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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BRUCE J. KELMAN et al., Plaintiffs and Respondents, v. SHARON KRAMER, Defendant and Appellant.	D047758 (Super. Ct. No. GIN044539)

APPEAL from an order of the Superior Court of San Diego County, Michael B. Orfield, Judge. Affirmed.

DISPOSITION

The order is affirmed. Kelman is awarded costs on appeal.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

AARON, J.

the Manhattan Institute to write a lay translation. The fact that Kelman did not clarify that he received payment from the Manhattan Institute until after being confronted with the *Kilian* deposition testimony could be viewed by a reasonable jury as resulting from the poor phrasing of the question rather than from an attempt to deny payment.

In sum, Kelman and GlobalTox presented sufficient evidence to satisfy a prima facie showing the statement in the press release was false.

course thereof . . . ." As we explained above, Kelman and GlobalTox presented admissible evidence showing Kramer's statement in the press release was neither a fair nor true report of Kelman's testimony during the *Haynes* hearing. Therefore, this privilege does not support granting her anti-SLAPP motion.

(The courts oddly did not bother to read the writing in its entirety to see it was specifically stated within the writing that the payment was for the Manhattan Institute version. Concluding sentences, "In 2003, with the involvement of the US Chamber of Commerce and ex-developer, US Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated to the real estate, mortgage and building industries'associations. A version of the Manhattan Institute commissioned piece may also be found as a position statement on the website of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine." http://www.prweb.com/releases/2005/03/prweb216604.htm)

Additionally, there was other evidence presented which could support a finding Kramer had a certain animosity against Kelman. Kelman gave an expert opinion in Kramer's lawsuit against her insurance company seeking damages caused by the presence of mold in her home. Kelman stated there did not appear to be a greatly increased level of risk of mold inside the home compared to the levels in the air outside the home. While the Kramer family eventually settled and recovered damages from the insurance company, a reasonable jury could infer that Kramer harbored some animosity toward Kelman for providing expert services to the insurance company and not supporting her position.

3 Kramer asked us to take judicial notice of additional documents, including the complaint and an excerpt from Kelman's deposition in her lawsuit against her insurance company. We decline to do so as it does not appear these items were presented to the trial court.

(US Chamber & ACOEM author, Kelman and his attorney, Keith Scheuer repeatedly used criminal perjury to make up a reason for purported personal malice while inflaming the courts. Over a five year period seven - now ten - San Diego judges and justices have been provided uncontroverted and irrefutable evidence of the criminal perjury. This far, they all seem to pretend that this evidence does not exist. One of numberous examples below of the San Diego courts being informed and evidenced)

1. My name is John T Richards. I am an attorney licensed to practice law in the State of California.

2. In 2003, I represented the Kramer family as co-counsel in the case of Mercury vs. Kramer, GIN)24147, San Diego Superior Court, North County Division, Honorable Judge Michael P. Orfield presiding.

3. On October 3, 2003, I took the deposition of Bruce J. Kelman of GlobalTox, Inc. Dr. Kelman is a toxicology who holds a PhD but not a medical degree. He had been retained as an expert witness for Mercury Insurance. This was the only time Dr. Kelman was deposed in the case.

4. The evidence in this case was that Sharon Kramer suffered from hypersensitivity pneumonitis. Mrs. Kramer claimed that this caused her significant medical problems. However, Mrs. Kramer did not contend that this

condition was terminal or life threatening to her. Nor did she ever claim that she had acquired toxicological illness from the mold in her home. Nor did her daughter make such a claim. Toxicological illness was not at issue in the case.

5. There were approximately seven other expert witnesses for the defense in the case of Mercury vs. Kramer. I am not aware that any of these other experts have ever claimed Mrs. Kramer has exhibited personal malice for them or has ever "launched into an obsessive campaign to destroy their reputations" because of their testimony as experts for the defense in the case of Mercury vs. Kramer.

I declare under penalty of perjury of the laws of the State of California that the
foregoing is true and correct and that this Declaration was executed by me on this ___ day of October, 2008 in _____, California

_____
John T. Richards, Esq

ROSTON v. EDWARDS 127 Cal.App.3d 842 (1982)

W. Patrick O'Keefe, Jr., Costello & Walcher, Edward J. Costello, Jr., and Keith Scheuer for Defendants and Respondents.

The judgments of dismissal in the Edwards action and the Montessori Schools action are reversed and the trial courts are directed: (1) to vacate their orders requiring plaintiffs to furnish security as vexatious litigants, and (2) to return these actions to the civil active list for further proceedings.

