MEMORANDUM DECISION

ATTORNEY FOR APPELLANTS

Andrea L. Ciobanu
Ciobanu Law, P.C.
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Ralph E. Sipes
Ralph Sipes Law
Anderson, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ryan P. Graber and
K. Renae Graber,
Appellants-Defendants,

v.

Andrew Turpen,
Appellee-Plaintiff

December 30, 2021

Court of Appeals Case No.
21A-PL-1237

Appeal from the
Hamilton Superior Court

The Honorable
William J. Hughes, Judge

Trial Court Cause No.
29D03-1711-PL-10071

Vaidik, Judge.

Case Summary

[1] In 2017, Ryan P. and K. Renae Graber alleged Andrew Turpen, an instructor at their child's daycare, inappropriately touched their child. These allegations

were made to law enforcement, the Department of Child Services, the daycare employees, and other parents whose children attended the daycare. Turpen later sued the Grabers for defamation, and a jury found the Grabers liable. The Grabers now appeal, asserting a variety of claims. We affirm.

Facts and Procedural History

[2] In 2017, Turpen was employed at The Play School at Arbor Village, a daycare in Fishers, Indiana. The Grabers' four-year-old son, Z.G., attended the daycare. Z.G. was born with microcephaly, which limits his verbal and motor skills.

[3] On August 11, the two teachers assigned to Z.G.'s room had the day off. Turpen and Veleta Grey were the substitutes. Z.G. had an appointment that day, and both Turpen and Grey were aware that he would be picked up around 12:45 p.m. Around noon, Turpen and Grey began preparing the children for naptime—dimming the classroom lights and setting up the cots. After the children were down for nap, around 12:30 p.m., Grey left for her lunch break. Turpen remained in the room. Grey unexpectedly returned around fifteen minutes later to retrieve an item and then again left.

[4] About two minutes after Grey left the room for the second time, Ryan arrived to pick up Z.G. Ryan collected Z.G. from the classroom and took him to his appointment. Ryan brought Z.G. back about an hour later, and Z.G. returned to the classroom. At this point, Ryan told Monique Sharifi, the daycare administrator, that when he entered the classroom to get Z.G. for the

appointment he saw Turpen "spooning" Z.G. on the cot and did not want Turpen to be around Z.G. unsupervised. Sharifi questioned Turpen about Ryan's allegations, which Turpen denied. Turpen explained that when Ryan came to get Z.G., Turpen was on the floor next to Z.G.'s cot, rubbing his back to help him fall asleep.

[5] Ryan reported his allegations to Renae. That evening, Renae spoke to Suzanne Gaidoo, who had two children attending the daycare, and told her about what Ryan had said. The two also exchanged text messages about the incident. In the messages, Gaidoo stated, "For us the only resolution is [Turpen] is gone," and Renae replied, "I agree him gone is our only resolution." Ex. p. 72. Gaidoo then told Renae she was at a birthday party with several of the other daycare parents and had told them what occurred, and they said they would "pull their kids if the school doesn't handle this." *Id*. Renae replied, "Glad to hear other parents agree." *Id.* Gaidoo also stated she planned to contact the daycare and possibly remove her children, and Renae provided her with the daycare owner's contact information.

[6] By August 12, the daycare owners had received several calls and emails from parents, including Gaidoo, regarding the previous day's incident. The daycare then terminated Turpen's employment. The daycare also made a report about the incident to the Department of Child Services (DCS).

[7] On August 14, Ryan contacted the Fishers Police Department and reported he observed Turpen "laying down with [Z.G.] on their sides in a 'spooning'

position with [Z.G.'s] back and buttocks up against [Turpen's] stomach and chest with [Turpen's] arm la[id] over [Z.G's] body." *Id.* at 78. Detective Robbie Ruble was assigned the case. After speaking with Ryan, Detective Ruble labeled the report "Child Molest." *Id.* at 86. Detective Ruble investigated the incident—interviewing several daycare employees and the Grabers, visiting the daycare, and photographing the classroom. Detective Ruble also reported the incident to DCS. On August 22, Detective Ruble closed the case due to insufficient evidence.

