

IN THE CIRCUIT COURT OF THE  
FOURTH JUDICIAL CIRCUIT, IN AND  
FOR DUVAL COUNTY, FLORIDA.

CASE NO.: **16-2005-CA-005096**

DIVISION: **CV-F**

**JOHN P. DALY, an individual,**

**Plaintiff,**

**vs.**

**MORRIS PUBLISHING GROUP, LLC  
a foreign limited liability company,  
MORRIS PUBLISHING GROUP, LLC  
d/b/a THE FLORIDA TIMES-UNION;  
MIKE FREEMAN, an individual; and  
JACKSONVILLE.COM, an unincorporated  
association or other entity,**

**Defendants.**

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**FINAL SUMMARY JUDGMENT**

This cause is before the Court upon a Renewed Motion for Summary Judgment filed by Defendants, Morris Publishing Group, LLC, Morris Publishing Group, LLC d/b/a *The Florida Times-Union*, Jacksonville.com, and Mike Freeman, against Plaintiff.<sup>1</sup> The Court has considered the pleadings, answers to interrogatories, depositions, and affidavits for and against summary judgment; and the arguments of counsel. Upon the foregoing, the Court finds that Defendants' Renewed Motion for Summary Judgment should be granted, based upon undisputed facts.

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<sup>1</sup> This Court, through a predecessor judge, denied Defendants' previously filed Motion for Summary Judgment. However, reconsideration of matters therein is appropriate in light of additional discovery, including the deposition of Plaintiff. *See, Hull & Co., Inc. v Thomas*, 834 So.2d 904 (Fla. 4<sup>th</sup> DCA 2003).

## **BACKGROUND**

Plaintiff, John P. Daly ("Daly"), is a professional golfer on the PGA Tour. On March 25, 2005, an opinion column by sports-writer Mike Freeman ("Freeman"), entitled "Daly, Duval Star in Golf's Surreal Life" ("Column"), appeared in the print edition of *The Florida Times-Union* and on its website (found under the domain name jacksonville.com). A copy thereof is attached hereto. In the Column, Freeman expressed opinions about the long-standing, public controversy surrounding Daly's career and personal life. In response to the Column, Daly sued for defamation (Counts 1-6), invasion of privacy-false light (Count 7), intentional infliction of emotional distress (Count 8), and negligent hiring and supervision (Count 9).

## **STANDARD OF REVIEW**

A party is entitled to summary judgment where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510(c). Pretrial disposition in defamation cases is appropriate "because of the chilling effect these cases have on freedom of speech." Stewart v. Sun Sentinel Co., 695 So. 2d 360, 363 (Fla. 4th DCA 1997). Moreover, summary judgment is "to be liberally granted" in public figure cases, such as this, where "the constitutional requirement of actual malice applies." (Pl.'s Mot. To Amend Compl. at 3 ("[Daly] is undeniably a public figure.)); Cronley v. Pensacola News-Journal, Inc., 561 So. 2d 402, 405 (Fla. 1st DCA 1990); Palm Beach Newspapers, Inc. v. Early, 334 So. 2d 50, 51 (Fla.

## **COUNTS 1 AND 4: DOMESTIC VIOLENCE COUNT**

In Counts 1 and 4 of his Complaint, Daly alleges that the underlined portion of the following sentences are defamatory: "How does Daly not fail the scoundrel sniff test . . . ? Look at the Daly blog. Domestic violence accusations. Yup. . . . Daly hasn't played but one or two decent rounds of golf lately, abuses his body, is accused of smacking women around and fans are lined up five rows deep outside the ropes to get his autograph."

