MOLLY S. HENDERSON,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
LANCASTER NEWSPAPER, INC., JOHN M. BUCKWALTER, ERNEST J. SCHRIEBER, MARVIN I. ADAMS, JR., HELEN COLWELL ADAMS, CHARLES RAYMOND SHAW, ARTHUR E. MORRIS, GILBERT A. SMART, JOHN H. BRUBAKER, III, AND DAVID PIDGEON	:	
	:	No. 1816 EDA 2011

Appeal from the Order Entered June 8, 2011
In the Court of Common Pleas of Chester County
Civil No(s).: 07-12003

BEFORE: GANTMAN, PANELLA and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED SEPTEMBER 28, 2012**

Appellant, Molly S. Henderson, appeals from the order of the Chester County Court of Common Pleas granting summary judgment in favor of Appellees, Lancaster Newspaper, Inc., John M. Buckwalter,[1] Ernest J. Schrieber, Marvin I. Adams, Jr., Helen Colwell Adams, Charles Raymond

* Former Justice specially assigned to the Superior Court.

[1] Appellees state in their brief that John M. Buckwalter has passed away. ***See*** Appellees' Brief at 18 n.8. They reference the reproduced record at 2878a-80a. However, those pages are not included in the reproduced record.

Shaw, Arthur E. Morris, Gilbert A. Smart, John H. Brubaker, III, and David Pidgeon, in this defamation case.[2] We affirm.

The trial court summarized the procedural posture and facts of this case as follows:

> [Appellant] commenced this action by Writ of Summons on December 11, 2007.[3] She filed a Complaint on January 9, 2008 that had three counts for defamation, false light and civil conspiracy. [Appellees] filed preliminary objections, which we overruled and a petition for change of venue, which we denied, in Orders dated August 26, 2008. [Appellees] filed a motion to modify the order regarding venue and certify it for appeal pursuant to Pa.R.A.P. 311(b), which we denied in our Order dated October 7, 2008. [Appellees] filed answers with new matter, which [Appellant] objected to. After [Appellant's] objections were overruled by Order of November 19, 2008, she filed a reply to the new matter. . . .
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> [Appellant] was a member of the Board of Commissioners of Lancaster County from 2003 to 2007. [Appellee] Lancaster Newspapers, Inc. (hereinafter "LNI") published two daily publications: *The Lancaster Intelligencer Journal* in the morning, and the *Lancaster New Era* in the evening. LNI also published the weekly *Lancaster Sunday News*. The combined circulation for the two daily publications is approximately 88,833, while the circulation for the Sunday publication is approximately 99,502. [Appellee] John M. Buckwalter is the Chairman of the Board of LNI. [Appellee] Ernest J. Schreiber is the Editor-in-Chief of the *New Era*. [Appellee] Marvin I.

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[2] On August 11, 2011, this Court entered an order denying Appellees,' application to stay appeal and remand for determination of a petition to enforce settlement. On November 22, 2011, this Court denied Appellees' application to enforce settlement and dismiss this appeal.

[3] "The tolling date for the statute of limitations occurs when there is proper, prompt service of a timely filed writ of summons." ***Sheets v. Liberty Homes, Inc.***, 823 A.2d 1016, 1018 (Pa. Super. 2003).

> Adams, Jr. is the Editor-in-chief of the *Sunday News*. [Appellee] Helen Colwell Adams is the Politics Editor and political writer of the *Sunday News*. [Appellee] Charles Raymond Shaw is the Editor-in-Chief of the *Intelligencer Journal*. [Appellee] Arthur E. Morris is the former mayor of Lancaster, a columnist under contract with the *Sunday News*, and the chairman and active executive director of the Lancaster County Convention Center Authority. [Appellees] Gilbert A. Smart, John H. Brubaker, III, and David Pidgeon are reporters, respectively, for the *Sunday News*, *New Era*, and *Intelligencer Journal*.
>
> [Appellant's] action against the LNI [Appellees] is based on eight articles and three editorials published between December 14, 2006 and January 14, 2007. There were also two subsequent articles on May 1, 2007 and September 13, 2007. Her action against [Appellee] Morris is based on his letters to the editor published by LNI on 1/15/07 and 1/28/08. The articles and letters stemmed from the Grand Jury Investigation of the Lancaster County Board of Commissioners' hiring of Gary Heinke ("Heinke") as Lancaster County's Chief Service Officer (CSO) and sale of Lancaster County's Conestoga View Nursing Home.
>
> [Appellant], Pete Shaub and Dick Shellenberger were elected to the Board of Commissioners in November 2003 and took office in January 2004. The commissioners hired Heinke March 2004. The sale of Conestoga View to Complete HealthCare Resources was announced in July 2005 and went to settlement on September 29, 2005. Heinke resigned on October 28, 2005. The Lancaster County District Attorney requested a Grand Jury investigation on November 10, 2005. On December 14, 2006, the Grand Jury filed its Report and the commissioners pled guilty to violations of the Sunshine Act. The Grand Jury Report ("GJR")[4] was made public on January 10, 2007 and Commissioner Pete Shaub resigned as of February 2007. [Appellant] claims that she lost her bid for re-election in November 2007 because of the LNI

[4] ***See*** Brief in Support of Motion for Summary Judgment of [Appellees] Ex. 1; R.R. at 172a. We note that Appellee Morris filed a separate motion for summary judgment.

