

# CLIENT ALERTS

---

## Butzel Obtains Dismissal of Defamation Lawsuit for National News Outlet

### Client Alert

7.20.2022

Butzel attorneys Paul Mersino, Robin Luce-Herrmann, and Javon David recently obtained dismissal of a defamation lawsuit against a national news media outlet in *Marcum v. Newser, LLC, et al*, Case No. 2022-191878-CZ (Oakland County Cir. Court, July 5, 2022).

At the height of the coronavirus pandemic, the Birmingham Public Schools Board of Education issued a mask mandate for all students. At a school board meeting in August 2021, several parents voiced their opinions about the mask mandate. The plaintiff was among such parents at the school board meeting and, in attempting to express his frustration that the proposed mask mandates were fascist and oppressive, reportedly engaged in conduct interpreted by bystanders as a Nazi salute.

Several news outlets reported on the story, including the five media Defendants in the case, and in doing so, relied upon an official email to parents from the Birmingham Public Schools Board of Education recounting the meeting events.

The plaintiff filed suit against the media Defendants and alleged that they took dramatic liberties with reporting the incident that ultimately resulted in him losing his job and being blacklisted from several social circles. The plaintiff asserted several causes of action stemming from the alleged defamatory statements against all Defendants.

Butzel represented Newser, LLC—a national web-based media outlet. Butzel immediately sought dismissal of the case on the basis that (1) the Court lacked personal jurisdiction over Newser; and (2) because the statements were true, and truth is the ultimate defense to claims of defamation, that the statements were privileged and therefore not actionable.

### Related People

Javon R. David  
Shareholder

Paul M. Mersino  
President & CEO

### Related Services

Media Law

Media, Entertainment, and  
Digital Content Law Specialty  
Team



## CLIENT ALERTS

---

The Court ruled in favor of Newser on both the personal jurisdiction grounds and on the merits. Specifically, the Court ruled that it had no personal jurisdiction over Newser because it is a web-based news outlet, only, and the stories can only be accessed through its website. In addition, Newser has no subscription fee, no subscribers, and does not target Michigan in any way. While it did mention incidents occurring in Michigan, Newser also mentioned incidents in other states. As such, the Court found that Newser caters to readers on a national level and its activities are not aimed at Michigan specifically; therefore, Newser did not have the minimum contacts necessary to subject it to the jurisdiction of Michigan courts.

The Court also ruled in Newser's favor on the merits because the plaintiff failed to allege with specificity any false statement published by Newser, which is required in a defamation claim. The plaintiff did not dispute that he gave a Nazi salute at the school board meeting and, in fact, admitted as much in his Complaint. Thus, the alleged defamatory statements were found to be substantially true and not actionable under Michigan law. Further, because Newser's article mirrored a public record—an official email from the school board—its statements were privileged and unactionable under MCR 600.2911(3).

Upon finding that the plaintiff's defamation claims failed as a matter of law, the Court dismissed all remaining causes of action stemming from the alleged defamatory statements.

The *Newser* case is one of many successes delivered by Butzel's media team. Butzel attorneys stand ready to defend media clients against defamation and related First Amendment actions.

**Javon David**

248.258.1415

davidj@butzel.com

**Paul Mersino**

313.225.7015

mersino@butzel.com