to amend

pleadings. Id. (citing Hilliard v. Jacobs, 927 N.E.2d 393, 398 (Ind. Ct. App.

2010), trans. denied). We will reverse only upon an abuse of that discretion,

which occurs when s decision is clearly against the logic and

effect of the facts and circumstances before the court or when the trial court has

misinterpreted the law. Id. We judge an abuse of discretion by evaluating

several factors, including undue delay, bad faith, or dilatory motive on the part

of the movant, repeated failure to cure deficiency by amendment previously

allowed, undue prejudice to the opposing party by virtue of the amendment,

and futility of the amendment. Id. (quoting Hilliard, 927 N.E.2d at 398).

[30] Here, Robinson filed a motion for leave to file a second amended complaint to

add new claims and to add Teasley as a defendant in the action. Robinson filed

her motion about thirty days after the close of discovery, but more than four

years after she filed her first amended complaint. School Appellees responded

that Teasley, who was the President and Chief Executive Officer of GEO

Foundation and Superintendent of the School, was in the same position he had

been in when Robinson filed her first amended complaint and that discovery

had unearthed nothing to support such late amendment to the complaint.

at 185. The trial court agreeing with School because the amendment would require additional discovery without providing any new avenues of relief. Therefore, the monetary and time costs of the

litigation would go up exponentially without providing any new liability,

at 177. In General Motors

Corp. v. Northrop Corp., 685 N.E.2d 127, 142 (Ind. App. Ct. 1997), trans. denied,

our court found no abuse of discretion in denying leave for plaintiff to file a

second amended complaint four years after filing the original complaint and two years after filing first amended complaint, when: (1) there is no justification for delay in adding claims; (2) defendant would be prejudiced by the delay; and (3) amendment would be futile. The facts in the case before us are in line with those in that case. Accordingly, the trial court did not abuse its amended complaint.

V. Summary Judgment

[31] Robinson contends that the trial court erred when it granted summary judgment in favor of School Appellees on her ten-count complaint. We review a grant of summary judgment de novo, applying the same standard as the trial court and drawing all reasonable inferences in favor of the nonmoving party. Ali v. All. Home Health Care, LLC, 53 N.E.3d 420, 427 (Ind. Ct. App. 2016) (citing Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014)). In conducting our review, we consider only those matters that were properly designated to the trial court. Id. (citing Haegert v. McMullan, 953 N.E.2d 1223, 1229 (Ind. Ct. App. 2011)).

Summary judgment is appropriate if the designated evidence shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. T.R. 56(C). A would affect undisputed material facts support conflicting reasonable inferences. Williams v. Tharp, 914 N.E.2d 756, 761 (Ind. 2009).

[32] Under Indiana law, the moving party evidence raises no genuine issue of material fact and that the moving party is

AM Gen. LLC v. Armour, 46 N.E.3d

436, 439 (Ind. 2015) (quoting Ind. Restorative Dentistry, P.C. v. Laven Ins. Agency,

Inc.

party then has the burden to demonstrate that there is a genuine issue of

Id. All reasonable inferences will be construed in favor of the

nonmoving party. Id -moving party has the burden

on appeal of persuading us that the grant of summary judgment was erroneous,

re that [appellant] was not

Hughley, 15 N.E.3d at 1003 (quoting

McSwane v. Bloomington Hosp. & Healthcare Sys., 916 N.E.2d 906, 909-10 (Ind.

2009) (internal quotation marks omitted)). We will affirm upon any theory or

basis supported by the designated materials. FLM, LLC v. Cincinnati Ins. Co.,

973 N.E.2d 1167, 1173 (Ind. Ct. App. 2012), trans. denied.

A. Count I -- Breach of Contract

[33] Robinson asserts that School Appellees breached the Employment Contract by

terminating her from their employ. appropriate in the context of contract interpretation because the construction of TW Gen. Contracting Servs., Inc. v. First

Farmers Bank & Trust, 904 N.E.2d 1285, 1287-88 (Ind. Ct. App. 2009).