> publications about her that were allegedly false, malicious and defamatory. She also claims that the articles were in retaliation for her opposition to increased public funding of the Convention Center and Hotel Project ("the Project"). The Project was proposed by Penn Square Partners ("PSP") as a redevelopment plan for the vacant Watt & Shand building. LNI had a financial interest in the Project since it was a limited partner of PSP and owned commercial real estate in the vicinity of the Project.
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> * * *
>
> The alleged defamatory statements . . . published by the LNI [Appellees], as well as the corrections, are as follows:
>
> [1]2/14/06[5] Commissioners plead guilty-Brubaker
> Under the [Sunshine] Act,[6] any violation is a summary offense-a criminal charge that draws a $100 fine and costs of prosecution per offense.

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[5] Contrary to the trial court's representation, the date of this publication was December 14, 2006, not February 14, 2006.

[6] The Act provides:

> **(a) Findings.**—The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.
>
> **(b) Declarations.**--The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.

65 Pa.C.S. § 702(a)-(b).

. . . . .
Two or more of the commissioners actually attended at least five secret meetings before the sale, according to investigations by the New Era over the last year.

12/15/06 Time to Resign-Editorial
The charges involve a series of private meetings that were conducted in 2004 and 2005 in which the commissioners met and initiated action that ultimately led to the sale of the county property.

12/31/06 Seeking an inside view – Smart
Shaub testified twice before the grand jury, but Shellenberger and [Appellant] testified only once. Shaub, who did not hire a lawyer to represent him during the investigation, has said that Shellenberger and [Appellant] hired lawyers to help them avoid testifying a second time. The appearance of "taking the fifth," say observers, could be extremely damaging politically.

1/7/07 Corrections
In a Page One article last Sunday on the grand jury report regarding the sale of Conestoga View, it was incorrectly reported that Lancaster County [Commissioners] Dick Shellenberger and [Appellant] had each only testified once before the grand jury, giving the appearance of "taking the fifth." In fact, attorneys for both commissioners had filed motions to quash subpoenas compelling them to testify more than once, but the court ultimately ruled against the commissioners. Shellenberger then testified once more, and [Appellant] testified on two additional occasions.

1/10/07 Grand jury: Commissioners betrayed public's trust—Brubaker
The grand jury had given the commissioners a choice: Plead guilty or face a formal presentment recommending that criminal charges be filed against them.

1/11/07 Secrecy, deceit crippled probe—Brubaker

How did county commissions escape multiple criminal charges? Local grand jurors blame inconsistent testimony and lack of records.

. . .

The grand jury report makes it clear that the commissioners and Gary Heinke, the former human services administrator hired to help conduct the nursing home sale, avoided other criminal charges only because the grand jury lacked sufficient corroborating evidence.

1/12/07—Corrections

The New Era reported that the investigating grand jury said the commissioners avoided further criminal charges only because the grand jury lacked sufficient evidence. Actually, the grand jury report presents no evidence to support further criminal charges against [Appellant].

1/11/07 Grand jury blasts three commissioners—Pidgeon

However, the key officials involved in the sale—from the three Commissioners to the deposed county administrator who helped conduct the sale—escaped serious criminal charges because the grand jury could not corroborate much of the evidence.

. . . .

While the report does not recommend criminal charges, it does document how the commissioners: Kept the sale process "cloaked in a veil of secrecy." Orchestrated the hiring of a hand-picked administrator, Gary Heinke, to help facilitate the sale. Sought a political contribution from an attorney involved in the sale. Involved administrators to help the [sic] maintain the secrecy.

1/11/07 Report details 'veil of secrecy' in county: Secret meetings on 'Charlie Victor'—Pidgeon

The report describes how the commissioners and their surrogates tried to circumvent the Sunshine Act while discussing the sale, even code-naming the nursing home "Charlie Victor," to keep their discussions confidential.

1/12/07 Corrections/clarifications

A story in Thursday's Intelligencer Journal grouped [Appellant] with commissioners Pete Shaub and Dick Shellenberger when reporting on what the newspaper

described as "serious criminal charges" considered by the grand jury. The Intell erred by failing to make it clear that [Appellant] was not mentioned in the grand jury report in relation to those charges.

1/13/07 Citizens: GET OUT—Holahan and Murse
The 37-page report, made public Wednesday, provides details of how commissioners secretly manipulated the sale of the county nursing home, Conestoga View, and the hiring of one of the key administrators responsible.

1/14/07 Conestoga View: Why were commissioners in such a heated rush to sell county nursing home?—Smart
The stories last week focused on the machinations behind the deal, the "actively deceitful" manner in which Lancaster County commissioners handled the sale of Conestoga View.

1/14/07 Commissioners Shellenberger and [Appellant]: Have grace to resign—Editorial
It's time for Dick Shellenberger and [Appellant] to resign. That is the inescapable conclusion that arises from the scathing grand jury report on the hiring of Gary Heinke and the sale of Conestoga View by the Lancaster County commissioners.
. . . .
[Appellant] sold the elderly and the poor of this county for 30 pieces of silver.

1/21/07—Sunny side up—Editorial
At the conclusion of a damning report on the way the commissioners pulled the wool over the public's eyes in the hiring of Gary Heinke as Chief services officer and the sale of the Conestoga View nursing home, the grand jury issued recommendations that ought to be required reading not only on the fifth floor of the courthouse but in the state Capitol.

5/1/07—Façade of almshouse may be eased to Preservation Trust—Brubaker
When the Lancaster County Commissioners secretly sold the county's nursing home to a private buyer, outraged citizens protested.