There is no genuine dispute that Daly is someone "accused" of domestic abuse. First, Daly admitted that he was accused of domestic violence regarding an incident involving his former wife, Bettye Daly ("Bettye"). (Daly Dep. at 52:16-19 ("You were accused of domestic abuse? . . . [Y]es, I was accused of it . . . ."). Second, on the basis of the above-noted accusation, Daly admitted that the words "John Daly" and "domestic abuse" were, thereafter, locked together. (Daly Dep. 52:16-19, 58:2-22; Ex. H to Defendants' July 2006 Motion for Summary Judgment ("First Motion") (Autobiography of John Daly, at 66). Finally, as a consequence of the above incident, Daly pleaded guilty to harassment by physical contact pursuant to Colorado Criminal Code § 18-9-111, which means that Daly was convicted of having struck, shoved, kicked, or otherwise subjected Bettye to an unlawful physical contact. (Ex. B to First Motion (Castle Rock, Colorado Police Report And Arrest Record); Daly Dep. 41:4-8, 45:10-12). As part of his sentence, Daly was required to participate in domestic violence evaluation and treatment. (Daly Dep. 48:2-13). On the basis of these admissions, this Court finds that there is no genuine dispute that Daly has been accused of domestic abuse. See Cape Publ'ns, Inc. v. Reakes, 840 So. 2d 277, 280

(Fla. 5th DCA 2003) (reversing defamation verdict regarding statement that plaintiff "broke the law" because she admitted "that she had entered a structure without permission"); Early, 334 So. 2d at 53 (finding admissions dispositive); see also McCall v. Couture, 666 S.E.2d 637, 640 (Ga. Ct. App. 2008) ("A plaintiff cannot recover for alleged defamation where he admits the truth of the communications attributed to the defendant." (citation omitted)).

Daly responded to the above evidence in several ways. First, he asserted that Bettye publicly retracted her accusation. This is irrelevant because any such retraction did not change the fact that Bettye originally made the accusation, that the State of Colorado repeated the accusation in a criminal prosecution, and that Daly pleaded guilty to a crime based upon it. Daly's second argument was that the word "women" necessarily implies that he has been accused of domestic violence by multiple women or that the word "is" suggested that the accusations were of more recent vintage than the incident with Bettye. Given the context of the Column, a sports-related opinion piece, Daly is incorrect that the phrase "smacking women around" should be read in such a literal fashion. See Hunter v. Hartman, 545 N.W.2d 699, 709 (Ct. App. Minn. 1996) (rejecting highly literal interpretations of sports commentary). Moreover, even if a reader interpreted the phrase as referring to more than one woman, it would not make a difference because the "sting" of the Column would be the same – that Daly has been accused of committing domestic abuse. See Woodard v. Sunbeam Television Corp., 616 So. 2d 501, 503 (Fla. 3d DCA 1993) (holding that an erroneous report that a person served a four-year prison term is not actionable if the plaintiff admits that he

served a two-year prison term because the "sting," the impression that the plaintiff is a criminal, is the same).

Even if Daly's interpretation of the phrase is accepted, the evidence establishes that it is substantially true. See McCormick v. Miami Herald Publ'g Co., 139 So. 2d 197, 200 (Fla. 2d DCA 1962) ("[N]ewspapers are not to be held to the exact facts or to the most minute details of the transactions they publish, . . . what the law requires is that the publication shall be substantially true, and that mere inaccuracies, not affecting materially the purport of the article, are immaterial."). After the incident with Bettye, Daly was accused of domestic violence, intimidation, and sexual assault by his subsequent wives and fiancé. (Ex. 19 to Daly Dep. (Office of the Sheriff, St. John's County, General Offense/Incident Report); Daly Dep. 85:2-8; Ex. 20 to Daly Dep.; Mother's Emergency Petition For Mandatory Injunctive Relief). As noted above, this Court need not decide whether any domestic violence actually occurred. Rather, the question is whether it is substantially true that Daly has been "accused" of domestic violence. It is beyond dispute that he has been. Accordingly, summary final judgment is entered with respect to Counts 1 and 4.

