

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

KENNETH FLOWERS,)
Plaintiff,)
)
v.) C.A. No. N24C-08-112 DJB
)
WALGREENS CO., d/b/a)
WALGREENS #11020,)
Defendant.)

Date Submitted: August 11, 2025

Date Decided: January 2, 2026

**Memorandum Opinion on Defendant's Motion for Summary Judgment –
GRANTED**

Kenneth M. Flowers, *pro se*

Matthew P. Donelson, *Esquire*, Weber, Gallagher, Simpson, Stapelton, Fires & Newby, LLP, Wilmington, Delaware, attorney for Defendant

BRENNAN, J.

Plaintiff Kenneth Flowers (hereinafter “Plaintiff” or “Flowers”) brought suit against Defendant Walgreens, Co., d/b/a Walgreens #11020 (hereinafter “Defendant” or “Walgreens”), alleging defamation and negligence following an interaction that occurred in the pharmacy in June 2024.¹ Plaintiff alleges he was defamed by a Pharmacist while he was waiting in line to pick up a prescription.² As a result, Plaintiff seeks damages for emotional distress and pain and suffering.³

I. RELEVANT FACTS AND PROCEDURAL HISTORY

On June 27, 2024, Plaintiff visited a Walgreens in Wilmington to refill a prescription.⁴ While in line and in front of others waiting, the Pharmacist asked him if he was there to get an HIV test.⁵ Plaintiff alleges that this caused others to stare at him, which made him feel “some kind of way.”⁶ When he left the store he called the corporate office to make an official complaint.⁷ Following that call, Plaintiff received a phone call from the Pharmacist, who apologized and relayed that he was not singled out, other customers were similarly asked whether they wanted an HIV

¹ *Flowers v. Walgreens*, N24C-08-112 DJB, Docket Item (hereinafter “D.I.”) 1, Compl., ¶ 3.

² D.I. 1, Compl. at ¶ 3.

³ D.I. 1, Compl. at ¶ 8.

⁴ D.I. 1, Compl. at ¶ 3.

⁵ *Id.*

⁶ *Id.*

⁷ D.I. 1, Compl. at ¶ 4.

test, as well.⁸ Plaintiff did not hear others asked this question while there.⁹ The day of the incident, June 27, 2024, was national HIV testing day.¹⁰

On August 23, 2024, Plaintiff filed his Complaint.¹¹ Plaintiff's Complaint brings two causes of action – one in defamation and in negligence. Plaintiff claims the Pharmacist's question defamed him, which caused him embarrassment and emotional distress. Further, Plaintiff alleges Walgreens was negligent in failing to adequately train their employees to properly speak with customers to avoid making derogatory, slanderous statements in violation of the Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPAA").¹² Plaintiff seeks to recover for emotional distress and pain and suffering.¹³ On September 13, 2024, Walgreens filed its Answer.¹⁴ A Trial Scheduling Order was issued¹⁵ and discovery ensued.¹⁶

On August 11, 2025, Walgreens filed the instant Motion for Summary Judgment.¹⁷ Plaintiff responded in opposition on September 24, 2025.¹⁸ Walgreens

⁸ D.I. 1, Compl., at ¶ 4.

⁹ *Id.*

¹⁰ D.I. 11, Answer at ¶ 8.

¹¹ D.I. 1.

¹² *Id.* at ¶ 7.

¹³ *Id.* at ¶ 8.

¹⁴ D.I. 11.

¹⁵ D.I. 17.

¹⁶ D.I. 18-28, 30-36, 40-41, 43-44, 46-47.

¹⁷ D.I. 48, Mtn. for Summ. Judgm't.

¹⁸ D.I. 55.

filed its Reply on October 3, 2025.¹⁹ Oral argument was held on October 16, 2025.²⁰

The matter is now ripe for decision. This is the Court’s decision **GRANTING** Walgreens’ Motion for Summary Judgment.

II. STANDARD OF REVIEW

To obtain summary judgment under Superior Court Civil Rule 56, the moving party bears the initial burden to demonstrate that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”²¹ If a moving party makes such a showing, “the burden shifts to [the] non-moving party to demonstrate that there are material issues of fact.”²² This Court will not grant summary judgment when the record evinces a “reasonable indication a material fact is in dispute.”²³ Under this standard, the all reasonable inferences from the record evidentiary facts are viewed in the light most favorable to the non-moving party.²⁴

¹⁹ D.I. 56.

²⁰ D.I. 57.

²¹ Del. Super. Ct. Civ. R. 56(c).

²² *Moore v. Sizemore*, 405 A.2d 679, 681 (Del. 1979) (citing *Hurtt v. Goleburn*, 330 A.2d 134, 135 (Del. 1974)).

²³ *JPMorgan Chase Bank v. Hopkins*, 2013 WL 5200520, at *2 (Del. Super. Ct. Sept. 12, 2013) (citing *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962)).

²⁴ *Heasley v. Allstate Property & Casualty Insurance Co.*, 2022 WL 951261, at *2 (Del. Super. Ct. Mar. 28, 2022).

