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IN THE
COURT OF APPEALS OF INDIANA

Timothy Stabosz,
Appellant-Defendant,

v.

Shaw Friedman,
Appellee-Plaintiff.

November 22, 2022

Court of Appeals Case No. 22A-PL-541

Appeal from the LaPorte Circuit Court

The Honorable Stephen R. Bowers, Special Judge

Trial Court Cause No. 46C01-2106-PL-1110

Bradford, Chief Judge.

Case Summary

[1] Timothy Stabosz and Shaw Friedman appear to be political adversaries. Stabosz was the elected Auditor of LaPorte County in November of 2020, and Friedman serves, at the request of the LaPorte County Commissioners, as the LaPorte County Attorney. In an effort to convince the LaPorte County Commissioners to decline to retain Friedman as County Attorney, in the months following the 2020 election, Stabosz made a number of public comments about Friedman suggesting that Friedman had engaged in illegal and unethical behavior. In February of 2021, Friedman filed the underlying lawsuit, alleging that Stabosz's statements constituted defamation *per se*. Claiming that Friedman's lawsuit was a strategic lawsuit against public participation ("SLAPP"), Stabosz subsequently moved to dismiss the lawsuit under the procedure set forth in Indiana's anti-SLAPP laws. The trial court

denied Stabosz's motion. Stabosz contends on appeal that the trial court erred in doing so. Because we conclude otherwise, we affirm.

Facts and Procedural History

[2] In the early morning hours of January 6, 2021,[1] Stabosz sent an email to LaPorte County Commissioners Joseph Haney, Sheila Matias, and Richard Mrozinski, with all members of the LaPorte County Council copied on the email, which read, in relevant part, as follows:

> It is with a heavy heart that I write to you on the eve of your consideration to select legal counsel to represent the county…. [A]s the auditor of La Porte County, who is not only the Chief Financial Officer of the County, but also, in a very real sense (perhaps only second to the Commissioners themselves), the "chief integrity officer" of the county, I have a moral duty to weigh in on your potential selection.
>
> In order to protect the citizens of La Porte County, I would strongly urge you to select someone OTHER than Shaw Friedman. In my studied observation of the man's longstanding record, it is apparent to me that Mr. Friedman has evidenced an inability to separate his role as principal of his law firm and his role as a political power broker, from maintaining any kind of "duty of loyalty" to La Porte County….
>
> In his longstanding record, at best, Mr. Friedman has evidenced himself to be a walking talking conflict of interest. Whether it is …

[1] Although Stabosz subsequently refers to his email to the Commissioners as being sent on January 5, 2021, the time stamp on the email indicates that it was sent just after midnight on January 6, 2021.

1) Utilizing the citizens of La Porte as a debased "clearing house" for "fishing expedition" legal cases … [that] ultimately serves the dual purpose of generating legal fees for him … and helping "his" candidates get elected or reelected in populist "moral crusades."

2) Farming out legal cases to 3rd party attorneys, in order to "spend the county's money" to advance his own influence needs (the most egregious in recent memory perhaps being the hiring of John Gregg to do legal work for La Porte County … for which Mr. Gregg was dubiously qualified … at a time when Gregg was running for Governor).

3) (As far as I know), not disclosing the exact nature of reimbursements (i.e. referral fees) to his law firm that result from the extensive amount of county work that is "farmed out[.]"

4) Mixing his role as county attorney and his role as a "shadow head" of his political party, in order to recruit candidates for commissioner …, largely running their campaigns, [setting] up a situation where these candidates, upon election, are not only beholden to hire him as county attorney … but worse, allow him to direct the county's affairs to serve HIMSELF.

5) Systematically driving independent minded and strong public servants out of his party, or "punishing" them for not submitting to his will….

6) Acting as a POLICY MAKER and POLICY ADVOCATE. Not knowing his proper place and "staying in his lane." (The most recent example was the unseemly way in which he sought to broker a transaction where he admitted to being "personally connected" with the seller, and compel the commissioners to purchase a building on Monroe Street, at nearly $30,000 over its most recent listing price, purportedly for PPE storage … which makes no sense from a bona fide policy perspective, since the

need for such storage is TEMPORARY, and renting would have made more sense.)

7) Being a primary agent of political patronage in a classic system of "rewards and emoluments," … through his direct influence with county department heads.

