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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

Rodrigo B. Fernandez, Jr.,

VS.

NO. 16-2-22512-8 KNT

Plaintiff,

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Michelle Zimmerman and Amazing Grace Lutheran Church dba Renton Preparatory Christian School,

Defendants.

This matter came before the court on a bench trial from February 6~8, 2018. The undersigned judge presided at the trial. The claim presented at trial for adjudication was as follows: Plaintiff Rodrigo B. Fernandez, Jr.'s claim against defendants Michelle Zimmerman and Amazing Grace Lutheran Church, dba Renton Preparatory Christian School, for defamation for statements made to some 6th grade students on May 25, 2016.

Plaintiff appeared personally at the trial and through his attorneys of record, Tom Hendrickson and Liezl Casanova. Defendants appeared personally at trial and through their attorney of record, Steven Goldstein.

The witnesses, who were called and testified at the trial are identified in the witness list attached as Exhibit A.

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The exhibits, which were offered, admitted into evidence, and considered by the court, are set out in the list attached as Exhibit B.

Based on the evidence presented at trial, the Court makes the following Findings of Fact:

I. FINDINGS OF FACT

- 1. Defendant Renton Preparatory Christian School ("School") is part of the Amazing Grace Lutheran Church ("Church"). Dr. David Paul Zimmerman is the pastor of the Church and Administrator of the School. His daughter, Michelle Zimmerman, is the Director of Innovative Teaching and Learning Sciences at the School and is responsible for overall leadership and direction of the school campuses. David Paul Zimmerman's wife, Gloria Zimmerman ("Gloria"), was a Principal and teacher at the School and now serves part time as requested.
- Plaintiff Rodrigo B. Fernandez, Jr., had two children enrolled at the School: 2. Jasmine, who has attended for 10 years, and Randi, who has attended for 7 years. Plaintiff's youngest daughter, Hailey, was enrolled at the Amazing Grace campus. The Fernandez family had been extremely appreciative of the environment and opportunities provided by the School, especially Defendant Michelle Zimmerman's positive influence in their daughters' lives.
- 3. The issue in dispute began when four 9th grade students, including Plaintiff's daughter, Jasmine, reported to Gloria Zimmerman that a sixth grade student, Leah, said that another sixth grader, Eidrea, was not smart because she did not know JavaScript. Gloria Zimmerman conducted an investigation into the claim on May 20, 2016; she took approximately an hour listening to all sides of the incident reported and made sure that all students were listened to respectfully. She first spoke to both Leah and Eidrea. Leah denied making any such statement, and Eidrea agreed that Leah did not make that statement. Eidrea stated that Jasmine's sister, Randi, told Eidrea that Leah made that statement. Randi joined the meeting and agreed that Leah

had only asked Eidrea if she knew JavaScript. Jasmine started crying because she felt she was responsible for staining her sister's reputation for bringing the matter to Gloria Zimmerman. When Gloria asked Randi if she felt her reputation had been ruined, she said "no" directly to her sister, Jasmine. Gloria told the girls involved that no one was in trouble and that no one's reputation was ruined. Gloria considered the matter resolved. There was no disciplinary action taken. As is routine, Gloria told the girls that none of this needed to be discussed with other students.

- 4. Following that meeting, Plaintiff was waiting to pick up his daughters and other students. He saw his daughters crying hysterically. They were upset about the meeting with Gloria. Plaintiff was upset about how he felt that his daughters had been ill-treated. Plaintiff had spoken to his wife, Dawn Fernandez, about seeing David Paul Zimmerman, and Dawn discouraged him from going until he got the whole story. Plaintiff yelled at her and hung up.
- 5. Plaintiff went to the Amazing Grace campus, during a school-wide celebration, approached David Paul Zimmerman and asked to immediately meet with him. David Paul Zimmerman could see he was upset and took him into his office even though he does not usually meet with parents during school events.
- 6. David Paul Zimmerman testified that Rod Fernandez appeared enraged; his fists were clenched, his eyes were bulging, and he was shaking. He testified that the intensity of how he looked frightened him. Rod Fernandez said "Don't speak, don't say anything. I am so mad I could hit someone." Based on Plaintiff's posture and angry tone of voice, David Paul Zimmerman immediately felt threatened and understood the "someone" Plaintiff could hit was him. In response, he employed de-escalation techniques he had learned: he lowered his chair so as to appear smaller, looked down and kept silent and listened. David Paul Zimmerman testified that

he believed if Plaintiff did hit him, he probably would not get up. Rod Fernandez testified that he was upset but denied being threatening. The court finds that David Paul Zimmerman's testimony was credible. The court finds that Rod Fernandez likely did not perceive how threatening and scary he appeared.