> 5/9/07 Corrections & Clarifications
> A May 1 news story about the county's former almshouse noted that the Lancaster County Commissioners "secretly sold" the county nursing home, Conestoga View. In fact, the commissioners, in a secret meeting, authorized the county to negotiate the sale with one buyer. The commissioners were apprised of these negotiations at two other secret meetings. Then they approved the sales agreement in public.
>
> 9/13/07 Former exec sues county—Brubaker
> A grand-jury report released earlier this year indicated that the county commissioners secretly manipulated the hiring of Heinke and held secret negotiations prior to selling the nurs[ing] home.
>
> 9/17/07 Corrections & Clarifications
> A Sept. 13 news story on a lawsuit filed by Gary Heinke, a former county human services director, against the Lancaster Count[y] Commissioners, provided background on a grand jury finding issued last January that the commissioners secretly manipulated Heinke's hiring. The grand jury finding applied only to majority commissioners Dick Shellenberger and Pete Shaub, not to minority commissioner [Appellant].

Trial Ct. Op., 9/19/11, at 1-3, 5-8 (citations to exhibits omitted).

Appellant refers to a letter printed in the newspaper dated January 15, 2007 entitled: "[Appellant] had more of role than she's letting on." Letter to the Editor of Arthur E. Morris, Lancaster New Era. The letter states, in pertinent part,

> So County Commissioner [Appellant] believes that the grand jury report "vindicates" her position on the sale process and Gary Heinke's hiring?
>
> This kind of spew, while typically produced by cattle, is being delivered far too often by Commissioner [Appellant].

> [Appellant] publically voted to hire Heinke, even though she knew beforehand that he was never the assistant superintendent of Pillager School District, as stated on his county employment application, and even though he was not qualified for the position.
>
> Even though she knew his employment application wasn't accurate, even though she knew that his position as an intern at Pillager School district did not qualify him for the position, she voted at the March 24, 2004, county commissioners' meeting to hire him at a salary of $80,000.

Complaint Ex. II; Opposition to Summary Judgment Ex. 73, R.R. at 424-25a. Appellant refers to another column of Morris entitled "Sunday's Guest: Missed opportunities, unmet expectations," printed in the Sunday News on January 28, 2007, which referred to the GJR. He stated:

> In reviewing this information, one has to wonder why [Appellant], knowing that Heinke was not qualified and, in private meetings, not supporting his hiring, would not tell the public of her concerns. Didn't she know that hiring an unqualified person would not be in her, or the public's, best interests?

Complaint Ex. JJ, Opposition to Summary Judgment Ex. 52, R.R. at 427-429a.

The GJR, dated December 14, 2006,[7] explained the purpose of its investigation as follows:

> The investigation submitted to us on November 10, 2005, . . . concerned the hiring of Gary Heinke as Lancaster County Human Services Administrator and whether any crimes, including but not limited to Unsworn falsification to authorities (18 Pa.C.S. 4904), may have been committed. During the course of that phase of the

[7] Appellees indicate that the GJR was released on January 10, 2007.

> investigation, the grand jury both obtained and heard evidence, including information from Gary Heinke himself, which led to the Amended Notice of Submission on May 12, 2006. The amended scope of the investigation . . . concerned the circumstances surrounding the actions taken by Gary Heinke, the Lancaster County Commissioners, . . . regarding the sale of Conestoga View Nursing Homes and whether any crimes, including but not limited to Criminal conspiracy (18 Pa.C.S. § 903), Penalty for neglect or refusal to perform duties (16 P.. § 411), Meetings open to public (16 P.S. § 460), Assistant County Solicitors (16 P.S. § 904), Contract procedures; terms and bonds; advertising for bids (16 P.S. § 1802), Authority to sell or lease real property (16 P.S. § 2306), and Open meetings (65 Pa.C.S. § 701 et seq.) may have been committed during that process.

Grand Jury Report, 12/14/06, at 2; R.R. at 173a.

The GJR made the following findings of fact. The Lancaster County Board of Commissioners consists of three members. ***Id.*** at 4; R.R. at 175a. Prior to Appellant and Shellenberger taking office, sitting Commissioner Shaub met with Shellenberger to discuss splitting the county administrator position into two positions, the Chief Services Officer ("CSO") and the Chief Administrative Officer ("CAO"). ***Id.*** at 4-5; R.R. at 175-176a. Shellenberger testified that he thought of Heinke immediately as an ideal candidate of the CSO position. ***Id.*** at 5; R.R. at 176a.. Commissioner Shellenberger knew Heinke since the mid-1990s. ***Id.***

After taking office in January 2004, Schaub and Shellenberger decided to create the two positions. ***Id.*** at 7; R.R. at 178a. Bonnie Ashworth, Personnel Specialist for the Human Relations Department, created the job descriptions and posted them on the Lancaster County website. ***Id.*** The job

description for the CSO position did not include oversight of the Conestoga View Nursing Home. ***Id.*** Ashworth received 107 applications. ***Id.*** at 8; R.R. at 179a. She divided the applications into "A", "B", and "C" lists. ***Id.*** She put Heinke in the "C" list because his most recent experience was an internship. ***Id.*** Shellenberger requested that he be placed in the "A" list and she complied. ***Id.*** at 9; R.R. at 180a.