When the language of a written contract is not ambiguous, its meaning is a question of law for which summary judgment is particularly appropriate. In interpreting an unambiguous contract, we give effect to the intentions of the parties as expressed in the four corners of the instrument. Clear, plain, unambiguous terms are conclusive of that intent. We will neither construe clear and unambiguous provisions nor add provisions not agreed upon by the parties.

K s Korner, Inc. v. Brown & Sons Fuel Co., 706 N.E.2d 556, 565 (Ind. Ct.

App. 1999) (citations omitted), g on other grounds. A contract is

not ambiguous merely because the parties disagree as to its proper construction;

rather, a contract will be found to be ambiguous only if reasonable persons

would differ as to the meaning of its terms. Trs. of Ind. Univ. v. Cohen, 910

N.E.2d 251, 257 (Ind. Ct. App. 2009).

reading the contract as a whole, and we attempt to construe the language so as

DLZ

Ind., LLC v. Greene Cty., 902 N.E.2d 323, 327 (Ind. Ct. App. 2009).

[34] On appeal, Robinson contends that her breach of contract claim should have

survived summary judgment. Robinson argues that an employee, like her, who [was] discharged for improper book[keep]ing 14 has a cause

of action against School Appellees because, since the School had entered into a

with the SBOA to provide training on the ECA

Account, the School breached its contract by: (1) not providing notice that

Robinson was deficient in her job performance; and (2) not allowing her to

participate in a Appellant Br. at 53.

claim for breach of contract rests on her assumption that School

Appellees had a duty under the Employment Contract to provide Robinson

with and that such language superseded the

terms that Robinson was an at-will employee.

Reviewing the plain meaning of the Employment Contract, we disagree.

[35] employment for a definite or ascertainable t Vincennes Univ. ex rel. Bd. of Trs. of Vincennes v. Sparks, 988 N.E.2d 1160, 1166-67

(Ind. Ct. App. 2013), trans. denied. If an employment contract makes no

reference to a term of employment, there is a presumption that the employment

is at will and can be terminated at any time, with or without cause, by either

party. Id. Here, the Employment Contract said in at least three separate places

and that she did not have an

14 . at App. Vol. VII at 120 n.1. expectation of continued employment. . Vol. IV at 114-15.

Those provisions included:

C.2.3. Employee acknowledges and understands that notwithstanding any other provision of this Agreement, o guarantee of employment, either express or implied is provided by this agreement or any other verbal or written commitment.

1. employment at any time, without notice, without cause, and

without further recourse by Employee policy that, in the event of failure of job performance,

Employer will work with Employee to develop a Progressive Improvement Plan to help Employee, prior to any steps toward termination.

. . . .

C.3. No other conditions of employment, express or implied, shall be construed as part of this Agreement. represents his/her acknowledgment that this Agreement does not provide

a right or guarantee to future employment.

IV at 114-15 (emphasis added).

[36] We agree with Robinson that the Employment Contract policy that, in the event of failure of job performance, the School would work

with Id. at 114. That

language, however, provided no additional job security for Robinson. The

implementation of the Progressive Improvement Plan was just a policy and, as Nothing herein shall be construed as

limiting em to amend or modify its policies, rules, and directives at any

time. . . . Id. at 115. was clearly at will. School Appellees did not breach the Employment Contract

when they terminated Robinson, an at-will employee, from her position.

B. Count II -- Indemnity

[37] In her first amended complaint, Robinson alleged that School Appellees,

having breached the [E]mployment [C]ontract for the failure to disclose and

[for] breach of the duty to give information, are responsible to indemnify

[Robinson] for all sums required to pay the [S]tate for public funds alleged to

have been owed and sought after on behalf of [School Appellees

App. Vol. IV at 94-95. ing indemnification rests on

a successful claim for breach of contract. Because we find as a matter of law

that School Appellees did not breach the Employment Contract and, therefore,

at will employee, the

indemnity claim must also fail. On appeal, Robinson contends that she has a

. at 44. Because these issues are being raised for the first time on

appeal, they are waived. See Messmer v. KDK Fin. Servs., Inc., 83 N.E.3d 774,

781 (Ind. Ct. App. 2017) (quoting Dunaway v. Allstate Ins. Co., 813 N.E.2d 376,

388 (Ind. Ct. App. 2004)) (Even if Robinson had previously raised these arguments, she has not designated the Articles of Incorporation or any other evidence to support her general assertion.