### **COUNTS 3 AND 6: THREE CHILDREN/THREE MOMS COUNTS**

In Counts 3 and 6 of his Complaint, Daly alleges that the underlined portion of the following sentence is defamatory: "Three different kids from three different moms, making him the Shawn Kemp of golf? Yes." With respect to these Counts, Daly admits that the underlying factual statement is true – that he has three kids with three different mothers. (Compl. at ¶ 64). Therefore, the only issue pertains to the

conclusion that Freeman derived from the above fact – that Daly was "the Shawn Kemp" of golf. This portion of the sentence cannot form the basis of a defamation action because conclusions about, or comments based upon, a stated fact are "pure opinion." See From v. Tallahassee Democrat, Inc., 400 So. 2d 52, 56 (Fla. 1st DCA 1981) <sup>2</sup> ("Pure opinion occurs when the defendant makes a comment or opinion based on facts which are set forth in the article . . . "); Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974) ("Under the First Amendment, there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas."). In fact, in his deposition, Daly admitted that comparisons of this sort are opinions. (Daly Dep. at 115:8-15 ("Q. . . . Is that the writer's opinion that you're the Pete Rose of the golf world? . . . A. Bad opinion."))

In his Complaint and other filings, Daly asserts that analogizing him to Shawn Kemp ("Kemp") is defamatory because Kemp has illegitimate children, whereas Daly does not. The problem with this argument is that Daly could come up with any number of reasons why the analogy to Kemp is invalid and it would not matter. Under established First Amendment law, the question of whether an opinion is well thought out or not is legally irrelevant. See Gertz, 418 U.S. at 339-40 (holding that "pernicious" opinions receive full constitutional protection); Parks v. Steinbrenner, 131 A.D.2d 60, 66 (N.Y. App. Div. 1987) ("That one may dispute the conclusions drawn from the specified facts is not, however, the test. So long as the opinion is accompanied by a recitation of

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<sup>2</sup> It is incumbent upon the Court, rather than a jury, to determine what constitutes "opinion." Id., at 56-57.

the facts upon which it is based[,] it is deemed a 'pure opinion' and is afforded complete immunity even though the facts do not support the opinion."). In short, interpersonal comparisons based upon stated facts are not actionable, even when a plaintiff contends they are poorly considered or otherwise offensive. See, e.g., Early, 354 So. 2d at 53 (rejecting claim based upon comparison to Lizzy Borden, Henry VIII, and Jack the Ripper); Koch v. Goldway, 817 F.2d 507, 508, 510 (9th Cir. 1987) (holding that calling plaintiff "Ilse Koch," the infamous Nazi war criminal, was not actionable); Yeager v. Local Union 20, 453 N.E.2d 666, 667, 669 (Ohio 1983) (calling plaintiff "little Hitler" was "an expression of opinion"), abrogated on other grounds by Welling v. Weinfeld, 866 N.E.2d 1051 (Ohio 2007); cf. Parks, 131 A.D.2d at 64 (describing the important American "freedom to boo the umpire" and that "harsh insults . . . are accepted commonplace occurrences in baseball"). Accordingly, summary final judgment is entered on Counts 3 and 6.

### **COUNTS 2 AND 5: THUG LIFE COUNTS**

In Counts 2 and 5, Daly alleges that the underlined portion of the following statement is defamatory:

How does Daly not fail the scoundrel sniff test with fans despite possessing definite Thug Life qualifications? Look at the Daly blog. Domestic violence accusations. Yup. Substance abuse issues? Unfortunately. Three different kids from three different moms, making him the Shawn Kemp of golf? Yes. A former wife indicted for laundering illegal drug profits? Roger that.

He still received endorsement deals from TrimSpa and Dunkin' Donuts despite a rap sheet that would make R. Jay Soward look like a Backstreet Boy.

These Counts fail for the same reason as the Three Children/Three Moms counts – the alleged defamatory statements are opinions based upon disclosed facts.