[8] Also on August 22, Renae and Ryan picked up Z.G. from the daycare, and Katie Guerra, an owner of the daycare, informed them that, since the August 11 incident, she felt interactions with the Grabers had become "awkward" and "uncomfortable" and she planned to terminate their enrollment contract. Tr. Vol. II p. 71. This resulted in a tense situation, with harsh words exchanged between Katie and Renae. At least one other daycare parent, Scott Greulach, witnessed part of the exchange. Renae then told Greulach that Z.G. was "no longer wanted at the school" because the Grabers complained about an employee who was "inappropriate" with Z.G. Ex. pp. 177-78.

[9] Two days later, Ryan made a report to DCS because he felt the other reports were inaccurate. Family Case Manager (FCM) Emily Sweetman was assigned the case. After interviewing the Grabers, Turpen, and several daycare employees, FCM Sweetman closed the assessment and found the allegations unsubstantiated. In doing so, FCM Sweetman noted Turpen denied the accusations, Z.G. could not corroborate them due to his limited verbal skills,

the daycare employees indicated the classroom cots could not hold Turpen's weight, and Grey unexpectedly walked into the classroom just minutes before Ryan and saw no inappropriate behavior.

[10] In November 2017, Turpen sued Ryan for defamation. He later added Renae as a defendant. In the complaint, Turpen alleged Ryan "interpreted what he heard and saw as his having surprised and caught [Turpen] in the act of molesting his son ZG because [Ryan] thought [Turpen] was lying on the cot with ZG 'spooning', inappropriately touching and lying with ZG with full body contact with ZG's buttocks and back." Appellants' App. Vol. II p. 32.

[11] In 2019, the Grabers moved for summary judgment, asserting in part that Turpen had not alleged any defamatory statements because he claimed Ryan "interpreted" and "thought" what he saw was spooning and that this phrasing equated to an admission by Turpen that the statements were subjective and therefore not defamatory. *Id.* The trial court disagreed and denied summary judgment. The trial court certified its order for interlocutory appeal, but this Court declined jurisdiction.

[12] A jury trial was held in May 2021. Turpen's theory at trial was that the Grabers did not like that he was a male working at the daycare and made up the accusations to get him fired. Several witnesses testified as to the veracity of the accusations. Guerra testified the cots could only hold about sixty pounds. The other owner of the daycare, Rita Hafner, testified she didn't think it "would be possible" for Turpen to lie on the cot with Z.G. because the cots are not "big

enough." Tr. Vol. II p. 98. Hafner also testified she did not understand why, if Ryan believed something "dark" happened to Z.G., he would "bring [Z.G.] back [to the daycare] an hour later[.]" *Id.* at 95. Grey testified she unexpectedly came back into the classroom during her break, about two minutes before Ryan entered the room, and that Turpen was not lying on the cot. All three women also testified it was common for daycare employees to rub Z.G.'s back to help him sleep during naptime.

[13] Both daycare owners also reported Turpen experienced prejudice as a male daycare instructor. Turpen testified Ryan was "lying" and that the Grabers were "uncomfortable" with him teaching at the daycare and "wanted [him] gone." Tr. Vol. III pp. 5, 49. Ryan testified he had no prejudice against Turpen and had never met him or complained about him before the August 11 incident. However, Detective Ruble testified, and noted in his report, that Ryan admitted to approaching the daycare management several months before the August 11 incident and "expressing a concern and discomfort with the possibility that [Turpen] would be teaching in there." Tr. Vol. II pp. 164-65.

[14] Several witnesses also testified about the Grabers' communications to others about the August 11 incident. Ryan testified he spoke about the incident only with Renae, the daycare workers, law enforcement, and DCS, and that he consistently reported what he had seen as "spooning." FCM Sweetman testified the daycare owner reported "the parents sent [her] an email that said God sent us to stop an inevitable molestation." *Id.* at 228. Ryan denied using the word "molestation" and stated, "there's emails that say that, from my wife, that says

that Ryan . . . came in and ah, prevented anything further from happening, which is what I stated in the email as well is that I know in my heart of hearts, when I came in, I stopped things from going further[.]" Tr. Vol. III p. 77.

[15] Renae testified about her communications with Gaidoo and denied that she intended them to cause Gaidoo to remove her children from the daycare or to pressure the daycare to fire Turpen. Renae also confirmed she had sent emails to the daycare regarding the incident, including an email stating "if you guys don't do something about this, and investigate it, we will, we will have it investigated ourselves" and "will be forced to tell other parents what has occurred." *Id.* at 130. Renae also testified she had a "tense" discussion with Guerra during pickup time at the daycare, during which at least one other daycare parent was present, and she stated "something happened to our son here" and "[o]ur son is a victim here." *Id.* at 113, 121.