"Ms. Ashworth also notified all three commissioners in writing that Mr. Heinke's previous job was only an internship, which she had learned by reading his application package." ***Id.*** Four candidates were selected, including Heinke, for interviews. ***Id.*** Appellant "did not vote to interview" Heinke. ***Id.*** "No one from the county's Human Resources department recommended that Mr. Heinke be interviewed." ***Id.*** Prior to Heinke's interview, Ashworth "specifically informed the commissioners that Mr. Heinke's previous job was as an intern with the Pillager School district." ***Id.*** at 11-12; R.R. 182-83a.

The commissioners placed five departments and Conestoga View under Heinke's supervision, increasing his oversight of staff by 200% and his salary by 58%. ***Id.*** at 13; R.R. 184a. The internal investigation by Myers and Hoffman[8] disclosed Heinke's two resumes, one dated May 27, 2003 and

[8] The Board of Commissioners requested then Director of Human Services Tom Meyers and attorney Joseph Hoffman to review Heinke's resume, the hiring process and to make a report. Compl., 1/9/08, at ¶ 81, R.R. at 66-

the second January 13, 2004. ***Id.*** at 15; R.R. at 186a. One listed the position with the Pillager School District as Assistant Superintendent. ***Id.*** at 16; R.R. 187a. The other listed the full job description acknowledging that it was an internship. ***Id.*** The commissioners were aware of the discrepancy prior to Heinke's interview. ***Id.*** Mr. Heinke stated that soon after his employment began, he attended secret meetings at the behest of Shaub and Shellenberger. ***Id.*** at 17; R.R. at 188a. "In early 2004, Conestoga View had been in existence in some form for more than 200 years and was located on forty acres of land that also housed the Youth Intervention Center along with other county owned buildings. Conestoga View employed approximately twenty-five percent of all employees paid for by the taxpayers of Lancaster County." ***Id.*** at 17 n.19; R.R. at 188a.

Shaub told Heinke one of his "fundamental responsibilities was the sale of Conestoga View." ***Id.*** at 17-18; R.R. at 188-189a. Heinke protested Shellenberger told him that this was going to be a "team effort." ***Id.*** at 18; R.R. at 189a.

> The grand jury [found] as a fact that commissioner Shaub had begun discussing the possible sale of Conestoga View prior to being re-elected for his second term as county commissioner. Commissioner Shaub discussed this plan with candidate Shellengberger as early as September of 2003, which was before the general election in which Mr. Shellenberger was elected as a county commissioner.

67a. ***See also*** the Myers-Hoffman Report ("MHR"), Brief in Support of Motion for Summary Judgment of Appellees Ex. 35; R.R. at 1734-1746a

Id. at 18n. 20; R.R. 191a. "A constant theme of the off-site meetings was that no one outside of 'the team' should know about the plan to, or even the possibility of, selling Conestoga View. Commissioner Shaub specifically told the team members that [Appellant] should be kept in the dark." ***Id.*** at 20-21; R.R. at 191-192a.

The GJR noted, however, that "[a] public bidding process for the sale of Conestoga View was not required by the County Code." ***Id.*** at 22 n.26; R.R. at 193a. At the end of June 2005, Shaub leaked the news of the impending sale of Conestoga View to the Lancaster New Era newspaper. ***Id.*** at 26; R.R. at 197a. "The sale was officially presented to the public on July 6, 2005 at the boards' weekly commissioners' meeting . . . ." ***Id.*** "According to Mr. Heinke's testimony and documentation reviewed by the grand jury, the topic of the sale of Conestoga View was on many administrative meeting agendas, beginning as early as on August 2, 2004. All three county commissioners . . . attended the administrative meetings and would have received copies of the agenda." ***Id.*** at 27; R.R. at 198a. Appellant claimed she was unaware of the potential sale of Conestoga View until April 1, 2005. ***Id.*** at 28; R.R. at 199a. The grand jury found that given the conflicting testimony and lack of notes taken in the secret meetings, other than those of Heinke, there was no "independent corroborating evidence of lying by any particular witness on this issue" and

therefore the grand jury did not issue any presentments for perjury. ***Id.*** at 29; R.R. at 200a.

> Aside from the weekly administrative meetings and the off-site meetings, there were at least three "executive sessions" where the grand jury finds as a fact that the sale of Conestoga View was discussed: April 1, 2005, June 9, 2005, and July 5,2005. 'Executive session' are a listed exception to The Sunshine Act and may lawfully occur only to discuss three specific and distinct issues: (1) pending litigation, (2) the purchase (not sale) of real estate, and (3) personnel issues.

Id. at 29-30; R.R. at 200-201a. The April 1, 2005 session was the first official session for the commissioners to discuss the potential sale of Conestoga View. ***Id.*** at 30: R.R. at 201a. This meeting was not publicized and Schaub, Shellenberger, and Appellant admitted their conduct violated The Sunshine Act and pleaded guilty to this offense. ***Id.*** There were two other meetings on June 9, 2005, and July 5, 2005, which Appellant attended, but there was insufficient evidence of what was discussed and thus the grand jury did not issue a presentment for violation of 16 P.S. § 460[9] or The sunshine Act. ***Id.*** at 30-31; R.R. at 201-202a. "The public

[9] Section 460 of the County Code provides:

> (a) All meetings, regular and special, of the board of county commissioners and of all boards, commissions and authorities, created by or operating as agencies of a county, are hereby declared to be public meetings open to the public at all times.
>
> (b) Nothing contained in this section shall prevent the county commissioners or any such board, commission or

outcry about the sale, although slow to start, soon became more vocal." ***Id.*** at 34; R.R. at 205a. The public learned of Heinke's two resumes. ***Id.*** at 34. n.41. The Commissioners commenced an investigation into Heinke and he resigned rather than cooperate. ***Id.***

Appellant conceded at her deposition that she knew Heinke's prior position was that of an intern. Dep., 10/20/09, at 245; R.R. at 1356a.