As written, the conclusion of the above passage is that Daly has both "Thug Life qualifications" and a "rap sheet" worse than that of R. Jay Soward ("Soward"). Conclusions are the opinions of the author. See, e.g., Fortson v. Colangelo, 434 F. Supp. 2d 1369, 1384 (S.D. Fla. 2006); Parks, 131 A.D.2d at 66. The key, however, is that Freeman does not make the factual bases for his conclusion a secret. Instead, he lists the following four facts about Daly to support it: (1) accusations of domestic violence; (2) Daly's substance abuse issues; (3) multiple children from multiple mothers; and (4) a former wife who was indicted for laundering illegal drug profits. Because the supporting facts are identified, the Column's conclusions (that he has thug-life qualifications and makes R. Jay Soward look like a Backstreet Boy) are afforded complete immunity under the First Amendment and cannot be the subject of a defamation action. Fortson, 434 F. Supp. 2d at 1384 ("By invoking the terms 'maliciously' and 'shoved' to characterize Fortson's actions, Vecsey merely offered readers his judgment – albeit, a harsh one – based upon facts that were known or available to them. Vecsey's language, therefore, was nothing more than a textbook expression of pure opinion.")

Given that the conclusions in the above passage are protected, the only possible basis for a defamation action would be if Daly proved that one of the four underlying facts was false, but there is no genuine dispute with respect to any of the underlying facts. First, as set forth above, Daly has been accused of domestic violence. Second,

Daly admits that he has struggled with "substance abuse" in the form of alcohol abuse. (Daly Dep. 102:21-105:20, 113:5-10, 138:15-138:25, 143:9-13, 163:1-164:21). Third, Daly admits that he has three children with three different mothers. (Compl. at ¶ 64). Fourth, and finally, Daly has never contended that the statement that his wife was indicted for laundering illegal drug profits is defamatory.

Daly has made various arguments to support the Thug Life Counts, but none of them is sufficient to defeat summary judgment. For example, Daly asserts that the analogy to Soward is a poor fit because, according to Daly, Soward was suspended from playing in the NFL over the use of cocaine. Whether or not that is an accurate statement about Soward, it would not make a difference in this case. As with the comparison to Kemp, the First Amendment leaves it to the reader, not the courts, to assess the quality of the author's judgment. See Gertz, 418 U.S. at 339-40; Parks, 131 A.D.2d at 66.

Daly's second argument is that the use of the term "rap sheet" implies that Daly has a criminal record. There are two problems with this argument. First, in the context of the Column, Freeman discloses the four reasons why he opines that Daly's "rap sheet" is worse than that of Soward and, thus, Freeman's judgment constitutes a pure expression of opinion. Fortson, 434 F. Supp. 2d at 1384 (conclusion that player had "shoved" another was protected opinion based upon disclosed facts). Second, even if one ignored the context in which the term "rap sheet" was used in the Column, Daly would still have no claim because it is true that he has a criminal record. (Ex. B to First Motion (Castle Rock, Colorado Police Report And Arrest Record); Daly Dep. 41:4-8;

45:10-12). As discussed, Daly pleaded guilty to the crime of "harassment" in Colorado. And, aside from his conviction, the record contains several police reports regarding Daly's conduct while intoxicated. (Ex. B to First Motion; Ex. 19, 20 to Daly Dep.)

In sum, the Column's reference to "Thug Life qualifications" and its comparison to R. Jay Soward are pure expressions of opinion based upon disclosed facts. Therefore, summary final judgment is entered on Counts 2 and 5.

### **COUNTS 1 THROUGH 6: ALL DEFAMATION COUNTS**

Under the First Amendment, public figures in defamation lawsuits are required to prove actual malice by clear and convincing evidence. See New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). Actual malice is subjective, and requires proof that the author published the alleged defamatory statement with the knowledge that it was false or while entertaining serious doubts as to its truthfulness. See Times Pub. Co. v. Huffstetler, 409 So. 2d 112, 112-13 (Fla. 5th DCA 1982); Menendez v. Key West Newspaper Corp., 293 So. 2d 751, 752 (Fla. 3d DCA 1974) (per curiam).