The trial court did not err in granting summary judgment in favor or School

Appellees

C. Count III -- Interference with Employment Contract

[38] Robinson argues that the trial court erred in granting School Appellees for summary judgment on her claim of interference with employment contract.

Robinson is correct that a claim of interference with an employment contract is

not defeated because the employee is at will. . at The parties

in an employment-at-will relationship have no less of an interest in the integrity

and security of their contract than do the parties in any other type of contractual

relationship. Bochnows , 571 N.E.2d 282, 284

(Ind. 1991). durational element of the contract has been left open. Id. at 285. This open-

endedness, however, does not affect the legitimacy of the agreement itself or the

amount of protection available to employees against interference by third

parties. Id. Thus any intentional, unjustified interference with such a

contract by third parties is actionable. Id. at 284-85.

[39] Tortious interference with a contractual relationship consists of the following

intentional inducement of breach of the contract; (4) the absence of justification;

Mourning v. Allison Transmission, Inc., 72 N.E.3d 482, 488 (Ind. Ct. App. 2017) (citing Duty v. Boys & Girls Club of Porter Cty., 23 N.E.3d 768, 774

(Ind. Ct. App. 2014)).

In order to adequately plead the fourth element the absence of justification the plaintiff must state more than a mere assertion s conduct was unjustified. That is, the plaintiff must set forth factual allegations from which it can

Id. (internal citations omitted). Robinson was terminated from her position

when Principal West and Treasurer Johnson discovered that Robinson could

not account for money missing from the ECA Account. Robinson was not

charged with a crime, and she did not admit to wrongdoing; yet, money was

missing from the ECA Account without explanation. As a matter of law, we

position as Office Manager, with oversight over the ECA Account, was

malicious or intended to injure her. The trial court did not err when it granted

summary judgment on Contract. 15

15 Count IV --

on a finding that School Appellees acted improperly when they dismissed Robinson. Because Robinson was terminated as an at will employee, the trial court did not err in granting summary judgment in favor of D. Count V -- Retaliation

[40] On appeal, Robinson contends that she was retaliated against by School

Appellees. appropriate when the evidence is such that no reasonable trier of fact could

Markley

Enters. v. Grover, 716 N.E.2d 559, 565 (Ind. Ct. App. 1999). employment contract of indefinite duration is presumptively terminable at the

Best Formed Plastics, LLC v. Shoun, 51 N.E.3d 345, 351

(Ind. Ct. App. 2016) (quoting Stillson t, 22 N.E.3d

671, 679 (Ind. Ct. App. 2014), trans. denied), trans. denied. However, it is well

settled in Indiana that an action for retaliatory discharge exists when an

employee is discharged for exercising a statutorily conferred right, such as filing

s compensation claim. Purdy v. Wright Tree Serv., Inc., 835 N.E.2d 209,

212 (Ind. Ct. App. 2005), trans. denied. In Frampton v. Central Indiana Gas Co.,

260 Ind. 249, 251-53, 297 N.E.2d 425, 427-28 (1973), our Supreme Court held

that an employee-at-will who was s compensation

claim could file an action for retaliatory discharge against her employer because

s Compensation Act was designed for the benefit of employees, and

as such, its humane purpose would be undermined if employees were subject to

reprisal without remedy solely for exercising that statutory right.