The net effect of all of the above … is to create a corrosive political underworld (the "seedy underbelly" of La Porte County politics), that saps the moral resolve of good people in county government, undermines faith and confidence, and breeds cynicism, with an attorney lording over department heads and commissioner alike, and fostering a culture of terror, a culture of coercion, a culture of intimidation, and a culture of "rewards and punishments," that completely undermines the moral dignity of La Porte County, and its officials.…

The question cries out: What business is it of a county attorney, to send out an e-mail to a newly elected official, such as myself, putting me in my place, and reminding me that my win "means nothing," because the only reason I won is that Donald Trump did so well in the county. What kind of professional says such a thing, which is an insult to EVERY Republican who was elected, and denies them their legitimacy, since all of our margins were narrow (with the exception of Coroner Lynn Swanson)?

What kind of County Attorney sends out an e-mail, during an election campaign, to a wide swath of county officials, demeaning then Commission candidate Joe Haney, and myself, and derisively referring to us as "the Laurel and Hardy of La Porte County politics"? Is this a professional?

And worst of all, what kind of man, years ago, upon being duly fired, … in a clear and transparent act of wrongdoing, travels down to Indianapolis … for the express purpose of threatening and intimidating [a sitting Commissioner], and telling her she will never serve in La Porte County Democratic politics again, if

> she does not immediately reinstate him? Is THIS the kind of man we want representing the people of La Porte County??
>
> The truth is, people have been afraid to say anything, because Mr. Friedman is willing to "do what is necessary" to maintain his position of power. This has only served to advance his corrosive influence upon La Porte County, as it seems quite clear his tentacles, tragically, have now extended into BOTH political parties of La Porte County.…
>
> What is patently clear to me is that his kind does not respect the inherent authority of the La Porte County Commission. He is supposed to be a handmaiden, and servant to the will of you, the Commission. He is not supposed to BE the will of the Commission, or seek to assert himself as that will!
>
> I am asking you to stand up and do the right thing and find a different attorney for La Porte County, one who has a true and honest interest in serving the people of La Porte County, and not in using the county to nakedly serve his own self[-]interest.

Appellee's App. Vol. II pp. 52–54. Despite Stabosz's email, later on January 6, 2021, Friedman was selected as County Attorney at the Commission Meeting by a vote of two to one, with Commissioners Matias and Mrozinski voting in favor and Commissioner Haney voting against.

[3] The next morning, Stabosz sent his January 6, 2021 email to a group of radio and newspaper outlets including the La Porte Herald-Dispatch, South Bend Tribune, and Northwest Indiana Times. The email was accompanied by a brief statement from Stabosz, which read as follows:

> **LaPorte County Auditor Timothy Stabosz Releases Letter to the County Commissioners**
>
> La Porte, Indiana. January 7, 2020. Today, La Porte County Auditor Timothy Stabosz released an e-mail he sent on the evening of January 5th to the County Commissioners, appealing for them to discontinue allowing Attorney Shaw Friedman to represent the county. Stabosz stated, "It is very disappointing to me that the Commissioners voted 2-1, at yesterday's reorganizational meeting, to retain Mr. Friedman, and are allowing Mr. Friedman to continue to place his yoke upon the people of La Porte County. As my letter evidences, Mr. Friedman has been shown to be unethical and unscrupulous in his dealings with the county. He is, and has acted, quite nakedly, more as a power broker, using the county to feather his own nest, than as a bona fide county attorney, to the great detriment of the citizens of LaPorte County. His retention by the Commissioners will make my job to secure the financial integrity of La Porte County that much more difficult and, as I was independently elected by the people to protect them and their money, it is Important for me to publicly notify them of my grave concerns," Stabosz said.

Appellee's App. Vol. II p. 55 (bold in original).

[4] Also on January 7, 2021, Friedman wrote the Commissioners, the council members, Stabosz, and Treasurer Joie Winski, who preceded Stabosz as Auditor, to inform them of the decision of the Indiana Supreme Court to deny transfer in a case brought against several LaPorte County officials. In a postscript directed to Stabosz, Friedman explained his reasoning for bringing in other lawyers and firms with areas of expertise to help with county lawsuits.

Notably, Friedman expressly denied Stabosz's allegations and demanded that Stabosz retract his comments and apologize.

[5] Rather than retract and apologize, Stabosz responded to every recipient of Friedman's email by again alleging that Friedman had applied "duress and pressure" upon a commissioner to reinstate him after he had been "fired" from his position as county attorney, and that in doing so, Friedman committed a "heinous and egregious act" and a "moral terror against another human being." Appellee's App. Vol. II p. 58. Stabosz then forwarded that email to LaPorte County Councilman Earl Cunningham at his personal email address and to himself. Stabosz's response generated rebukes from LaPorte County Council President Randy Novak and LaPorte County Councilman Mike Mollenhauer.