[16] The Grabers proposed a jury instruction that stated, in order for them to be liable for defamation, Turpen must have proven they acted with actual malice, meaning "prove it is highly probable that the Grabers knew the communication was false or had serious doubts as to the truth of the communication." Appellants' App. Vol. II p. 99. The trial court rejected the instruction, noting actual malice is a required element of defamation for private-figure plaintiffs only when the statements at issue relate to a matter of public concern, and that the statements here did not involve a matter of public concern.

[17] As to the defamatory communications, the trial court gave Instruction 20, which states in part:

> To recover damages from Ryan and/or Renae, [Turpen] must prove by the greater weight of the evidence that:
>
> (1) Ryan and/or Renae made any of the following communications:
>
> a) On August 11, 2017, Ryan caught [Turpen] in a dimmed classroom lying with and spooning with his four (4) year old son [Z.G.] on [Z.G.'s] cot;
>
> b) Ryan had come to the school early to pick up [Z.G.], surprising [Turpen], and found [Turpen] with [Turpen's] full body against [Z.G.] in a spooning position on [Z.G.'s] cot during nap time, with [Turpen] lying on the cot with [Z.G.] "spooning", inappropriately touching and lying with [Z.G.] with full body contact with [Z.G.'s] buttocks and back.
>
> c) Renae told others [Turpen] was unsafe to be alone with children;
>
> d) Ryan or Renae sent an e-mail to [Turpen's] employer stating, "God sent us to stop an inevitable molestation."
>
> e) Renae sent telephone text messages and/or e-mail messages regarding [Turpen] and the alleged August 11, 2017 incident to people not associated with law enforcement or child protective services agencies.

> f) Renae also communicated the touching and spooning conduct of [Turpen] to Suzanne Gaidoo, Monique Sharifi, Katie Guerra, Ronak Greulach's father Scot[t] Greulach, and Adam (another parent, last name unknown).[1]

Appellants' App. Vol. II pp. 221-22. The jury found both Ryan and Renae liable to Turpen for defamation and awarded Turpen $200,000.

[18] The Grabers now appeal.

Discussion and Decision

I. Judicial Admission

[19] The Grabers first argue Turpen made a binding judicial admission that Ryan's allegations were based on his interpretation of the incident and the trial court erred in not instructing the jury as such.[2] A judicial admission "is an admission in a current pleading or made during the course of trial; it is conclusive upon

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[1] Renae admitted in an interrogatory to communicating the alleged conduct to "Adam (another parent, last name unknown)." Ex. p. 177. A text message between her and Adam, sent a few days after the incident, was also admitted. *See id.* at 75. The message does not reference the August 11 incident, and no other evidence about this parent or Renae's communications with him was admitted.

[2] Turpen argues the Grabers waived this argument "by taking an interlocutory appeal of the trial court's determination of this issue, and failing to perfect their appeal." Appellee's Br. pp. 52-53. Turpen explains the Grabers failed to perfect the appeal because the "certificates of service for [their appellate] documents d[id] not specify the method of service." Appellee's Br. p. 53. But even if the Grabers did fail to perfect their interlocutory appeal, this merely forfeits the opportunity for the interlocutory appeal; it does not forfeit the right to bring up that issue in an appeal of the final judgment. *Bojrab v. Bojrab*, 810 N.E.2d 1008, 1014 (Ind. 2004). In support of this waiver argument, Turpen included several documents relating to the attempted interlocutory appeal in his appendix. The Grabers filed a motion to strike these documents. As we do not find the Grabers' argument waived and instead address it on the merits, we do not rely on these documents and therefore deny the motion to strike.

the party making it and relieves the opposing party of the duty to present evidence on that issue." *Weinberger v. Boyer*, 956 N.E.2d 1095, 1105 (Ind. Ct. App. 2011), *trans. denied*. Unlike evidentiary admissions which the trier of fact may accept or reject, judicial admissions are conclusive and binding on the trier of fact. *Stewart v. Alunday*, 53 N.E.3d 562, 568 (Ind. Ct. App. 2016). "Whether a party's statement constitutes a judicial admission is a question of law." *Id.* at 570. Judicial admissions are "voluntary and knowing" concessions of fact, and statements that contain "ambiguities or doubt" are not binding as judicial admissions. *Id.* at 568. For a statement to be considered a judicial admission, the party must give a statement clearly and unequivocally to a fact peculiarly within his knowledge. *Id.*