> [Counsel for Appellees]: Okay. The next thing that the grand jury says is, Ms. Ashworth also notified all three commissioners in writing that Mr. Heinke's previous job was only an internship which she had learned by reading his application. Again, you believe that to be accurate?
>
> [Appellant]: Yes. The application resume were produced to us as a packet, so we were well aware of the situation.

Id. at 244-45; R.R. at 1356a.

Appellant was questioned about the Myers-Hoffman Report. She was shown the report and she testified:

> [Counsel for Appellees]: Okay. Now, this was a report that the three commissioners directed Mr. Myers and Mr. Hoffman to do; correct.
>
> A: Correct.

> authority from holding executive sessions from which the public is excluded, but no final official action shall be taken as to any proposed or existing resolution, ordinance, rule or regulation, or part thereof, at such an executive session.

16 P.S. § 460(a)-(b).

> Q: And it was to review the resume and the whole hiring process of Gary Heinke and make a report about it; correct?
>
> A: Yes.

Dep., 11/6/09, at 85-86; R.R. at 1368-69a. Appellant was questioned about her handwritten notes dated March 15, 2004. ***Id.*** at 112; R.R. at 1375a..

> Q: And do you remember, looking at the top, what those notes were about?
>
> A: This was after I had learned about the relationship—the pre-hiring relationship of Mr. Shellenberger and Heinke, and also Shaub.
>
> And I called for a personnel meeting, and that's why Mr. Myers was there, and—the four of us were there. And those were the points that I wanted to make at the meeting.

Id. at 112-13; R.R. 1375a.. Appellant gave conflicting testimony regarding when she knew of the possible sale of Conestoga View. Counsel for Appellees read Appellant's answer to interrogatory 13 in Appellees Second Set of Interrogatories:

> [Counsel for Appellees]: In your answer to this question which asks, When did you first learn that Commissioners Shellenberger and Shaub were discussing the possibility of selling Connestoga View Nursing Home, the answer reads, [Appellant] was aware before she took office in 2004 that commissioners Shaub and Shellenberger intended to examine whether Conestoga View, the Youth Intervention Center, the Prison, the Planning Commission, and other county operations were core services which heeded to be continued in their existing form.

Id. at 120-21; R.R. 1376a.

> [Counsel for Appellees]: And did you tell the grand jury that you were unaware of the potential sale of Conestoga View until April 1st, 2005?
>
> A: This, again, is we're getting into semantics. I knew about—
>
> Q: No. I'm just asking you whether or not you told the grand jury that you were unaware of the potential sale of Conestoga View until April 1st, 2005?
>
> A: Yes.

Id. at 168-69; R.R. at 1379a. Appellant was questioned about her handwritten notes following her discussion with Chief Administrative Officer Don Elliott:

> [Counsel for Appellees] Q: I show you what I am marking as [Exhibit] 170.
>
> A: (Witness reviews document.)
>
> Q: I take it this is your handwriting; correct?
>
> A: Yes.
>
> Q: And were these notes made on September 2nd, '04, on or about?
>
> A: On or about.
>
> Q: Okay. And can you read into the record what this says.
>
> A: In p.m., at 2:00, I returned from lunch with Andi Murphy to meet with Craig Zumbrun.
>
> He's with the Assembly Group.
>
> I see Don Elliott speaking with Maggie Weidinger at about 4 o'clock. Joy informs me that no one knows where anyone is except Pete had called asking if Gary was back from Stevens & Lee.

* * *

On Friday, at 11:45, the 3rd, Don Elliott explained to me that all had met at Stevens & Less with John Espenshade to discuss the possible sale of Conestoga View.

* * *

Q: Okay. This note, why did you write it?

A: Because the—of Dick and Pete meeting with Espenshade, discussing things with the staff. And, again, this is marginalizing me again.

* * *

Q: So then you go to Friday at 11:45.

How did you come to meet with Don Elliott?

A: I must have just run into him in the office area.

Q: And he—

A: In the main lobby little area there.

Q: And he explained to you that all of them, he, Gary Heinke, Dick Shellenberger, Pete Shaub, had met at Stevens & Lee with Mr. Espenshade to discuss the possible sale of Conestoga View?

A: Yes.

Id. at 194-97, 203; R.R., 1380a, 1496a.

On May 17, 2010, Appellees filed a consolidated motion for summary judgment which was granted on July 7, 2011. This appeal followed. Appellant filed a timely court-ordered Pa.R.A.P. 1925(b) statement of

matters complained of on appeal and the trial court filed a responsive opinion.

Appellant raises the following issue for our review: "Did the Court below commit error as a matter of law by ruling that there was no issue of material fact and granting summary judgment dismissing [Appellant's] Complaint in its entirety?" Appellant's Brief at 5.

Appellant argues: "But for the memos and an examination of the fourteen pieces . . ., if there were no indicia of malice and the articles were based on reliable sources, were substantially true and the facts contained as broad as the sting, then there would not be a cause of action." Appellant's Brief at 17. Appellant acknowledges that the paper printed corrections but complains that the corrections were not prominently placed in the newspaper, but were buried. ***Id.*** at 18, 24, 29. Appellant argues that summary judgment should not have been granted in the instant case because "Mr. Buckwalter's Memos of orchestration all need to be considered by a jury to establish malice." ***Id***. at 47.