[6] Later that day, Stabosz sent an email to Friedman, the Commissioners and Commission Secretary Diane Gonzalez which said, "I am going to honor Councilman Novak's request." Appellee's App. Vol. II p. 64. However, despite his promise to honor Council President Novak's request, Stabosz posted the following to his Facebook page "Tim Stabosz for LaPorte County Auditor" on January 10, 2021:

> there are forces in our county that seek to use the county for their own personal gain, undermining its financial integrity and moral dignity. The most notorious of these forces is Attorney Shaw Friedman.…
>
> I felt it was necessary to weigh in, and, on the eve of the Commission meeting this past Wednesday, sent an e-mail to both the Commission and County Council, indicating my view on Mr.

> Friedman's myriad conflicts of interest, how he recruits and trains candidates that are then beholden to hire him as county attorney, and how he basically "runs" the county through these operatives/henchmen to feather his own nest. It gets worse, but I'm going to save that for the actual e-mail I sent to county officials, which I will post now.

Appellant's App. Vol. II p. 28. Stabosz then posted a verbatim copy of his January 6, 2021 email.

[7] On January 21, 2021, Stabosz again took to his campaign's Facebook page and posted the following:

> Well, it didn't take long. In one of the most naked displays of the CORRUPTION of La Porte County politics, last night could best be described as the "Saturday Night Massacre." (Those of you old enough will understand the Watergate reference.) At the County Commission meeting, Sheila Matias and Rich Mrozinski showed themselves to be little more than "bagman" for attorney Shaw Friedman.

Appellant's App. Vol. II p. 29.

[8] On January 18 and 22, 2021, through counsel, Friedman sent Stabosz two letters explaining what he felt to be the defamatory nature of Stabosz's remarks and demanding a retraction and apology. On February 5, 2021, Stabosz sent an email to a number of LaPorte County employees, in which he claimed that, as County Auditor, he had an obligation to "represent the truth" and again accused Friedman of committing manipulation and intimidation and requested that the Commissioners "re-find [their] moral worth" and fire Friedman.

Appellant's App. Vol. II p. 29. On February 21, 2021, Stabosz released his response to the letters sent by Friedman's counsel to the media. In his response, Stabosz indicated that Friedman "needs to find his manhood" and indicated that he believed that his statements were protected speech given Friedman's position as a public figure. Appellee's App. Vol. II p. 73.

[9] On February 10, 2021, Friedman filed a lawsuit, alleging that Stabosz's various public statements were defamatory. On March 5, 2021, Stabosz created a post on Commissioner Haney's Facebook page in which he praised Commissioner Haney's "courage, moral authority, and moral dignity" and again accused Friedman of being corrupt. Appellant's App. Vol. II p. 30. Friedman filed an amended complaint on March 30, 2021.

[10] On May 17, 2021, Stabosz filed a motion to dismiss pursuant to Indiana Code section 34-7-7-9, claiming that Friedman's lawsuit should be dismissed because it violated Indiana's anti-SLAPP laws. In his motion, Stabosz acknowledged that "Under I.C. § 34-7-7-9(a)(1), the Court must treat this motion as one for summary judgment." Appellant's App. Vol. II p. 32. In his memorandum in support of his motion, Stabosz made various arguments relating to the appropriate summary judgment standard that the court should apply, arguing that in order to survive summary judgment, Friedman should have to prove that Stabosz had acted with actual malice by clear and convincing evidence. Friedman opposed Stabosz's motion to dismiss and, on October 8, 2021, requested permission to file a second amended complaint, which restated the alleged defamatory statements contained in the first amended complaint and

included additional allegedly defamatory statements that were either discovered after the first amended complaint was filed or that Stabosz had allegedly made since the inception of the lawsuit.

[11] On December 7, 2021, the trial court denied Stabosz's motion to dismiss. Also in this order, over Stabosz's objection, the trial court permitted Friedman to file the second amended complaint. On January 17, 2022, Stabosz filed a motion requesting that the trial court certify its December 7, 2021 order for interlocutory appeal. One month later, the trial court granted Stabosz's motion and certified its order for interlocutory appeal.