[20] In Turpen's amended complaint, he stated, "[Ryan] interpreted what he heard and saw as his having surprised and caught [Turpen] in the act of molesting his son ZG because [Ryan] thought [Turpen] was lying on the cot with ZG 'spooning', inappropriately touching and lying with ZG with full body contact with ZG's buttocks and back." Appellants' App. Vol. II p. 32. The Grabers argue this statement constitutes a binding judicial admission, specifically, that Turpen admitted Ryan made the allegation based on his subjective interpretation of events, and that they were entitled to a jury instruction that stated this. We disagree.

[21] The context of Turpen's statement in the amended complaint shows any "admission" by him is not clear and unequivocal. The Grabers argue this statement is an admission that Ryan's allegations regarding Turpen and the

August 11 incident were based on his interpretation of events and therefore could not be false. But elsewhere in the pleading, Turpen repeatedly denies Ryan's allegations and asserts they are "false and unfounded." Appellants' App. Vol. II p. 36. Thus, the context of the statement shows it was not a clear and unequivocal admission and cannot be regarded as binding. *See Harr v. Hayes*, 106 N.E.3d 515, 527 (Ind. Ct. App. 2018) ("Due to the context of Hayes' argument . . . we conclude Hayes' statement contains an ambiguity and cannot therefore be regarded as a binding judicial admission."); *Stewart*, 53 N.E.3d at 571 (holding doctor's testimony that he did not consider a possible diagnosis was not a judicial admission because he later testified he did consider that possible diagnosis). Nor is this a fact within the knowledge of Turpen, as the statement is made from the point of view of Ryan. What Ryan "interpreted" or "thought" are not facts peculiarly within the knowledge of Turpen.

[22] The Grabers argue our Supreme Court's holding in *Lutz v. Erie Insurance Exchange*, 848 N.E.2d 675 (Ind. 2006), "is controlling here." Appellants' Br. p. 17. In *Lutz*, the plaintiff sued the defendant for injuries arising from a car accident. In her answer, the defendant admitted she entered an intersection against a red light. Our Supreme Court held this statement was a judicial admission and therefore the plaintiff was entitled to an instruction that the light was red when the defendant entered the intersection. But *Lutz* is distinguishable. In *Lutz*, there was no question the defendant was making an admission; the issue was whether that admission was binding and should have

been presented as such to the jury. Here, as explained above, Turpen's statement in his amended complaint was not an admission.

[23] The trial court did not err in determining the statement did not constitute a judicial admission.

II. Jury Instruction

[24] The Grabers next argue the trial court erred in giving Instruction 20, which states in part,

> To recover damages from Ryan and/or Renae, [Turpen] must prove by the greater weight of the evidence that:
>
> (1) Ryan and/or Renae made any of the following communications:
>
> . . .
>
> d) Ryan or Renae sent an e-mail to [Turpen's] employer stating, "God sent us to stop an inevitable molestation."

Appellants' App. Vol. II p. 221. The decision to give a jury instruction is largely left to the sound discretion of the trial court. *Wal-mart Stores, Inc. v. Wright*, 774 N.E.2d 891, 893 (Ind. 2002). In reviewing a trial court's decision to give or refuse a tendered instruction, we consider whether the instruction (1) correctly states the law, (2) is supported by the evidence in the record, and (3) is covered in substance by other instructions. *Id.* Only the first consideration is a legal question on which the trial court receives no deference. *Humphrey v. Tuck*, 151

N.E.3d 1203, 1207 (Ind. 2020). The other two are reviewed for an abuse of discretion. *Id.* As to the second consideration, the amount of evidence needed to instruct a jury on an issue is low. *Id.* "[A] party who makes a proper request is entitled to have an instruction based upon his own theory of the case if within the issues and there is any evidence fairly tending to support it." *Id.*