- 7. Dawn Fernandez joined them towards the end of the meeting to discuss the earlier meeting with their children. David Paul Zimmerman testified that as soon as Dawn Fernandez joined the meeting, plaintiff's body language changed.
- 8. Next, Gloria Zimmerman joined because she was the person who had the interaction with the children. Both David Paul and Gloria Zimmerman testified that Rod Fernandez immediately accused Gloria of lying. When Gloria asked why she would lie, the Plaintiff said to protect your family. David Paul Zimmerman immediately walked into the hallway and called Michelle and instructed her to come get her mother. Michelle Zimmerman testified that her father was very upset and she came immediately.
- 9. After the Plaintiff and Gloria left, David Paul Zimmerman continued his conversation with Dawn Fernandez in the hall outside his office. In the video recording of that interaction, Dawn Fernandez wife said, "I apologize for Rod." After David Paul Zimmerman said not to apologize for him, Dawn Fernandez said, "He's the nicest guy but he goes crazy." Later during the conversation, Dawn Fernandez asked if the Plaintiff was nice to David Paul Zimmerman when he came in. David Paul Zimmerman said "No, he was scary. I don't get scared about anything, but I thought if you're going to get hit, you're going to get hit and I am probably not going to get up because at 63 I can't move as quickly. . . . " Dawn Fernandez then apologized again. At another point in the conversation, Dawn Fernandez described how Plaintiff was screaming at her on the phone as he was planning on going to see David Paul Zimmerman and

then Plaintiff hung up on her. The video recorded evidence of these conversations is set forth in Exhibit 216. The court did not find Dawn Fernandez' alternate explanations of her statements credible.

- 10. There were a number of email exchanges between Michelle Zimmerman, David Paul Zimmerman, and Dawn Fernandez regarding their concerns. Michelle Zimmerman also transcribed portions of the May 20, 2016 meeting conducted by Gloria so the Fernandez family could understand what transpired. The parties agreed to have another meeting on May 24, 2016 with the Fernandez family, the Zimmermans, several students, a teacher, and the father of the student allegedly insulted, in order to address mutual concerns and watch the video of Gloria Zimmerman's interaction with the girls.
- 11. Prior to the May 24, 2016, meeting, David Paul Zimmerman talked extensively with both his wife and his daughter about what happened with Plaintiff. He explained that Plaintiff's posture (clenched fists) and verbal warning to him not to speak created a physical and emotional threat to him that was extremely disturbing. He told Michelle Zimmerman that he had not been that scared of being hit in the face since he had served in the U.S. Marine Corps over 40 years ago. David Paul Zimmerman explained to his daughter that he became more concerned about Mr. Fernandez's behavior after his discussion with Dawn Fernandez in the hallway. He was concerned about the behavior repeating itself unless Plaintiff took full responsibility for his behavior, apologized, and a reconciliation occurred. Michelle Zimmerman had not seen her father this distraught since a gun was pulled on him several years before.
- 12. Michelle Zimmerman also watched the video recording of the interaction between her father and Plaintiff's wife outside of his office on May 20th. She too became scared.