Discussion and Decision

[12] "Public participation is fundamental to self-government, and thus protected by the Indiana and United States Constitutions." *Gresk for Est. of VanWinkle v. Demetris*, 96 N.E.3d 564, 566 (Ind. 2018). The Indiana Supreme Court has recognized that, as early as the 1970s, "ordinary individuals were being sued for simply speaking out politically." *Id.* at 568. Such lawsuits eventually became known as SLAPPs. *Id.* The defining goal of a SLAPP is not to win, but to silence political opposition with delay, expense, and distraction. *Id.* (internal quotation omitted).

[13] Many states, including Indiana, have adopted anti-SLAPP statutes. *Id.* "Indiana adopted its anti-SLAPP statute in 1998 to address and reduce abusive SLAPP litigation." *Id.*; *see also* Ind. Code §§ 34-7-7-1 to -10. Indiana's statute

"applies to an act in furtherance of a person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue or an issue of public interest." Ind. Code § 34-7-7-1. When citizens are faced with meritless retaliatory SLAPP lawsuits designed to chill their constitutional rights of petition or free speech, "Indiana's anti-SLAPP statute provides a defense." *Demetris*, 96 N.E.3d at 566. An integral component of Indiana's anti-SLAPP statute "is balancing a plaintiff's right to have his or her day in court and a defendant's free speech and petition rights, while simultaneously providing a framework to distinguish between frivolous and meritorious cases." *Id.* at 568. "If the lawsuit stems from a legitimate legal wrong, it is not a SLAPP." *Id.* "But, if the lawsuit is filed for an ulterior political end, it is a SLAPP." *Id.*

> Defendants may invoke the anti-SLAPP defense when faced with a civil action for acts or omissions "in furtherance of the person's right of petition or free speech" under the United States Constitution or Indiana Constitution "in connection with a public issue" and "taken in good faith and with a reasonable basis in law and fact."

Id. at 568–69 (quoting Ind. Code § 34-7-7-5).

[14] When a person invokes and moves to dismiss under Indiana's anti-SLAPP statute, the motion "is treated as a motion for summary judgment." *Id.* at 567.

> Our standard of review for summary judgment cases is well-settled. When we review a trial court's grant of a motion for summary judgment, our standard of review is the same as it is for the trial court. Summary judgment is appropriate only where the

> moving party has shown that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. All factual inferences must be construed in favor of the non-moving party, and all doubts as to the existence of a material issue must be resolved against the moving party. Summary judgment is a high bar for the moving party to clear in Indiana.

Burris v. Bottoms Up Scuba - Indy, LLC, 181 N.E.3d 998, 1003–04 (Ind. Ct. App. 2021) (internal citations and quotation omitted).

> We will not reweigh the evidence but will liberally construe all designated evidentiary material in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial. The party who lost at the trial court has the burden to persuade the appellate court that the trial court erred. A trial court's grant of summary judgment is clothed with a presumption of validity. A grant of summary judgment may be affirmed by any theory supported by the designated materials.

Perkins v. Fillio, 119 N.E.3d 1106, 1110–11 (Ind. Ct. App. 2019) (internal citations omitted). "Once an anti-SLAPP motion to dismiss is filed, discovery is stayed except as necessary to respond to the issues raised in the motion." *Demetris*, 96 N.E.3d at 569.

I. Summary Judgment Standard

[15] The crux of Stabosz's argument on appeal is that Indiana's summary judgment standard is too onerous to further anti-SLAPP policies. Stabosz asserts that in order to balance this allegedly onerous standard against the public interest in protecting against SLAPP lawsuits, Indiana courts should "adopt a judicial attitude more favorable to summary judgment in SLAPP cases." Appellant's

Br. p. 27. Stabosz also asserts that the trial court erred by finding that Friedman was not required to prove actual malice by clear and convincing evidence at the summary judgment stage. In support of both of these assertions, Stabosz cites to *Heeb v. Smith*, 613 N.E.2d 416 (Ind. Ct. App. 1993), *trans. denied*.

[16] In *Heeb*, which was decided before Indiana's anti-SLAPP laws were adopted, a panel of this court concluded that

> the chilling effect of a defamation suit on the exercise of First Amendment rights calls for a judicial attitude more favorable to summary judgment than in the ordinary case. Summary judgment, rather than trial on the merits, is a proper vehicle for affording constitutional protection in the proper case. In order to survive summary judgment, a public figure plaintiff must present sufficient evidence to carry the clear and convincing evidence standard.