[41] In her complaint, Robinson claimed that School Appellees retaliated against her

by interfering with -waivable right to file a charge with the EEOC.

at 99. She also claimed that School Appellees of causing the Attorney General to bring a collection action against her to recover

public funds was done in retaliation for Robinson having reported financial

irregularities to the officers of the School. Id. at 99-100. We find no evidence

s of retaliation.

[42] The parties agree that Robinson filed a claim with the Gary Human Rights

Commission; however, that was done four days after she was let go.

App. Vol. IV at 87. We find no evidence, though, regarding if or when

Robinson filed a charge with the EEOC. Accordingly, this claim fails.

Furthermore, we find no evidence that the AG Action was filed in retaliation

team, testified in a deposition that the account examiners and SBOA play no

role in determining what action, if any, is pursued after an audit is certified and

XI at 125, 126. It is the prosecutor who determines whether there is a criminal

action to pursue, and the Attorney General who determines whether to pursue

a civil action for any misappropriation of assets. Tr. Vol. II at 15-16;

App. Vol. XI at 125-26. Because the AG Action could not have been ordered by

School Appellees, that action did not constitute retaliatory action on the part of

School Appellees. The trial court did not err in granting summary judgment on

the claim of retaliation. E. Counts VI and VII Defamation and Defamation Per Se

[43] Robinson also argues that the trial court erred when it granted summary

judgment in favor of School Appellees on her defamation claims. 16

esteem,

respect, good will, or confidence in the plaintiff, or to excite derogatory feelings

Ali, 53 N.E.3d at 428 (internal quotation

alleged defamation must be both false and defamatory. Id. (internal quotations

defamation: (1) a communication with a defamatory imputation; (2) malice; (3)

Id. The determination of whether a

communication is defamatory is a question of law for the court. Id.

[44] In an action for defamation, the defamatory meaning of words can be apparent

on the face of the words (per se) or apparent only by reference to extrinsic facts

and circumstances (per quod). Other times, the terms per se and per quod are used

16 Robinson uses the terms libel, slander, and defamation. As explained in the Indiana Model Civil Jury Instructions: Defamation is an attack upon the reputation or character of another that results in injury. A communication is defamatory if it tends to harm the reputation of another so as to lower him in the eyes of the community or to deter third persons from associating or dealing with him. The law of defamation historically has been divided into libel and slander, which are methods of defamation. Libel is a written defamation while slander is an oral or spoken defamation of character or reputation. Libel can be expressed either in writing or by print, signs, pictures, effigies, or the like. Historically, different legal standards have been applied to libel and slander in some circumstances. Unless those circumstances are present in a case, the committee

2700 Introduction, Ind. Model Civ. Jury Inst. 2700 INTRO (footnotes omitted). in reference to whether a defamatory statement falls into one of four categories.

Defamation per se involves a communication imputing: (2) a loathsome dise s trade, profession, office, or

Baker v. Tremco, Inc., 917 N.E.2d 650,

657 (Ind. 2009). The communication must be made with malice, publication,

and damage. Id. The plaintiff is entitled to presume damages as a natural and

probable consequence of defamation per se. Kelley v. Tanoos, 865 N.E.2d 593,

597 (Ind. 2007). This is so because the words imputing one of those conditions

are so naturally and obviously harmful that one need not prove their injurious

character. Cortez v. Jo-Ann Stores, Inc., 827 N.E.2d 1223, 1230 (Ind. Ct.

App.2005). The defamatory nature of the communication must appear without

reference to extrinsic facts or circumstances. Id. A person alleging defamation

per quod must demonstrate the same elements without reference to extrinsic

facts or circumstances but must additionally demonstrate special damages. Id.

[45]

stateme Ali, 53 N.E.3d at 428 When specific

statements that are alleged to be defamatory have not been sufficiently

s complaint, an award of summary judgment for the

defendant is proper. Id. (quoting Miller v. Cent. Ind. Cmty. Found., Inc., 11

N.E.3d 944, 956 (Ind. Ct. App. 2014), trans. denied). In her complaint,

Robinson alleged that: (1) School Appellees caused the Attorney General to file

the AG Action; (2) the local paper, Northwest Indiana Times, reported that the

School suspected Robinson of theft and had reported that theft to police; and (3) sometime during a staff meeting, held during the 2009-2010 school year,

pending mo . Vol. IV at 89-90. The first two claims are defamation

claims, while the claim about West is a claim of defamation per se.