?FN 2. Defendants, in their zeal to present a portrait of plaintiff Roston (and his enterprises) that would enhance their position, made reference to a multitude of cases which were inappropriate for consideration by the trial court. Some were small claims cases; in many the plaintiff Roston prevailed; in many he was the party defendant; and, most patently erroneous, many cases dated back to 1965 and 1966. While we will not gratuitously speculate why such cases were presented to the court, it seems obvious the reason was not to support the motion, because they did not fall within the applicable seven-year period. The presentation of such matter, if designedly done, is certainly to be discouraged. One might mistake it for an attempt to inflame the court against a party to the action.

Exclusion of Evidence

Kramer contends the trial court erred in sustaining the plaintiffs' objections to her declarations and exhibits on the basis of relevance, hearsay and foundation.

Further, in determining whether there was a prima facie showing of malice, the trial court also relied on the general tone of Kramer's declarations. These declarations reflect a person who, motivated by personally having suffered from mold problems, is crusading against toxic mold and against those individuals and organizations who, in her opinion, unjustifiably minimize the dangers of indoor mold. Although this case involves only the issue of whether the statement "Kelman altered his under oath statements on the witness stand" was false and made with malice, Kramer's declarations are full of language deriding the positions of Kelman, GlobalTox, ACOEM and the Manhattan Institute. For example, Kramer states people were "physically damaged by the ACOEM Statement itself" that the ACOEM statement "is a document of scant scientific foundation; authored by expert defense witnesses; legitimized by the inner circle of an influential medical association, whose members often times evaluate mold victims o[n] behalf of insurers and employers; and promoted by stakeholder industries for the purpose of financial gain at the expense of the lives of others."

grounds to support the judgment. It is entitled to the assistance of counsel." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, p. 627.) We may ignore points that are not argued or supported by citations to authorities or the record. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.)

(B) Prior Inconsistent Statements

Kramer contends the court erroneously excluded Kelman's "prior inconsistent e-mail on that same issue" — presumably, the extent of his involvement in preparing the ACOEM statement — because it was "an admission against interest and directly impeaches his declaration in opposition."

Again, Kramer has failed to meet her burden of showing error. We decline to wade through the record to find this e-mail or the portion of the declaration Kramer claims it somehow impeaches, to see if there was an objection to this e-mail, and to determine if there was error. Moreover, Kramer's cryptic argument fails to explain how the e-mail was material or relevant to the issues at hand, that is, whether Kelman altered his testimony about receiving payment from the Manhattan Institute or whether she acted with malice.

(C) Coconspirator Admissions

Kramer contends the court erred in excluding "[t]he e-mails of various ACOEM board members" because they were "co-conspirator admissions (with regard to the true intention o[r] purpose for its creation, use, and manner of preparation of the ACOEM statement) binding upon Kelman which also act as impeachment of his declaration regarding the true reason for the ACOEM report creation, the limited scope of defense oriented 'peer review,' and the scope of his involvement in the creation of the document." She argues various exceptions to the hearsay rule apply including state of mind (Evid. Code, § 1250), coconspirator statements (*id.*, § 1223), and admissions by a party (*id.*, § 1220).

Initially, we note this lawsuit is not about a conspiracy. This lawsuit was filed by Kelman and GlobalTox alleging one statement in a press release was libelous. Thus, conspiracy issues are not relevant.

Kramer's brief does not clearly refer to any e-mails of various ACOEM board members. Moreover, the "evidence" she details involves collateral matters, such as whether the ACOEM paper was intended to be a defense document for litigation, whether it was "peer-reviewed by 100's of physicians,", whether Kelman's interpretation of the ACOEM findings was correct, whether Kelman first heard of Kramer in 2003 or 2002,

No truer words have been spoken as an accurate summary of this unbridled malicious litigation than the words of the Honorable Judge Lisa C. ("Schall") on August 18, 2008, as she framed the scope of the trial in violation of C.C.P. 425.16(b)(3) and described how Judge Orfield had done the same when denying Kramer's MSJ on June 22, 2008.

> *"That's why I like reading their* [sic Justice McConnell's, Aaron's & McDonald's] *ruling because I know what I'd do. I won't upset them if I follow their guidance to start with. They did a pretty good job on pointing to the kinds of evidence they considered in the anti-SLAPP, which is key because it's the same thing that was adopted in the motion for summary judgment ruling that was made by Judge Orfield."*