III. ANALYSIS

A. DEFAMATION

Defamation claims can arise from both written and spoken statements.²⁵ Libel is written defamation, while slander is defamation in spoken form.²⁶ To sufficiently plead a claim of defamation, a plaintiff must allege: (1) a defamatory statement was made; (2) the statement was published; (3) a third party would naturally understand the statement to be defamatory; and (4) damages.²⁷ Walgreens argues that Plaintiff has not shown that a defamatory statement was made.²⁸ Further, Walgreens contends Plaintiff has not articulated actionable damages that resulted from the alleged defamatory conduct.²⁹

1. The Question Posed to Flowers Was Not Defamatory.

“A communication is considered defamatory ‘if it tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.’”³⁰ To be defamatory, a statement must not only affect one’s reputation in the community, but it must cause

²⁵ *Spence v. Funk*, 396 A.2d 967, 970 (Del. 1978).

²⁶ *Id.*

²⁷ *Id.*

²⁸ D.I. 48 at 2.

²⁹ D.I. 48 at 4.

³⁰ *Preston Hollow Capital LLC. v. Nuveen LLC.*, 2022 WL 2276599, at *3 (Del. Super. Jun. 14, 2022) (quoting *Spence*, 396 A.2d at 969).

one's reputation to be "grievously fractured."³¹ The "content, context, and verifiability" is considered when determining whether a statement is defamatory.³²

The statement at issue is not defamatory because the Pharmacist simply asked Plaintiff if he wanted an HIV test.³³ The Pharmacist did not accuse Plaintiff of having HIV, nor was any sort of conclusory statement made. In assessing the context of the Pharmacists question, June 27, 2024, was national HIV testing day and Walgreens pharmacy was an HIV test provider.³⁴ Further, it has not been alleged, nor is there record evidence to support that the Pharmacist had any factual knowledge of whether Plaintiff had HIV when the question was posed, or that there was any other reason to pose such a question.³⁵ In fact, the Pharmacist had asked every customer whether they wanted an HIV test on the day in question.³⁶

Accordingly, there is no genuine issue of material fact as to whether at any point the Pharmacist made conclusory statements regarding Flower's health or HIV status.³⁷ The question was generic and aligns with the plain purpose of national HIV testing day. Although Flowers took offense to the Pharmacist's question, offensive

³¹ *Preston Hollow Capital LLC. v. Nuveen LLC.*, 2022 WL 2276599, at *3 (Del. Super. June 14, 2022) (quoting *Q-Tone Broad. Co. v. Musicradio of Maryland, Inc.*, 1994 WL 555391, at *4 (Del. Super. Aug. 22, 1994)).

³² *Q-Tone Broad. Co.*, 1994 WL 555391, at *4.

³³ D.I. 1 at ¶ 3.

³⁴ D.I. 11 at ¶ 8.

³⁵ D.I. 1 at ¶ 3.

³⁶ *Id.* at ¶ 4.

³⁷ D.I. 1 at ¶ 3.

questions alone are not defamatory. Accordingly, the Pharmacist's statement was not defamatory. This is true, even when viewing the facts in the light most favorable to the Plaintiff.

2. Flowers Failed to Plead Special Damages.

A claim for slander, spoken defamation, is not actionable without special damages.³⁸ "Special harm is the loss of something having economic or pecuniary value."³⁹ In looking at the record evidence, in the light most favorable to Plaintiff, he has not alleged special damages, and a result, his claim cannot pass muster.⁴⁰ While Plaintiff pleads emotional distress and pain and suffering, he does not articulate any economic loss and has failed to plead special damages.⁴¹ The anguish Flowers experienced does not meet the legal standard for special damages because no monetary loss resulted.⁴²

While Plaintiff contends he left because people began staring at him, he has failed to offer any proof how this has impacted his reputation in the community.⁴³ During argument, Plaintiff presented that he is an established model and that a

³⁸ *Preston Hollow Capital LLC. v. Nuveen LLC.*, 2022 WL 2276599, at *3 (Del. Super. June 14, 2022) (quoting *Spence*, 396 A.2d at 970-71.)

³⁹ *Preston Hollow Capital LLC.*, 2022 WL 2276599, at *3 (quoting Restatement (Second) of Torts § 621 cmt. a (Am. Law Inst. 1977).

⁴⁰ D.I. 1 at ¶ 8.

⁴¹ *Id.*

⁴² *Spence*, 396 A.2d at 970.

⁴³ *Id.* at ¶ 3.

statement like this could damage his reputation.⁴⁴ However, no evidentiary evidence has been presented that this reputation damage has occurred. It was inquired of Plaintiff as to whether any modeling jobs had been lost because of this statement, but admittedly he could not provide any information to that effect.⁴⁵

3. Plaintiff Fails to Establish Slander *per se*.

Slander *per se* does not require pleading proof of special damages.⁴⁶ A spoken statement is considered slander *per se* if it: “(1) maligns one in a trade, business or profession; (2) imputes a crime; (3) implies that one has a loathsome disease; or (4) imputes unchastity to a woman.”⁴⁷ Providing Plaintiff with a liberal reading of his Complaint, and in the light most favorable to his claims, his Complaint will be considered as if he specifically alleged the Pharmacist’s question was slander *per se* as it referenced a loathsome disease, HIV.⁴⁸ Although there is little precedential case law addressing slander *per se* in the loathsome disease context, good faith is relevant in a determination of whether a statement would constitute slander *per se*.⁴⁹ There is no record evidence that the Pharmacist’s question was not made in good faith, and

⁴⁴ D.I. 57.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See D.I. 1.