1. Defamation

a. The AG Action

[46] Robinson claim about the AG Action fails because Robinson did not include

in her first amended complaint the statement, if any, that School Appellees

allegedly said to trigger the filing of the AG Action. See Miller, 11 N.E.3d at

When specific statements that are alleged to be defamatory have not been

suffici s complaint, an award of summary judgment

for the defendant is proper. Furthermore, even if a statement had been

included, Indiana courts have recognized a common interest privilege that

protects communication made in connection with membership qualifications,

employment references, intracompany communications, and the extension of

credit. Kelley, 865 N.E.2d at and unrestricted communication on matters in which the parties have a

Id. at 598 (internal quotation marks and citation

omitted). Under the facts of this case, any communication between School

Appellees and the SBOA or Attorney General would have been protected by

the common law interest privilege. The trial court did not err in granting

summary judgment on this claim. b. The Newspaper Article

[47] Regarding the article, Robinson further complains that she was defamed

because: (a) Johnson said Burns should not have to pay back missing funds

(since ECA procedures were not in place until after Burns separated from

employment), yet failed to say the same for Robinson; (b) the article excluded

information that the School treasurer was responsible for overseeing the

collection, retention, or deposit of public funds; and (c) that the article did not

say that the School failed to comply with SBOA requirements pertaining to the

Id.

[48] claims that she was defamed by information printed in the local

newspaper fail. Robinson takes issue with the article statements that (1)

[m]ore than $13,000 in cash payments for student lunches and extracurricular

activities at [the School] never made it to the bank, state auditors determined ; (2)

the School filed a police report, but no further action has been taken, according to

the audit; (3) auditors said they found [Robinson] . . . failed between August 2007

and March 2009 to deposit $11,841.12; and (4) School officials asked the SBOA to run an audit after the School suspected in March that someone was stealing money. . Vol. VI at 165 (emphasis added).

[49] Regarding claims (1), (2), and (3), the newspaper reported that the auditor was the source of its information. It was the auditor who said that money never made it to the bank and that Robinson failed to deposit more than $11,000 over a two-year period. at 165. Likewise, audit that provided information that a police report had been filed and no further action had been taken. Robinson cannot hold School Appellees responsible for the independent statements of the auditor; accordingly, those claims must fail.

[50] Claim (4), that Robinson was defamed when School Appellees asked the SBOA to run an audit because they suspected someone was stealing money, also fails. The statement to which Robinson refers makes no claim that Robinson was stealing the money or even that money was definitely being taken. Finally, and laying aside the question of whether the statements could even be considered defamatory, Robinson has designated no evidence that School Appellees made any false statements. See Journal-Gazette Co. s, Inc., 712 N.E.2d 446, 457 (Ind. , cert. denied, 528 U.S. 1005 (1999) as a matter of law. The trial court did not err in granting summary judgment in favor of School Appellees on these four claims.

[51] Robinson also takes issue with omissions from the article, specifically, that

Johnson did not say: (a) the School treasurer is responsible for public money,

(b) she did not believe Robinson stole the money, and (3) the School did not

comply with SBOA requirements.

[52] In Town of West Terre Haute v. Roach, 52 N.E.3d 4 (Ind. Ct. App. 2016), Roach

was an at-will employee who was fired by the Town of West Terre Haute after

the SBOA informed the Town Council President that it had discovered, during a preliminary review, that public funds were missing. Id. at 6. Ultimately, it

was found that Roach had not stolen any public funds. A newspaper article

reported on a press conference, attended by the Town Council President, during

which the allegations against Roach were discussed, but the President made no

comment in exoneration of Roach. Roach filed a complaint but did not set

forth any defamatory statement. Instead, she alleged that the

omission of supporting statements resulted in defamation. Our court, granting

It would be an odd use of the

defamation doctrine to hold that silence constitutes actionable speech. Id. at

11 (quoting Trail v. Boys & Girls Clubs of Nw. Ind., 845 N.E.2d 130, 136 (Ind.