As discussed above, there is no evidence in the record that any of the factual statements in the Column is false, much less that Defendants were subjectively aware of their falsity at the time of publication. Cronley, 561 So. 2d at 405 ("We share the trial court's view that the unrefuted factual statements in the affidavits demonstrated that the publications were substantially accurate and were not published under circumstances which would cause a rational finder of fact to find actual malice by clear and convincing evidence.") Accordingly, even if this Court did not enter summary

judgment for the reasons stated above, it would do so on the basis that there is no evidence of actual malice, much less "clear and convincing" evidence.

**COUNTS 7 THROUGH 9: INVASION OF PRIVACY-FALSE LIGHT; INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENT HIRING AND SUPERVISION**

In Count 7, Daly asserted a claim for invasion of privacy – false light. Summary final judgment is appropriate because, in Florida, no such cause of action exists. See Jews for Jesus, Inc. v. Rapp, 997 So. 2d 1098 (Fla. 2008). With respect to the remaining Counts, Florida follows the single publication/single action rule, which prohibits a party from basing additional torts on the same essential facts as a failed defamation claim. See Callaway Land & Cattle Co. v. Banyon Lakes C. Corp., 831 So. 2d 204, 208 (Fla. 4th DCA 2002). In this case, Daly has alleged nine causes of action based upon the same basic facts. The first six counts are for defamation and are based upon the Column. The three remaining counts (invasion of privacy – false light; intentional infliction of emotional distress; and negligent supervision and hiring) are likewise based upon the Column. Therefore, Counts 7 through 9 are barred by the single publication/single action rule and summary final judgment is entered with respect to them. See Trujillo v. Banco Central Del Ecuador, 17 F. Supp. 2d 1334, 1339 (S.D. Fla. 1998). It is, thereupon,

**ORDERED and ADJUDGED:**

1. The Renewed Motion for Summary Judgment filed by Defendants, Morris Publishing Group, LLC, Morris Publishing Group, LLC d/b/a *The Florida Times-Union*, Jacksonville.com, and Mike Freeman is hereby **GRANTED**,

and Final Summary Judgment is entered as to each of these Defendants against Plaintiff John P. Daly.

2. Plaintiff John P. Daly shall recover nothing by this action and Defendants, Morris Publishing Group, LLC, Morris Publishing Group, LLC d/b/a *The Florida Times-Union*, Jacksonville.com, and Mike Freeman shall go hence without day. The Court reserves jurisdiction to award such costs and attorneys' fees as may be appropriate to Defendants.

**DONE AND ORDERED** in Chambers at Jacksonville, Duval County, Florida, this 17<sup>th</sup> day of March, 2009.

**ORDER ENTERED**

**MAR 17 2009**

~~/s/ Hugh A. Carithers, Jr.~~  
**HUGH A. CARITHERS**  
**Circuit Judge**

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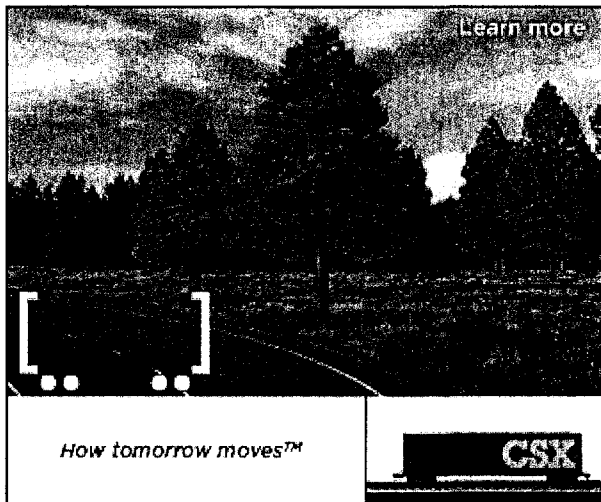
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# Daly, Duval star in golf's surreal life

It was a normal day of golf for John Daly. Stuffed inside his bag were a cartoon of Marlboros and six-pack of Diet Coke. Oh, and let's not forget his putter called the Dunlop Redneck. No, really, he does.