⁴⁹ See *Esposito v. Townsend*, 2013 WL 493321, at *7 (Del. Super. Feb. 8, 2013) (citing *Rhone v. Dickerson*, 2003 WL 22931336, at *2 (Ct. Comm. Pleas Oct. 16, 2003)).

the facts support the contrary, given this occurred on national HIV testing day. There is a distinction between asking someone whether they want an HIV test on national HIV testing day and accusing someone of actually having a loathsome disease. Even in viewing the record evidence in the light most favorable to Plaintiff, this claim must fail as there are no genuine issues of material fact as to whether the Pharmacist's question constituted slander *per se*.

B. NEGLIGENCE

A *prima facie* case of negligence requires Plaintiff to show: (1) Defendant had a duty to Plaintiff; (2) Defendant breached that duty by not allowing Plaintiff to use the bathroom; (3) Defendant's breach was both the proximate and actual cause of the harm; and (4) Plaintiff suffered damages.⁵⁰ A duty exists when a defendant has a legal obligation to protect a plaintiff from the risk of harm which caused the injury.⁵¹ Walgreens alleges Plaintiff has failed to sufficiently plead the required elements in his Complaint, and the facts of the case preclude a successful claim.⁵²

1. Plaintiff Fails to Establish Defendant Owed a Duty

Plaintiff's negligence claim requires he show that Walgreens had a duty to train employees on the conduct giving rise to the underlying tort itself.⁵³ While

⁵⁰ *Campbell v. DiSabatino*, 947 A.2d 1116, 1117 (Del. 2008).

⁵¹ *Fritz v. Yeager*, 790 A.2d 469, 471 (Del. 2002).

⁵² D.I. 48.

⁵³ *Beckett v. Trice*, 1994 WL 710874 at *6 (Del. Super. Nov. 4, 1994).

employers have a duty to train its employees on issues that could result in a claim of negligence,⁵⁴ a negligent training claim will not succeed unless an actionable underlying tort took place.⁵⁵

Here, Plaintiff's negligent training claim fails because the underlying tort of defamation fails. Plaintiff alleges Walgreens failed to train employees on "how to be professional when handling/speaking with customers," "not to make derogatory and libel statements slandering the character of its customers," and "on the HIPAA laws, to avoid this type of incident occurring."⁵⁶ Although while failing to train employees to interact with customers may lead to a disappointing customer experience, Plaintiff's negative experience at the pharmacy does not serve as the basis for any actionable tort. Further, HIPAA is not implicated here, as HIPAA protects the release of confidential personal patient information to others. That did not occur here. Consequently, Plaintiff cannot establish a duty and his negligent training claim fails.

2. Plaintiff Cannot Establish Actionable Damages

Notwithstanding Plaintiff's inability to establish a duty, he is unable to plead actionable damages.⁵⁷ Plaintiff alleges damages in the form of emotional distress

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ D.I. 1, ¶ 7.

⁵⁷ *Campbell*, 947 A.2d 1116, at 1117.

and pain and suffering he experienced due to the perceived “bad impression” customers had “of him and his personal life” due to the question posed to him by the Pharmacist.⁵⁸

In Delaware, a claim for emotional distress cannot be established “unless the mental anguish manifests into physical symptoms.”⁵⁹ Thus, without articulating any bodily harm, the alleged emotional distress suffered by Plaintiff, on its own, is insufficient to satisfy this requirement. While Plaintiff alleges “pain and suffering,” there has been no physical pain articulated or evidenced on the record that can support recovery here. Even reviewing the evidence in the light most favorable to Plaintiff, his damages claim does not meet the requirements for damages to support a negligence claim. Therefore, no genuine issue of material fact exists, and summary judgment is appropriate.

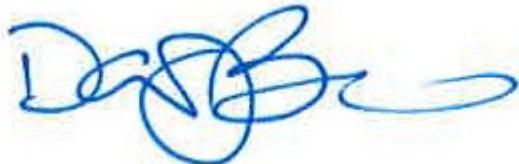
⁵⁸ See Compl., D.I. 1.

⁵⁹ *Estate of Moulder v. Park*, 2022 WL 4544837 at *4 (Del. Super. Sept. 29, 2022).

IV. CONCLUSION

For the foregoing reasons Walgreen's Motion for Summary Judgment is
GRANTED.

IT IS SO ORDERED.



Danielle J. Brennan, Judge

Cc: All parties via Lexis File&Serve
Kenneth Flowers, via first-class mail