613 N.E.2d at 420 (internal citations omitted). Stabosz reads *Heeb* to require "plaintiffs to meet their burden of showing, clearly and convincingly that the defendant spoke with actual malice. And plaintiffs had to meet this burden *at the summary-judgment stage*, rather than waiting until trial." Appellant's Br. p. 29 (emphasis in original).

[17] The trial court considered Stabosz's assertion that a different standard of review should apply to summary judgment proceedings when the underlying claim is one of defamation, but noted that "[t]he Court has been unable to locate any subsequent cases—in the nearly thirty years since *Heeb* was decided—that have applied this unique summary judgment standard, and the case appears to be an

outlier." Appellant's App. Vol. II p. 20 (citing *Kitco, Inc. v. Corp. for Gen. Trade*, 706 N.E.2d 581, 588 n.1 (Ind. Ct. App. 1999) (recognizing that the *Heeb* decision conflicts with other decisions of the Court, which do not require a heightened standard of proof when ruling on a motion for summary judgment in a case involving a claim of defamation)). The trial court further noted that other panels have applied the traditional summary judgment standard to defamation suits and that "*Heeb* is the only case that clearly supports Stabosz's position." Appellant's App. Vol. II p. 20.

[18] The trial court determined that given that it was "aware of no other cases that have applied *Heeb*'s unique burden of proof," "*Heeb* is not persuasive in this regard." Appellant's App. Vol. II p. 20. The trial court also differentiated the Indiana Supreme Court's decision in *Love v. Rehfus*, 946 N.E.2d 1 (Ind. 2011), noting that "the Indiana Supreme Court held the parties to the same summary judgment burden of proof as in any other case." Appellant's App. Vol. II p. 21. For these reasons, the trial court found that

> [i]n this case, the Court will apply the traditional summary judgment standard-to the extent this case is ripe for Trial Rule 56 summary judgment-which requires the movant, not the nonmovant, to demonstrate there is no genuine issue of material fact, and he is entitled to judgment as a matter of law.

Appellant's App. Vol. II p. 21.

[19] Like the trial court, our research has uncovered no cases applying *Heeb*'s unique burden of proof where summary judgment has been sought in defamation cases.

We have, however, found a number of cases applying the general summary judgment standard to anti-SLAPP motions to dismiss. *See Demetris*, 96 N.E.3d at 567; *Love*, 946 N.E.2d at 18; *Burris*, 181 N.E.3d at 1003–04; *Pack v. Truth Publ'g Co., Inc.*, 122 N.E.3d 958, 964–65 (Ind. Ct. App. 2019); *401 Pub. Safety v. Ray*, 80 N.E.3d 895, 899 (Ind. Ct. App. 2017), *trans. denied*; *Brandom v. Coupled Prods., LLC*, 975 N.E.2d 382, 385 (Ind. Ct. App. 2012); *Nexus Grp., Inc. v. Heritage Appraisal Serv.*, 942 N.E.2d 119, 122 (Ind. Ct. App. 2011); *Hamilton v. Prewett*, 860 N.E.2d 1234, 1240 (Ind. Ct. App. 2007), *trans. denied*; *Shepard v. Schurz Commc'ns, Inc.*, 847 N.E.2d 219, 224 (Ind. Ct. App. 2006); *see also Chester v. Indpls. Newspapers, Inc.*, 553 N.E.2d 137, 140–41 (Ind. Ct. App. 1990) (providing that in a case involving a claim of defamation, a plaintiff need not meet the heightened standard of proving actual malice by clear and convincing evidence in order to survive a summary judgment even though the standard must be met at trial). Given the lack of any other cases applying *Heeb*'s unique standard, we find it to be an outlier and are unpersuaded by its conclusion. As such, we conclude that the trial court did not err in applying the general summary judgment standard to Stabosz's motion.

II. Application of Indiana's Summary Judgment Standard

[20] SLAPPs can be difficult to identify. But for the anti-SLAPP statute to apply, the statutory requirements of Indiana Code

> section 34-7-7-5[2] must be satisfied. Upon receiving an anti-SLAPP motion to dismiss, the court must determine three things: (1) whether an action was in furtherance of the person's right of petition or free speech; and, (2) if so, whether the action was in connection with a public issue. If both requirements are satisfied, the court then analyzes (3) whether the action was taken in good faith and with a reasonable basis in law and fact.

Demetris, 96 N.E.3d at 569 (internal quotations omitted).

[21] We agree with the trial court that there appears to be no material dispute that Stabosz's statements were made (1) in furtherance of his right of free speech and (2) in connection with a public issue. We therefore turn our attention to whether the designated evidence demonstrates as a matter of law that Stabosz's actions were taken in good faith and with a reasonable basis in law and fact.