2006)).

[53] Like Roach, Robinson did not identify a defamatory statement made by

Johnson. Instead, Robinson claims that in light of her termination from

employment, she was defamed by include in the article

statements that supported Robinson. Roach,

we conclude that the trial court did not err in granting summary judgment in

favor of School Appellees on this issue. 17

17 Robinson cites to Glasscock v. Corliss in support of her claim. 823 N.E.2d 748 (Ind. Ct. App. 2005), trans. denied. However, the facts before us, like those in Roach, differ from Glasscock. There, the defamatory statements were that Corliss had been fired because of discrepancies in her expense reports and had bought gifts for her family and friends. The only fair inference was that Corliss had committed misconduct by purchasing gifts for her family with company funds, thereby constituting a defamatory communication. Id. at 753. Here, Johnson , not commissions. 2. Defamation Per Se

[54] Finally, . Robinson

contends that the trial court erred when it granted summary judgment in favor

of School Appellees on her claim that she was defamed per se by a statement

made by West during a staff meeting. In her complaint, Robinson described the

Plaintiff was again defamed sometime around the

convening of the 2009-2010 school year, during a 21st century staff meeting,

when [West] told the staff that she saw [Robinson] in Walmart spending the

at 90.

[55] Robinson contends that there was a genuine issue of material fact created by the

affidavit executed by Patricia Tatum, an affidavit that Robinson contends was

affidavit, Tatum

said: employment [with the School] . . . I personally heard Angela

West make negative comments about Victoria Robinson, once at a staff

18 App. Vol. XI at 81. Tatum added that the staff

meeting occurred after Robinson was no longer employed at the school and that

she saw Victoria Robinson at

Walmart spending our money. Id.

18 Tatum also stated that, while she and West were having lunch together, West make a negative statement about Robinson. . Vol. XI at 81. Because this is the first time that such an allegation has been made in this case, that issue is waived. See Messmer v. KDK Fin. Servs., Inc., 83 N.E.3d 774, 781 (Ind. Ct. App. 2017). [56] Regarding defamation per se, our court recently noted:

Recent Indiana decisions clarify that defamation per se profession involves actual misconduct as opposed to a

generalized opinion. In Levee v. Beeching, 729 N.E.2d 215 (Ind. union representation for defamation per se. The union

Id. at 218. A panel of this Court

harmful that proof of their injurious character can be dispensed

Id. at 220. The Court also observed that the statements were not defamatory on their own, but were only defamatory

attacks against the principal. Id.

Sheets v. Birky, 54 N.E.3d 1064, 1071 (Ind. Ct. App. 2016). Following the Sheets

per se. Here,

McQueen v. Fayette Cty. Sch. Corp., 711 N.E.2d

62, 65 (Ind. Ct. App. 1999), trans. denied. If West made the alleged statement

Sheets, 54 N.E.3d at 1070. Accordingly,

w School Appellees on this claim of defamation per se.

F. Counts VIII and IX Breach of Duty and Negligence

[57] by the Board breach of fiduciary duty

and School Appellees To recover under a theory of negligence, a plaintiff must (1) duty owed to plaintiff by

defendant; (2) breach of duty by allowing conduct to fall below the applicable

standard of care; and (3) compensable injury s

breach of duty , 62 N.E.3d 384, 386

(Ind. 2016) (quoting King v. Ne. Sec., Inc., 790 N.E.2d 474, 484 (Ind. 2003)).

Absent a duty there can be no negligence or l Id. (citing Peters v. Forster, 804 N.E.2d 736, 738 (Ind. 2004)).