Appellant argues that a violation of The Sunshine Act is not a criminal conviction. ***Id.*** at 54. Appellant avers that the GJR does not refer to the violation as a crime. ***Id.*** at 20. Appellant contends, *inter alia*, that "the substantial variance between the grand jury report and published defamations is circumstantial evidence of actual malice particularly where,

as here, [Appellees] republish after notice, indeed admission, that their accusations with regard to [her] were incorrect." ***Id.***. at 50.

Appellant averred that Appellees, maliciously published false statements "to malign and injury [her] reputation, sway public opinion against [her], and attempt to force [her] resignation from office and/or forego the pursuit of reelection in the upcoming primary and general elections scheduled in 2007." Complaint, 1/8/08, at ¶¶ 115, 117, 122, 129, 132-34, 139, 140, 145, 156; R.R. at 74a, 76a, 79a, 81-85a, 87a, 90a. Appellant claimed that "[a]s a direct and proximate result of the false and defamatory statements published by [Appellees] with **actual malice**, [she] has suffered substantial harm to her reputation as well as anguish, humiliation, and undue embarrassment." ***Id.*** at ¶159, R.R. at 91a. (emphasis added). We find no relief is due.

Our standard of review is well-established:

> "[S]ummary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." ***Atcovitz v. Gulph Mills Tennis Club, Inc.***, 571 Pa. 580, 812 A.2d 1218, 1221 (2002); Pa. R.C.P. No. 1035.2(1). When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party. ***Toy v. Metropolitan Life Ins. Co.***, 593 Pa. 20, 928 A.2d 186, 195 (2007). In so doing, the trial court must resolve all doubts as to the existence of a genuine issue of material fact against the moving party, and, thus, may only grant summary judgment "where the right to such judgment is clear and free from all doubt." ***Id.*** On appellate review, then,

> an appellate court may reverse a grant of summary judgment if there has been an error of law or an abuse of discretion. But the issue as to whether there are no genuine issues as to any material fact presents a question of law, and therefore, on that question our standard of review is *de novo*. This means we need not defer to the determinations made by the lower tribunals.
>
> ***Weaver v. Lancaster Newspapers, Inc.***, 592 Pa. 458, 926 A.2d 899, 902–03 (2007) (internal citations omitted). To the extent that this Court must resolve a question of law, we shall review the grant of summary judgment in the context of the entire record. ***Id.*** at 903.

Summers v. Certainteed Corp., 997 A.2d 1152, 1159 (Pa. 2010).

The elements of a defamation claim are as follows:

> **(a) Burden of plaintiff.**—In an action for defamation, the plaintiff has the burden of proving, when the issue is properly raised:
>
> (1) The defamatory character of the communication.
>
> (2) Its publication by the defendant.
>
> (3) Its application to the plaintiff.
>
> (4) The understanding by the recipient of its defamatory meaning.
>
> (5) The understanding by the recipient of it as intended to be applied to the plaintiff.
>
> (6) Special harm resulting to the plaintiff from its publication.
>
> (7) Abuse of a conditionally privileged occasion.
>
> **(b) Burden of defendant.**—In an action for defamation, the defendant has the burden of proving, when the issue is properly raised:
>
> (1) The truth of the defamatory communication.

> (2) The privileged character of the occasion on which it was published.
>
> (3) The character of the subject matter of defamatory comment as of public concern.

42 Pa.C.S. § 8343 (a)-(b).

Because Appellant was a public figure,[10]

> [c]ase law further informs us that if the plaintiff is a public figure he or she must prove that the defendant published the offending statement with "actual malice," *i.e.*, with knowledge that the statement was false or with reckless disregard of its falsity. ***Curran v. Philadelphia Newspapers, Inc.***, 497 Pa. 163, 439 A.2d 652, 659 (1981) (quoting ***New York Times Co. v. Sullivan***, 376 U.S. 254, 279-80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)). Actual malice is not judged on an objective reasonable man standard. Rather, for the purposes of establishing that a defendant acted with reckless disregard for the truth, "[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." However, it is important to note that immunity from defamation liability is not guaranteed merely because a defendant protests that he published in good faith. ***Id.*** Actual malice can be shown when "the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation," or "where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports."

Joseph v. Scranton Times L.P., 959 A.2d 322, 338 (Pa. Super. 2008) (some citations omitted).

In ***Curran v. Philadelphia Newspapers, Inc.***, 546 A.2d 639 (Pa. Super. 1988), this Court opined:

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[10] Appellant does not contest the fact that she was a public figure.

> As it stands now, the law holds that a plaintiff can recover in a media libel law suit if he can prove that the defamer spoke with actual knowledge that the words were false or with reckless disregard of whether the words were false. This is a difficult task for the plaintiff, to say the least, but when the law holds that the defamer has a right to be wrong, has the right to be negligent in ascertaining the truth, has a right to carry ill will against the defamed, has a right not to be fair, and has a right to speak from undisclosed sources the burden for the plaintiff becomes almost too heavy to carry. . . .
>
> And so, the tension goes on between our basic interest in a vigorous and uninhibited press and the interest of our citizens in a good and unchallenged reputation with the swing in favor of the former. . . .
>
> > Some tension necessarily exists between the need for a vigorous and uninhibited press and the legitimate interest in redressing wrongful injury. As Mr. Justice Harlan stated, "some antithesis between freedom of speech and press and libel actions persists, for libel remains premised on the content of speech and limits the freedom of the publisher to express certain sentiments, at least without guaranteeing legal proof of their substantial accuracy." In our continuing effort to define the proper accommodation between these competing concerns, we have been especially anxious to assure to the freedoms of speech and press that "breathing space" essential to their fruitful exercise. To that end this Court has extended a measure of strategic protection to defamatory falsehood.
> >
> > The ***New York Times*** standard defines the level of constitutional protection appropriate to the context of defamation of a public person. Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures and those who hold governmental office may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with knowledge of its falsity or with reckless disregard for