David Duval, struggling to get a grip on his game, grat a club from his caddy at No. 14 Thursday.  
CHRIS VIOLA/The Times-Union



(On the Dunlop Web site, there is actually a description of the Redneck Putter that includes: "Rednecks to the rescue." Whew. Glad the rednecks are coming to save me.)

Yes, typical day for Big John. Got his smokes, his cokes and his rednecks.

Before several of his shots off the tee, Daly would take a long drag on one of those Marlboros, breathe deeply, gently lay his cigarette on the ground a few feet from the tee, hit long and crooked, bend over, pick up the smoke, then stroll down the fairway to a round of applause.

The surreal deal. That's Daly. Just imagine Byron Leftwich, right before breaking the huddle, whipping out a pack of smokes and lighting up.

Daly was paired on Thursday with David Duval, whose shot can sometimes be a danger to birds, trees and people with slow reflexes.

These two together once would have been remarkably sexy. Duval, the quiet homeboy who won The Players

Championship and British Open, and Daly, a British Open and PGA Championship winner who burst onto the scene because chicks dig the long ball.

Instead in 2005 here is Daly, the outcast, and Duval, the outclassed. The latter making just three of his last 14 cuts. Thursday he shot a 76 to Daly's 73.

"Way to go, John!" screamed several fans as he ended the first day.

A question. When will normally smart and skeptical sports fans stop making excuses for Daly and Duval and apply that critical fan eye and sarcastic tongue they normally do to other pro athletes to these two men?



John Daly, struggling to get a grip on his many vices, watches a putt roll off his Dunlop Redneck putter at No. 14. Daly, at 1 over 73, and Duval, at 4-over 76, are scheduled to start the second round at hole No. 10 with Steve Elkington at 12:20 p.m. today.  
CHRIS VIOLA/The Times-Union

**Note to readers**

A letter from John Daly's attorney disputed some of a column written by Mike Freeman on March 25.

To clarify:

Daly was charged in a domestic disturbance involving his then-wife in Castle Rock, Colo., in 1992, pled to harassment and was placed on probation in 1993.

References of substance abuse relate to Daly's alcohol abuse.

A reference to Shawn Kemp was not meant to suggest that Daly's children were illegitimate.

Particularly in terms of Daly. How does Daly not fail the scoundrel sniff test with fans despite possessing definite Thug Life qualifications? Look at the Daly blog. Domestic violence accusations? Yup. Substance abuse issues? Unfortunately. Three different kids from three different moms, making him the Shawn Kemp of golf? Yes. A former wife indicted for laundering illegal drug profits? Roger that.

He still received endorsement deals from TrimSpa and Dunkin' Donuts despite a rap sheet that would make R.Jay Soward look like a Backstreet Boy.

To many, Daly is still the lovable lug, the chain smoker with a heart. Awww, come on, his supporters crow, don't you just want to pinch those chubby cheeks?

It is always interesting to observe what behavior fans and media will tolerate from athletes. A hard-working Jaguars safety asks for more money and a trade and it's Armageddon. Daly hasn't played but one or two decent rounds of golf lately, abuses his body, is accused of smacking women around and fans are lined up five rows deep outside the ropes to get his autograph. Remarkable.

Daly has stated in the past that people forgive him because each of us has a Daly somewhere in our families. He's probably right, though I don't believe any of my relatives own a Redneck Putter.

What cannot be argued is that both men are making a mockery of the sport -- even if it is a sport that sometimes takes itself too seriously. Duval, because he does not put real effort into breaking out of this mythic slump and seems to just stumble along, getting cut from tournament after tournament, and Daly, because he does not put the effort into changing that mythic physique. He is, after all, supposed to be a professional golfer, not a defensive tackle.

How can Daly or Duval be taken seriously when contrasted with Tiger Woods or Vijay Singh or dozens of others on the Tour who have to be dragged from the gym and practice areas kicking and screaming?

Duval double-bogeyed the seventh hole, the ball hitting the water so hard he wiped out several species of salamander. Soon after that, Daly was lighting up another one of those Marlboros.

Beautiful. Just beautiful.