[58] To prevail on a motion for summary judgment, defendants must show that the

undisputed material facts negate at least one of the elements essential to

Severance

v. New Castle Cmty. Sch. Corp., 75 N.E.3d 541, 546 (Ind. Ct. App.), trans. denied.

particularly fact-sensitive and are governed by a standard of the objective

reasonable person, which is best applied by a jury after hearing all the

Kramer v. Catholic Charities of Diocese of Ft. Wayne-S. Bend, Inc., 32

N.E.3d 227, 231 (Ind. 2015). However, the element of duty is generally a

question of law to be determined by the court. Smith v. Walsh Constr. Co. II,

LLC, 95 N.E.3d 78, 84 (Ind. Ct. App. 2018) trans. denied. Accordingly, our

review is de novo.

1. Breach of Duty

[59] Robinson contends that the Board had a statutory duty to comply with Indiana

law and that the Board breached its duty of loyalty to her by negligently

managing the School. . at 30, 31. to a civil collection action by the Indiana Attorney General. Robinson claims that her damages arose, in part, from for

the difference between receipts collected and funds deposited into the ECA

Id. at 32.

[60] Robinson fails to point to any specific evidence or caselaw to support her

contention that the Board owed her either a statutory duty to comply with the

law or a duty of loyalty. Moreover, even if the Board did owe Robinson a duty,

its failure to comply with that duty was not the proximate cause of the AG

Action. There was uncontroverted evidence before the trial court that the State

prosecutor decides whether there is a criminal action to pursue, and the

Attorney General decides whether to pursue a civil action for any

misappropriation of assets. Tr. Vol. II at 15-16. Regardless of whether the

Board acted or did not act, as a matter of law, the Board could not have been

responsible for the initiation of the AG Action to recover public funds from

Robinson. See Collins v. J.A. House, Inc., 705 N.E.2d 568, 576 (Ind. Ct. App.

1999) (affirming grant of summary judgment because, as a matter of law,

alleged negligent act was not a proximate cause of def injuries), trans. denied.

2. Negligence

[61] Robinson also asserts that the trial court erred in granting summary judgment

on her claim of negligence. Robinson contends that she incurred damages from School Appellees because School Appellees: (1) failed to have an

independent investigation regarding the financial irregularities; (2) failed to

adequately train Robinson regarding her bookkeeping duties; (3) persisted in causing the special investigation by the SBOA, when they should have known that Robinson did not steal or misappropriate public funds; (4) persisted in causing the AG Action to continue, when they knew that they lacked policies, procedures, and financial controls, which caused the financial irregularities; (5) failed to have proper policies, procedures, and financial controls in place and failed to comply with SBOA rules, which resulted in the foreseeable loss of money. . Vol. IV at 108

[62] Here, Robinson was hired as an officer manager, and her relationship with School Appellees was created by the Employment Contract. Although Robinson designated volumes of evidence, none of that evidence created a genuine issue of material fact regarding whether School Appellees would, or even could, by statute or under the terms of the contract, initiate an independent financial investigation to clear name, stop an SBOA audit, or dissuade the Attorney General from filing a collection action. School Appellees had no duty to Robinson to take any of these actions on her behalf. Furthermore, even if School Appellees had a duty to ensure that (1) Robinson was properly trained and (2) proper policies, procedures, and financial controls were in place, any injury that Robinson sustained was not the proximate cause of that breach. Robinson did not contend that she knew where the missing money was but had been unable to deposit it because she had been improperly trained or had used

the improper form or procedure; the State filed suit against

Robinson because public money could not be accounted for. From the

designated evidence, we find no genuine issue of material fact. The trial court

properly granted summary judgment in favor of School Appellees on the

negligence claim.