> the truth. This standard administers an extremely powerful antidote to the inducement to media self-censorship of the commonlaw rule of strict liability for libel and slander. And it exacts a correspondingly high price from the victims of defamatory falsehood. Plainly many deserving plaintiffs, including some intentionally subjected to injury, will be unable to surmount the barrier of the ***New York Times*** test. Despite this substantial abridgment of the state law right to compensation for wrongful hurt to one's reputation, the Court has concluded that the protection of the ***New York Times*** privilege should be available to publishers and broadcasters of defamatory falsehood concerning public officials and public figures.

Id. at 652-53 (footnotes and citations omitted).

It is well established:

> In determining whether the editorial was capable of defamatory meaning, a distinct standard is applied because the publication is of an opinion. "A statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion. A simple expression of opinion based on disclosed . . . facts is not itself sufficient for an action of defamation."

Kurowski v. Burroughsm, 994 A.2d 611, 618 (Pa. Super. 2010) (citations omitted), *appeal denied*, 12 A.3d 752 (Pa. 2010).

> "Whether a particular statement constitutes fact or opinion is a question of law." ***Braig v. Field Communications***, 310 Pa. Super. 569, 579, 456 A.2d 1366, 1372 (1983).
>
> In ascertaining whether a communication is capable of defamatory meaning, a special standard is applied when the communication is an opinion. A statement in the form of an opinion is actionable only if it "may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion." ***Beckman v. Dunn***, 276 Pa. Super. 527, 535, 419 A.2d 583, 587

> (1980) (emphasis supplied), citing Restatement (Second) Torts § 566 (1977). "A simple expression of opinion based on disclosed . . . facts is not itself sufficient for an action of defamation . . ." ***Braig***, ***supra***, 310 Pa. Super. at 581, 456 A.2d at 1373, citing Restatement (Second) Torts § 566 Comment c (1977).

Veno v. Meredith, 515 A.2d 571, 575 (Pa. Super. 1986).

"More is required than a bald assertion that the defamatory statements harmed a plaintiff's reputation 'in the social, civil, professional and political community.'" ***Pilchesky v. Gatelli***, 12 A.3d 430, 444 (Pa. Super. 2011).

The trial court opined:

> [Appellant] cannot prove actual malice because the articles were substantially true and based on a reliable source. Finally, [Appellant] cannot prove that her failure to be re-elected resulted from the articles and editorials. We doubt that the result would have been different if the articles had stated what [Appellant] would have us believe—that she had no idea what was happening in her own government. As for the editorials, only statements of fact, not expressions of opinion, can support an action in defamation. ***Moore v. Cobb-Nettleton***, 889 A.2d 1262, 1267 (Pa. Super. 2005). . . .
>
> [Appellant] alleges that the recurring use of "criminal charges" and "additional criminal charges" in the articles was false, even though she pled "guilty" to a violation of the Sunshine Act. The language of the Sunshine Act itself states that any member of an agency who attends a meeting in violation of the Act "**commits a summary offense** and shall, upon conviction, be **sentenced** to pay a fine not exceeding $100 plus costs of **prosecution**. 16 Pa.C.S. § 714 (emphasis added). Further, the grand jury report states that the investigation was to determine whether any crimes were committed regarding the sale of Conestoga View, including violations of 65 Pa.C.S. § 701 *et seq*. Finally, LNI filed two corrections stating that the

grand jury report showed no evidence to support additional criminal charges against [Appellant].

[A]ppellant also claims that the implication that she attended multiple secret meetings is false. However, the article of 12/14/06 specifically stated that only Shellenberger and Shaub attended meetings on March 23, April 29 and Sept. 2, 2004, but all three commissioners attended meetings on April 1 and June 9, 2005. The article also pointed out that [Appellant] only pled guilty to one violation regarding the meeting on April 1, 2005. Furthermore, according to documentation reviewed by the grand jury report, the topic of the sale of the Conestoga View was on many administrative meeting agendas as early as August 2, 2004, and that all three Commissioners and Mr. Heinke attended these administrative meetings and received copies of the agendas. Furthermore, the sale was discussed at "executive sessions" on April 1, 2005, June 9, 2005 and July 5, 2005. Commissioners are only allowed to discuss the purchase (not sale) of real estate at executive sessions. . . . The sale was not officially presented to the public until July 6, 2005, when the commissioners voted unanimously to sell Conestoga View.

Next, [Appellant] complained about the accuracy regarding the number of times she testified before the grand jury. and "taking the fifth." . . . Furthermore, [Appellees] conceded that [Appellant] actually testified three times and corrected the error in the next issue of the Sunday News. . . .