[25] Here, the Grabers argue there was no evidence supporting the instruction because the only testimony about the email was inadmissible hearsay. FCM Sweetman testified the daycare owner told her "the parents sent [the daycare owner] an email that said God sent us to stop an inevitable molestation." Tr. Vol. II p. 228. Regardless of whether this evidence amounts to inadmissible hearsay, the Grabers did not object to its admission, so it was admitted and able to be considered substantively by the jury. *Johnson v. State*, 734 N.E.2d 530, 532 (Ind. 2000) ("Failure to object at trial waives any claim of error and allows otherwise inadmissible hearsay evidence to be considered for substantive purposes."). Furthermore, the Grabers both testified an email regarding the August 11 incident was sent to the preschool owner, although the exact language is disputed. *See* Tr. Vol. II pp. 77 (Ryan), 133 (Renae). Therefore, Turpen presented evidence as to this theory of defamation and was entitled to an instruction on it.

[26] The trial court did not abuse its discretion in giving Instruction 20.

III. Verdict Contrary to Law

[27] The Grabers next argue the jury's verdict is contrary to law. A judgment is contrary to law only when the evidence is without conflict, and all reasonable inferences to be drawn from the evidence lead to only one conclusion, yet a different conclusion was reached. *Stanifer v. Wright*, 806 N.E.2d 311, 313 (Ind. Ct. App. 2004). We will uphold a general verdict upon any theory consistent with the evidence. *Coachmen Indus., Inc. v. Dunn*, 719 N.E.2d 1271, 1273 (Ind. Ct. App. 1999), *trans. denied*. We will neither reweigh the evidence nor judge the credibility of witnesses and will consider only the evidence most favorable to the judgment. *Id.*

[28] The Grabers argue the jury's verdict is "contrary to law because [the Grabers' statements] were true, without malice, privileged, and subject to immunity." Appellant's Br. p. 26. We will address each in turn.

A. Truth

[29] The Grabers first assert the verdict is contrary to law because their statements were true. Truth is an absolute defense to defamation. *Gatto v. St. Richard School, Inc.*, 774 N.E.2d 914, 924 (Ind. Ct. App. 2002). The defendant bears the burden of proving truth. *West v. J. Greg Allen Builder, Inc.*, 92 N.E.2d 634, 646 (Ind. Ct. App. 2017), *trans. denied*. When the defendant appeals a negative judgment on the issue of truth, we may reverse only if no reasonable trier of fact could have found the statements were untrue. *Id.*

[30] The Grabers argue "it was never proven that [Turpen] did not commit the actions Ryan reported" and that other pieces of evidence supported that their statements were not "unfounded." Appellant's Br. p. 28. This is an invitation to reweigh evidence, which we do not do. Nor is this a situation where the evidence pointed to only one conclusion. Turpen presented evidence that the statements were false—he denied he was on the cot when Ryan entered the room, several witnesses testified the cots likely couldn't hold Turpen's weight, Turpen was aware Ryan was coming into the room at that time, and another daycare worker had been in the room just a few minutes earlier and had seen no inappropriate behavior.

[31] Viewing this record in the light most favorable to Turpen, the verdict is not contrary to law. *See Dunn*, 719 N.E.2d at 1274 (finding defamation verdict not contrary to law where both parties presented evidence regarding the truth of the statements).

B. Actual Malice

[32] The Grabers next argue the verdict is contrary to law because Turpen failed to show actual malice. Actual malice, as an element of the tort of defamation, exists when the defendant publishes a defamatory statement "with knowledge that it was false or with reckless disregard of whether it was false or not." *Journal-Gazette Co. v. Bandido's Inc.*, 712 N.E.2d 446, 456 (Ind. 1999). Actual malice is not a required element of a defamation claim between private individuals unless the alleged defamatory statements relate to a matter of public concern. *Charles v. Vest*, 90 N.E.3d 667, 672 (Ind. Ct. App. 2017). Determining

whether a matter is of public concern is a question of law for the court. *Bandido's*, 712 N.E.2d at 452 n.7. Here, the trial court refused to instruct the jury it was required to find actual malice because the Grabers' statements did not relate to a matter of public concern. We agree.