13. On May 23, 2016, Michelle Zimmerman wrote an email to Dawn Fernandez indicating that she wanted to hear the Fernandezes' perspective of what happened at the May 20 meetings. (Exhibit 217.) In light of how shaken Michelle Zimmerman had seen her father after the meeting, and the comments she heard Plaintiff's wife make to her father in the video, Michelle Zimmerman wanted to get some assurance that Plaintiff was not an actual danger She wrote:

I would also like to confirm that there wasn't any actual real threat of physical violence toward my dad from Rod before you got to the meeting and that maybe there was a misunderstanding and it wasn't actually stated that one or any of us don't care about your kids or that Randi didn't feel supported or loved." (Exhibit 217)

Although it was Michelle Zimmerman's intent to be direct and get some assurance, Dawn Fernandez did not realize Michelle Zimmerman was awaiting a response. She also did not share the e-mail with her husband. (Dawn Fernandez's lack of response is somewhat understandable as the concern was at the end of lengthy e-mail discussing the children and the sentence could have been more clearly written.)

14. On May 24, 2016, the meeting with the Fernandez family and others occurred. During that meeting, there was a discussion of the May 20 interaction between Plaintiff and David Paul Zimmerman. Initially Rod Fernandez was discussing a family reunion but then he turned to the interaction with David Paul Zimmerman:

Rod Fernandez: Believe me, I can give you stories. Reunion to my family, from-came from all over from California. (Looks to Dawn and asks) 'You remember writing the prayer for me, right?' I started reading. And pretty soon I can't even read the words. I got so nervous. I start panicking. Once you panic, it's just like anger. Once you're mad, you're mad. You try to correct it and calm down and get away from where you were. It's like you're upset, you walk away, you come back, you feel better. I was totally upset. Right now, I'm telling you thank you for listening to me, because I was really upset.

DP Zimmerman: And I did it because I cared.

Rod Fernandez: I appreciate it.

DP Zimmerman: I'll tell you a couple of other parents, I would have said, walk out the door and don't come back. Because I know how much you invested, and

you know how much we invested in the hearts of your children, I stopped there, because you scared me. You really scared me.

Michelle Zimmerman: And you talk about family, and how important.....

Rod Fernandez: I've dealt with that.

DP Zimmerman: I sat there and kept praying, thinking, "Okay, if he hits me, I'm dead, there is not much of me left."

Michelle Zimmerman: "Think about that: you're talking about family and you know how you're all saying... Well this really hurt me when I heard about this, well when I heard my dad was threatened with physical violence, that really scared me, and I was thinking "over this?" where it started with something really small, that..

Rod Fernandez: I know, I know, I know. And let me explain why I came to that point. When I saw my two girls crying, running to the car crying like someone died. . . (Exhibit 234)

- 15. When Plaintiff did not deny that he did in fact threaten her father with physical violence, but instead went on to explain why he came to that point, Michelle Zimmerman reasonably interpreted this as an admission of his threats. Michelle Zimmerman also heard Plaintiff say during the course of the meeting that he hit someone in the past.
- 16. The meeting did not end well. After two hours, the Zimmermans felt personally attacked and left the meeting. The others stayed to continue discussing what occurred. David Paul Zimmerman turned off the lights after he left the room. (He testified this occurred by habit and not intentionally, and when he went back into the room to grab his computer, he did not even notice it was dark.) The Fernandez family understandably felt disrespected.
- 17. David Paul Zimmerman was not satisfied that Plaintiff's threatening behavior, or the potential of such threatening behavior, would not be repeated in light of his refusal to accept the School's findings regarding the investigation. Given his concern, David Paul Zimmerman made the decision to dis-enroll the family and sent an e-mail informing the family that their children were dis-enrolled within a half an hour of leaving the May 24 meeting. Michelle Zimmerman lives with her parents. David Paul Zimmerman shared his thoughts of the meeting and fact of disenrollment with Michelle.