[Appellant] alleges that [Appellee] Morris's Letters to the Editor published on January 15, 2007 and January 28, 2007 were defamatory. Specifically, [Appellant] alleges that Morris knowingly made the false accusations that she voted to hire Gary Heinke "even though she knew beforehand that he was never the assistant superintendent . . . was not qualified for the position . . . and that she knew that his application wasn't accurate." According to the grand jury report, Bonnie Ashworth from the Human Resources Department testified that she informed all three commissioners before Mr. Heinke's interview that he had only been an intern. Furthermore, [Appellant] originally

> voted against hiring Heinke, which seems to indicate that she thought he was not qualified for the job.

Trial Ct. Op. at 8-10. We agree.

Although Appellant testified before the grand jury that she was unaware of the potential sale of Conestoga View, her deposition belies this assertion. At her deposition, Appellant testified that her handwritten note dated September 2, 2004 indicated that a meeting had been held to discuss the possible sale of Conestoga View.[11]

Appellant concedes that she was convicted of one violation of The Sunshine Act. However, Appellant complains that a violation of the Sunshine Act does not constitute a criminal conviction. Appellant avers that the GJR does not refer to the violation as a crime. Appellant's Brief at 20. This is not accurate. The GJR states in pertinent part: "The amended scope of the investigation, . . . concerned the circumstances surrounding the actions taken by Gary Heinke, the Lancaster County Commissioners . . . regarding the sale of Conestoga View Nursing Home and whether any crimes, including but not limited to . . . Open meetings (65 Pa.C.S. § 701 [The Sunshine Act]) may have been committed during that process." Grand Jury Report at 2; R.R. at 173a. ***See Ackerman v. Upper Mt. Bethel Twp.***, 567 A.2d 1116, 1120 (Pa. Commw. 1989) ("Although the Sunshine Act's purpose is to discourage private meetings on agency business followed by rubber stamp

[11] Although the letter is dated September 2, 2004, it notes that the meeting took place on Friday, September 3, 2004.

public hearings, the legislature has apparently provided no remedy to achieve this purpose beyond **summary criminal proceedings** against agency members.)[12] Moreover, "it is not necessary for a statute to be included within Title 18 to constitute a criminal violation." ***Commonwealth v. Derr***, 841 A.2d 558, 561 (Pa. Super. 2004).

In the complaint for count II, False Light,[13] Appellant summarily averred:

> The aforementioned articles identified and described above, [ ] collectively as well as individually, and without

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[12] "Although decisions of the Commonwealth Court are not binding on this Court, we may rely on them if we are persuaded by their reasoning." ***NASDAQ OMX PHLX, Inc. v. PennMont Securities***, ___ A.3d ___, 2012 WL 2877607, *11 n.7 (Pa. Super. 2012).

[13] False light is defined as follows:

> False light invasion of privacy includes "publicity that unreasonably places the other in a false light before the public." ***Curran v. Children's Service Center of Wyoming County, Inc.***, 396 Pa.Super. 29, 38, 578 A.2d 8, 12 (1990). Moreover, "[i]t is only when there is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position, that there is a cause of action for invasion of privacy." ***Id.*** at 39-40, 578 A.2d at 13. . . . The elements to be proven are publicity, **given to private facts**, which would be highly offensive to a reasonable person and which are not of legitimate concern to the public. ***Harris by Harris v. Easton Publishing Company***, 335 Pa.Super. 141, 154-56, 483 A.2d 1377, 1384 (1984).

Strickland v. Univ. of Scranton, 700 A.2d 979, 987 (Pa. Super. 1997) (emphasis added).

> regard to their truth or falsity, also created false impressions of [Appellant] by repeatedly, widely, and extensively publicizing information which stated or implied falsehoods about [Appellant] that exposed [Appellant] to contempt and ridicule within the community and placed her before the public in a false light of a kind highly offensive to a reasonable person.

Complaint at ¶ 161, R.R. at 91a.

Appellant states on appeal:

> The court then examines the doctrine of false light pertaining to publicity given to private facts and concludes that what was complained of were of legitimate concern to the public. **Appellant is prepared to forego these claims and focus instead on the defamation counts.**

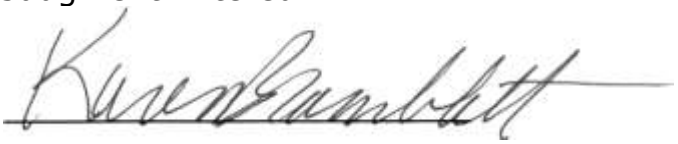
Appellant's Brief at 44 (emphasis added). In the argument section of her brief, in one page, Appellant defines falsity and then baldly asserts: "Any truth in the articles analyzed herein was nowhere as broad as the sting of those articles regarding [Appellant]." ***Id.*** at 58. We do not address this claim. ***See Umbelina v. Adams***, 34 A.3d 151, 161 (Pa. Super. 2011) ("[W]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived.") (citation omitted), *appeal denied*, 47 A.3d 848 (Pa. 2012).

Appellant contends that the newspaper's motivation for the defamatory articles was retaliation for her stance on the project to redevelop the Watt & Shand Building of the Penn Square Partners, of which John M. Buckwalter, then LNI's chairman, was a member. ***See*** Appellant's Brief at 9.

The project contemplated the construction of "a convention center, owned by a public convention center authority, with a privately owned and financed hotel adjacent to the convention center." Complaint at ¶ 18, R.R. at 52a. This argument was based upon Count III of the complaint which stated a claim for civil conspiracy. However, Appellant does not advance any argument in her brief for the civil conspiracy count. Therefore, we do not address it on appeal. ***See Umbelina***, ***supra***.

Order affirmed.

Judgment Entered.



Prothonotary

Date: 9/28/2012