[33] The Grabers contend their allegations against Turpen are a matter of public concern and cite to *Brewington v. State*, 7 N.E.3d 946 (Ind. 2014). The Grabers argue *Brewington* holds that "a psychologist abusing his position of trust is a matter of public concern" and that this is similar to a daycare worker abusing his position of trust. Appellants' Reply Br. p. 12. In *Brewington*, a father involved in a custody case repeatedly wrote on websites that a psychologist, who testified as an expert witness in the custody case, gave false testimony and abused children. The Court noted expert-witness testimony "primarily affects only the private litigants in a particular case" and is public "only to the extent that the proceedings" were open to the public. *Brewington*, 7 N.E.3d at 962. Nonetheless, the Court "[o]ut of an abundance of caution" "assume[d] arguendo" that this was a matter of public concern and analyzed the claim under the actual-malice standard. *Id.*

[34] Given this context, we disagree with the Grabers' reading of the *Brewington* holding. The Court made clear that while it was applying the actual-malice standard to the statements made about the psychologist, it did so without deciding whether the statements related to a matter of public concern. And even if that were the holding, the facts here are distinguishable. As the Court noted in *Brewington*, an expert witness's misconduct could be a matter of public

concern because their work product is often made public by their testimony. Therefore, it was not the psychologist's potential misconduct against a particular patient that the Court thought **could** be a public concern, but rather, the psychologist's misconduct as an expert witness testifying in open court. That is not the case here. The issue here involves potential misconduct by a daycare worker against one particular child in his care. That is not a matter of public concern for purposes of Indiana defamation law.

[35] Because actual malice was not a required element to prove defamation in this case, the verdict was not contrary to law due to Turpen's failure to show actual malice.

C. Qualified Privilege

[36] The Grabers then assert their statements regarding the August 11 incident and Turpen are subject to a qualified privilege. Whether a privilege exists is a question of law. *Ali v. Alliance Home Health Care, LLC*, 53 N.E.3d 420, 430 (Ind. Ct. App. 2016). A qualified privilege protects "communications made in good faith on any subject matter in which the party making the communication has an interest or in reference to which he has a duty, either public or private, either legal, moral, or social, if made to a person having a corresponding interest or duty." *Kelley v. Tanoos*, 865 N.E.2d 593, 597 (Ind. 2007) (quotation omitted). "Our courts have recognized two distinct rationales for holding certain communications qualifiedly privileged." *Id.* The first, called the public-interest privilege, protects communications made to law enforcement to report criminal

activity, and is intended to enhance public safety by facilitating the investigation of criminal activity. *Id.* at 598. The second, called the common-interest privilege, is intended to protect "full and unrestricted communication on matters in which the parties have a common interest or duty," such as employee references or membership qualifications. *Id.* at 597.

[37] But a communication may lose its privileged character upon a showing of abuse where "(1) the communicator was primarily motivated by ill will in making the statement; (2) there was excessive publication of the defamatory statements; or (3) the statement was made without belief or grounds for belief in its truth." *Id.* at 598. "[T]he essence of the concept is not the speaker's spite but his abuse of the privileged occasion by going beyond the scope of the purposes for which privilege exists." *Id.* Whether a defendant has acted in good faith or has abused the privilege is a question of fact for the jury. *Cortez v. Jo-Ann Stores, Inc.*, 827 N.E.2d 1223, 1233-34 (Ind. Ct. App. 2005), *reh'g denied*.

1. Renae's Statements

[38] To the jury, the Grabers argued only that their communications to law enforcement, DCS, and the daycare employees were subject to qualified privilege. *See* Appellants' App. Vol. II p. 226 ("Ryan and/or Renae had a qualified privilege to make the statements to Andrew's employer, police and [DCS]."). The Grabers now argue Renae's communications to the other daycare parents are protected by the common-interest qualified privilege because there is a common interest "in protecting [the children at the daycare] from sexual abuse." Appellants' Br. p. 34. This was not asserted in the trial

court.[3] Therefore, it is waived for purposes of our review. *Van Winkle v. Nash*, 761 N.E.2d 856, 859 (Ind. Ct. App. 2002) ("Failure to raise an issue before the trial court will result in waiver of that issue.").