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- 18. On the following day, May 25, 2016, Michelle Zimmerman went to the 6th grade classroom before the arrival of the entire class, since the home room teacher was out for a doctor's appointment. As soon as Michelle Zimmerman walked in the classroom, she saw the children isolating Leah, the same girl Randi Fernandez accused of saying Eidrea was not smart. It appeared to Michelle Zimmerman by the children's body language and glares directed toward Leah that Leah was being blamed for Randi Fernandez being "kicked out." She asked the girls at the table why they were crying. Initially, they did not respond. She asked again. Given the interaction, she felt she needed to explain that the reason Randi was not at school had nothing to do with Leah. She explained to the girls that Randi's absence was unrelated to Leah. She added: "It was because Randi's father had threatened her father with physical violence and that Randi's father threatened to punch her father." It was important to Michelle Zimmerman to deflect the bullying that had been happening to Leah, and to explain the real reason the Fernandez children were not at school that day. She also did not want the students to think that Randi and Jasmine were expelled or that it was their fault for bringing an issue to Gloria's attention. Michelle Zimmerman's statement to the students is the basis of the Plaintiff's defamation claim.
- 19. During the next several days there were multiple emails exchanged between Dawn Fernandez and David Paul Zimmerman. After a lengthy emotional conversation between them, Dawn acknowledged his feeling of being threatened by Plaintiff. (Exhibit 258). She stated "We would like to apologize for your feeling physically threatened. We are very sorry you felt that way, and respect your feelings, which no one but you have control over. We do not contest your feelings." David Paul Zimmerman accepted the apology and believed reconciliation had occurred. To demonstrate reconciliation he re-enrolled the Fernandez children, offering them the

opportunity to continue attending the schools. The Fernandez family did not accept the reenrollment because they wanted to review the available videos first.

20. Michael Nichols, President of Amazing Grace, also wrote an email to Dawn Fernandez to explain the investigation into the claimed defamatory statement, the conclusion that the statements were true, and offered again to conciliate. The Fernandez family did not accept that offer. (Exhibit 45)

II. CONCLUSIONS OF LAW

- 1. The elements a plaintiff must establish in a defamation case are falsity, an unprivileged communication, fault, and damages. *Mohr v. Grant*, 153 Wn.2d 812, 822 (2005).
- 2. With respect to the first element of a defamation claim, Washington does not require a defendant to "prove the literal truth of every claimed defamatory statement." *Mark v. Seattle Times*, 96 Wn.2d 473, 494 (1981). The defendant need only show that the statement is substantially true or that the gist of the story, the portion that carries the "sting" is true. *Id.*
- 3. The gist of Michelle Zimmerman's statements to a few of the 6th grade girls were true. This finding is based on the testimony of David Paul Zimmerman, Michelle Zimmerman, the video recordings of the conversations between David Paul Zimmerman and Dawn Fernandez of May 20, 2018, and the video recordings of conversations during the May 24, 2016 meeting referenced above. The court finds that Rod Fernandez appeared threatening to David Paul Zimmerman. David Paul Zimmerman was quite scared and recounted his fear and the threatening behavior to his daughter Michelle. After the issue was not resolved, the Fernandez family was in fact dis-enrolled from the School because of Plaintiff's threats to David Paul Zimmerman.
- 4. In a defamation case brought by a private individual, the plaintiff must prove that the defendant knew, or in the exercise of reasonable care, should have known that the statement

was false or would create a false impression in some material respect. *Maison de Franc, Ltd. v. Mais Oui! Inc.*, 126 Wn. App. 34 (2005).

- 5. Here, Michelle Zimmerman had a reasonable belief that the Plaintiff had in fact threatened her father with physical violence and the Fernandez family was dis-enrolled because of Plaintiff's threats to her father. Michelle Zimmerman had a reasonable basis to believe that Plaintiff threatened her father with physical violence and that he had threatened to punch her father in light of what her father told her, her observations of her father following the May 20 meeting, her observations of the videotape between Dawn Fernandez and her father following the May 20 meeting, and how Plaintiff himself responded to her concern about his threatening actions during the May 24, 2016 meeting.
- 6. Plaintiff did not prove the elements of a defamation claim. He failed to prove both falsity and negligence. The court finds for the defendants and enters a separate judgment in favor of all defendants dated the same day as these Findings of Fact and Conclusions of Law.

DATED this 20th day of February, 2018.