H. Count X -- Intentional Infliction of Emotional Distress

[63] Robinson finally contends that she was subjected to intentional infliction of

emotional distress (IIED) when outrageous acts by School Appellees invaded

her legal right to be free from false accusations regarding the missing money

and free from the ensuing AG Action. The tort of [IIED] occurs when the

defendant (1) engages in extreme and outrageous conduct (2) which

intentionally or recklessly (

McCollough v. Noblesville Sch., 63 N.E.3d 334, 341-42 (Ind. Ct. App. 2016)

(internal quotation marks omitted), trans. denied. The requirements to prove

this tort are rigorous, and at its foundation is the intent to harm the plaintiff

emotionally. Id. at 342 (quoting Bah v. Mac s Convenience Stores, LLC, 37

N.E.3d 539, 550 (Ind. Ct. App. 2015)), trans. denied. As often quoted from

Comment (d) of the Restatement (Second) of Torts Section 46 (1965),

The cases thus far decided have found liability only where the s conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all

possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim,

McCollough, 63 N.E.3d at 342. The question of what amounts to extreme and

outrageous conduct depends in part on prevailing cultural norms and values,

and

Id. This is one of those cases.

[64] In her first amended complaint,

statements and unfounded representation of material fact to the SBOA and

police there would have been no litigation to recover the public funds and

. Vol. IV

injuries arose from the AG Action

. at

51. In her motion in opposition to School Appellees judgment, Robinson argues intention that Robinson be

prosecuted; therefore, prosecution, West told the SBOA and field examiners that Robinson had stolen

. Vol. X at 190. Robinson asserts that there is

a genuine issue of material fact, arguing that state of mind to prove that West either intentionally or recklessly made statements about Robinson that led to her distress.

[65] Here, it is unnecessary to investigate what West was when she

made the statements about suspected theft 19 because, contrary to

assertion, those statements are not material to her IIED claim.

Robinson argues that triggered the AG Action, which

resulted in her emotional distress. However, in a deposition, a member of the

audit team, Small, testified 20 that the account examiners and SBOA play no role

in determining what action, if any, is pursued after an audit is certified and

forwarded to . Vol.

XI at 125, 126. It is the prosecutor who decides whether there is a criminal

action to pursue, and the Attorney General who decides whether to pursue a

civil action for any misappropriation of assets. Tr. at 15-16; . Vol.

XI at 125-26. This testimony was not disputed. 21 Because discovery produced

no facts Appellees had subjected her to

IIED, School Appellees presented the trial court with a prima facia case that

summary judgment should be granted in their favor, and Robinson presented

19 Robinson also makes arguments regarding her damages. An argument about damages is also unnecessary

Action. 20 was attached as Exhibit D to School Appellees . . Vol. XI at 125, 126. 21 Robinson suggested that she was targeted because the School did not properly follow the SBOA protocol. Tr. at 30. We disagree. Here, Robinson was not charged for improper use of forms and procedures; instead she was charged for missing money that could not be accounted for under any form of accounting. no evidence to produce a genuine issue of material fact on that claim.

Furthermore, even if West intended to trigger the AG Action, as a matter of

law, we cannot say that her statements were so outrageous in character or

extreme in degree that her actions can be regarded as atrocious or utterly

intolerable in a civilized community. 22 See Jaffri v. JPMorgan Chase Bank, N.A.,

26 N.E.3d 635, 640 (Ind. Ct. App. 2015) (holding that even assuming defendant

intentionally mishandled mortgage- type of beyond-the- conduct that may be covered by an IIED

cf. Mitchell v. Stevenson, 677 N.E.2d 551 (Ind. Ct. App. 1997) (holding

that evidence that decedent s second wife secret s

remains, rather than maintain a grave with a headstone pursuant to an

agreement with family members, sufficiently establ s actions

were deliberate and extreme and outrageous for purposes of establishing an

IIED claim), trans. denied. The trial court did not err in granting summary

judgment in favor of School Appellees on IIED claim

[66] Affirmed.

Vaidik, C.J., and Riley, J., concur.

22 Robinson also makes arguments regarding her damages. Because we conclude as a matter of law that Robinson cannot establish that West triggered the AG Action or that School Appellees engaged in extreme and outrageous conduct, we need not address claims regarding the other elements of her IIED claim.