[39] Waiver notwithstanding, and even if Renae's statements to Gaidoo and the other daycare parents were subject to the common-interest privilege, Turpen presented evidence from which the jury could have found Renae acted with ill will. In her statements to Gaidoo, Renae said Turpen no longer working at the daycare was the only "resolution" she would accept. Gaidoo made similar statements, and they both referenced getting support from the other daycare parents. Gaidoo also made clear she planned to tell the daycare it must fire Turpen or she would remove her kids from the daycare, and Renae then gave her the daycare owner's contact information. Renae also testified she told the daycare that if it didn't "do something about [Turpen]," then the Grabers would "have it investigated" and "be forced to tell other parents what has occurred." From this evidence, the jury could have found Renae was not making these statements to further the purpose of the privilege but was instead aiming to rally the daycare parents to pressure the daycare to fire Turpen.

[3] In fact, it appears from the record that Turpen's proposed jury instruction on qualified privilege suggested the Grabers were asserting the privilege for their statements to the other daycare parents. But when the trial court stated its intent to modify that instruction to include only statements to DCS, law enforcement, and the daycare, the Grabers did not object.

[40] Therefore, the jury could have found Renae abused her privilege and the verdict is not contrary to law.[4]

2. Ryan's Statements

[41] Unlike Renae, the record shows Ryan only made statements regarding the August 11 incident and Turpen to law enforcement, DCS, and the daycare employees. We agree that Ryan's statements to law enforcement and his statements to DCS and the daycare are the type of statements generally privileged under the public-interest and common-interest privileges. However, in addition to proving his statements were privileged, Ryan also had to show he made the statements in good faith. "In the context of defamation law, 'good faith' has been defined as a state of mind indicating honesty and lawfulness of purpose; belief in one's legal right; and a belief that one's conduct is not unconscionable." *401 Public Safety v. Ray*, 80 N.E.3d 895, 901 (Ind. Ct. App. 2017) (quotation omitted), *trans. denied*.

[42] Turpen's theory of the case presented to the jury at trial was that Ryan's allegations were false and made for the purpose of removing Turpen from the daycare. Turpen presented evidence from which the jury could find Ryan was lying about the allegations—Turpen denied the allegations, Grey had been in

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[4] Renae also asserts her communications to Gaidoo are subject to attorney-client privilege. But again, she did not assert this in the trial court, so it is waived. Additionally, Renae testified as to her communications with Gaidoo without asserting privilege in the trial court. This again amounts to waiver of the privilege. *See Waterfield v. Waterfield*, 61 N.E.3d 314, 324 (Ind. Ct. App. 2016) ("[W]here the client himself testifies concerning the privileged matter, he then waives the privilege."), *trans. denied*.

the room just a few minutes before Ryan and saw nothing inappropriate, and the cots likely wouldn't hold Turpen's weight. Turpen also presented evidence that Ryan's actions in the aftermath of the incident were not consistent with his allegations, namely that Ryan brought Z.G. back to Turpen's classroom after Z.G.'s appointment, despite alleging he saw Turpen inappropriately touch Z.G. earlier that day. There was also evidence presented that Ryan did not want Turpen working at the daycare. Detective Ruble testified Ryan admitted to previously expressing "concern and discomfort" with Turpen teaching at the daycare.

[43] From this evidence, the jury could have determined that Ryan's statements to law enforcement, DCS, and the daycare were not made in good faith.

D. Immunity

[44] Finally, the Grabers argue the verdict is contrary to law because under Indiana law they are immune from liability. An individual who has reason to believe that a child is a victim of abuse or neglect has a duty to make an immediate report to either DCS or local law enforcement. Ind. Code §§ 31-33-5-1, 31-33-5-4; *Sprunger v. Egli*, 44 N.E.3d 690, 693 (Ind. Ct. App. 2015). "A person who makes such a report is immune from both civil and criminal liability because of doing so; however, immunity will not attach if the person making the report has acted maliciously or in bad faith." *Anonymous Hosp. v. A.K.*, 920 N.E.2d 704, 707 (Ind. Ct. App. 2010); I.C. §§ 31-33-6-1, 31-33-6-2.

[45] As noted above, in addition to any reports made to law enforcement or DCS, Renae also made statements to other daycare parents, which are not immune. As for Ryan, just as statements that are privileged must be made in good faith, so too must any report subject to immunity under Section 31-33-6-1. And as we have already found, there was evidence presented from which the jury could have found Ryan's statements were not made in good faith.

[46] Affirmed.[5]

Najam, J., and Weissmann, J., concur.

[5] The Grabers also argue the jury's verdict is not supported by sufficient evidence. However, their argument presumes they have prevailed on the above issues, which we have rejected.