Judge Regina Cahan

EXHIBIT A

	Witnesses
1.	Rodrigo B. Fernandez, Jr.
2.	Dawn Fernandez
3.	Sean Huertas
4.	Eun Young Ku, LICSW
5.	Eidrea "DeDe" Akamine
6.	Jasmine Fernandez
7.	Gloria Zimmerman
8.	Dr. Paul David Zimmerman
9.	Dr. Michelle Zimmerman

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EXHIBIT B

Exhibits Admitted

No.	DATE TIME	DESCRIPTION
22.	05/23/16 10:38am	Email to M. Zimmerman Subject: Filming opportunity for Randi
26.	05/24/16 8:18pm	Email to D. Zimmerman Subject: Re: Notice of Dis-Enrollment
41.	05/31/16 5:24pm	Email to D. Fernandez Subject: Communications with Amazing Grace staff
42.	05/31/16 6:53pm	Email to M. Nichols Subject: Communications with Amazing Grace staff
45.	07/08/16 12:00pm	Email to D. Fernandez and R. Fernandez w/cc: S. Huertas, E. Akamine & K. Huertas Subject: Church council review findings w/attached letter
46.	07/12/16 8:00pm	Email to Mike Nichols w/ cc: R. Fernandez, S. Huertas, K. Huertas & E. Akamine Subject: Church council review findings
47.	07/18/16 4:54pm	Email to D. Fernandez Subject: Church council review findings
202.		2015-2016 Parent-Student Handbook
203.	05/20/15	YouTube Video: Happy Teacher Appreciation Week, Miss Zimmerman https://www.youtube.com/watch?v=aHH059BAOg8&t=166s
207.	05/03/16	Essay: Amazing Grace Christian and Renton Prep Christian Schools' Impact on the Fernandez Girls [attachment to D. Fernandez email of 05/03/16]
211.	05/20/16 @ 1449	Audio-Video Recording: Administrative Office AIRCAMDOME (14:49:51 – 15:00:01)
	£	Subject to the protective order.
212.	05/20/16 @ 1459	Audio-Video Recording: Administrative Office AIRCAMDOME (14:59:52 – 15:10:02)
		Subject to the protective order.

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1 No.	DATE TIME	DESCRIPTION
2 213.	05/20/16 @ 1509	Audio-Video Recording: Administrative Office AIRCAMDOME (15:09:53 – 15:20:00)
4		Subject to the protective order.
5 214.	05/20/16 @ 1519	Audio-Video Recording: Administrative Office AIRCAMDOME (15:19:51 – 15:30:01)
6		Subject to the protective order.
7 215.	05/20/16 @ 1529	Audio-Video Recording: Administrative Office AIRCAMDOME (15:29:52 – 15:40:02)
9	%	Subject to the protective order.
0 216.	05/20/16 @ 1806	Audio-Video Recording: Channel 11 Main (06:06:51 – 06:22:49)
1	(#)	Subject to the protective order.
2 217.	05/23/16 @ 0508	Email to D. Fernandez Subject: Filming opportunity for Randi
225.	05/23/16 @ 2349	Email to E. Akamine, raincitycatering, R. Fernandos, D. Fernandez Subject: Transcript for Security Camera Recording for Review prior to the meeting
6 229.	05/24/16 @ 1739	Audio-Video Recording: Class Room North (17:39:52 – 17:50:02)
7		Subject to the protective order.
230.	05/24/16 @ 1749	Audio-Video Recording: Class Room North (17:49:53 – 18:00:00)
	=	Subject to the protective order.
231.	05/24/16 @ 1759	Audio-Video Recording: Class Room North (17:59:51 – 18:20:01)
2		Subject to the protective order.
3 232.	05/24/16 @	Audio-Video Recording: Class Room North
	1809	(18:09:51 – 17:50:02)
		Subject to the protective order.