[22] In denying Stabosz's motion, the trial court found that Stabosz had "not submitted sufficient evidence to show that his defamatory statements had a reasonable basis in law and fact," noting that

> [t]he only evidence that Stabosz has designated on this element is the following: Friedman has served as County Attorney "on-and-off for over 20 years" (Friedman Biography [Ex. A to Stabosz's Desig. of Evid.]); "Stabosz is a long-time resident of LaPorte County and has known Friedman for decades" (Stabosz's Verification of footnote 6 in the Motion to Dismiss);

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[2] Indiana Code section 34-7-7-5 provides that it is a defense in a civil action against a person that the act or omission complained of is:

> (1) an act or omission of that person in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue; and
> (2) an act or omission taken in good faith and with a reasonable basis in law and fact.

> and "Stabosz has been active in local politics for years, and served as a LaPorte City Councilman from 2004–2007 and 2016–2019." (Stabosz's Verification of footnote 7 in the Motion to Dismiss). To summarize, Stabosz is generally familiar with Friedman and LaPorte County politics.

Appellant's App. Vol. II p. 18. The trial court further noted that

> Stabosz has not identified any facts from which he concluded that Friedman is corrupt, has violated professional obligations and criminal statutes regarding conflicts of interest, collected referral fees in violation of professional obligations, or in any other way engaged in unethical conduct. Without more specific factual allegations, the Court cannot assess whether Stabosz's conclusions as to Friedman's alleged criminal and unethical conduct have a reasonable basis in law or fact. Stabosz has suggested an evidentiary basis for providing testimony as to Friedman's alleged illegal and illicit acts but has not designated the substantive evidence to support any of his accusations.

Appellant's App. Vol. II pp. 18–19. For these reasons, the trial court concluded that Stabosz's designated evidence "simply does not prove that Stabosz's defamatory comments have any basis whatsoever in law or fact, let alone a reasonable basis." Appellant's App. Vol. II p. 19.

[23] "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." *Pack*, 122 N.E.3d at 966 (internal quotation omitted).

> Bad faith, then, appears to require, regardless of truth or falsity, a statement the speaker knew was false or entertained serious

> doubts as to its truth; even if the speaker is motivated by self-interest, a statement might not be in bad faith if the speaker genuinely believed that he was being factual and also believed that it would be best for his community to pursue the subject matter of the statement.

Brandom, 975 N.E.2d at 389 (cleaned up). Some courts have examined the question of actual malice at the summary judgment stage in connection with the question of good faith. *See id.* at 389–90. To the extent that it is appropriate to do so, while it is undisputed that Friedman would have to prove by clear and convincing evidence that Stabosz acted with actual malice in order to be successful at trial, at this stage in the proceedings, Friedman was not required to prove actual malice by clear and convincing evidence at the summary judgment stage of the proceedings. The question, rather, is whether an issue of material fact remains.

[24] "Actual malice 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) (internal quotation omitted). In *Brandom*, we concluded that there was "a genuine issue of material fact as to whether Brandom knew her statements were false, entertained serious doubts as to their truth, or made the statements with reckless disregard for whether they were false." *Id.* Similarly, in this case, the trial court found that "Friedman has designated evidence, as set out above in the Court's discussion of good faith, that creates a genuine issue of material fact on whether Stabosz harbored doubts as to the veracity of his own accusations.

For these reasons, summary judgment is not appropriate at this juncture." Appellant's App. Vol. II p. 23.

[25] Upon our review of the record, we agree with the trial court that Friedman has designated evidence which is sufficient to create a genuine issue of material fact as to whether Stabosz's statements were made in good faith and with a reasonable basis in law and fact. The designated evidence indicates that Stabosz had previously been told that, given his position as an elected official, if he had a reasonable belief that Friedman had committed illegal or unethical acts or if he had any evidence of illegal or unethical behavior by Friedman, then he should report the alleged wrongdoing to the appropriate authorities. The record does not reflect that Stabosz has ever done so. Further, in objecting to Friedman's motion for summary judgment, Stabosz did not designate any evidence, beyond his alleged personal belief, that any illegal or unethical behavior actually occurred. "If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper." *Brandom*, 975 N.E.2d at 388. As such, given the record before us on appeal, we conclude that the trial court did not err in denying Stabosz's motion to dismiss.

[26] The judgment of the trial court is affirmed.

Mathias, J., and Pyle, J., concur.