No.	DATE TIME	DESCRIPTION
233.	05/24/16 @ 1819	Audio-Video Recording: Class Room North (18:19:53 – 18:30:02)
		Subject to the protective order.
234.	05/24/16 @ 1829	Audio-Video Recording: Class Room North (18:29:53 – 18:40:00)
		Subject to the protective order.
235.	05/24/16 @ 1839	Audio-Video Recording: Class Room North (18:39:51 – 18:50:01)
		Subject to the protective order.
236.	05/24/16 @ 1849	Audio-Video Recording: Class Room North (18:49:52 – 19:00:02)
		Subject to the protective order.
237.	05/24/16 @ 1859	Audio-Video Recording: Class Room North (18:59:53 – 19:10:00)
		Subject to the protective order.
238.	05/24/16 @ 1909	Audio-Video Recording: Class Room North (19:09:52 – 19:20:01)
		Subject to the protective order.
239.	05/24/16 @ 1919	Audio-Video Recording: Class Room North (19:19:52 – 19:30:02)
		Subject to the protective order.
240.	05/24/16 @ 1929	Audio-Video Recording: Class Room North (19:29:53 – 19:40:00)
		Subject to the protective order.
241.	05/24/16 @ 1939	Audio-Video Recording: Class Room North (19:39:51 – 19:50:01)
	19	Subject to the protective order.
242.	05/25/16 @ 0749	Audio-Video Recording: 6 th Grade Classroom AIRCAMDOME (07:49:50 – 08:00:00)
		Subject to the protective order.

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No.	DATE TIME	DESCRIPTION
243.	05/25/16 @ 0759	Audio-Video Recording: 6 th Grade Classroom AIRCAMDOME (07:59:52 – 08:10:01)
		Subject to the protective order.
244.	05/25/16 @ 0809	Audio-Video Recording: 6 th Grade Classroom AIRCAMDOME (08:09:53 – 08:19:59)
		Subject to the protective order.
245.	05/25/16 @ 0819	Audio-Video Recording: 6 th Grade Classroom AIRCAMDOME (08:19:5) – 08:30:00)
	27	Subject to the protective order.
247.	05/28/16 @ 0114	Email to D. Zimmerman Subject: Fri., May 20, 2016, meeting between you and Rod
248.	05/28/16 @ 1720	Email to D. Zimmerman, M. Zimmerman, G. Zimmerman, L. Nichols, R. Fernandos, DEDE aka Vanity, S. Huertas, K. P. Huertas Subject: REQUEST FOR RESPONSE BY 12:00 AM – May 30, 2016
249.	05/28/16 @ 2042	Email to D. Fernandez, M. Zimmerman, G. Zimmerman, L. Nichols, R. Fernandos, DEDE aka Vanity, S. Huertas, K. P. Huertas Subject: RE: REQUEST FOR RESPONSE BY 12:00 AM – May 30, 2016
250.	05/28/16 @ 2058	Email to D. Fernandez Subject: 2016-2017 Re-Enrollment
251.	05/28/16 @ 2133	Email to D. Fernandez Subject: May 20 Meeting in Pastor's Office
252.	05/29/16 @ 0053	Email to D. Fernandez, M. Zimmerman, G. Zimmerman, L. Nichols, R. Fernandos, DEDE aka Vanity, S. Huertas, K. P. Huertas Subject: RE: Dawn's Letter From 20 Days Ago
256.	05/29/16 @ 1505	Email to D. Zimmerman, M. Zimmerman, G. Zimmerman, L. Nichols, S. Huertas, D. Fernandez, R. Fernandos, DEDE aka Vanity Subject: Re: REQUEST FOR RESPONSE BY 12:00 AM – May 30, 2016
258.	05/29/16 @ 2106	Email to D. Zimmerman, R. Fernandos Subject: RE: Renton Prep – Wednesday, May 25, 2016 – The Road to Reconciliation
259.	05/30/16 @ 0938	Email to D. Fernandez, D. Zimmerman Subject: Communications with Amazing Grace staff

No.	DATE TIME	DESCRIPTION		
267.	05/24/16 @	With Noise Reduction		
	1759	Audio-Video Recording: Class Room North (17:59:51 – 18:20:01)		
		Subject to the protective order.		
268.	05/24/16 @	With Noise Reduction		
	1909	Audio-Video Recording: Class Room North (19:09:52 – 19:20:01)		
		Subject to the protective order.		
269.	05/24/16 @	With Noise Reduction		
	1929	Audio-Video Recording: Class Room North (19:29:53 – 19:40:00)		
		Subject to the protective order.		
270.	05/24/16 @	With Noise Reduction		
	1939	Audio-Video Recording: Class Room North (19:39:51 – 19:50:01)		
		Subject to the protective order.		
271.	05/24/16 @	With Noise Reduction		
	1849	Audio-Video Recording: Class Room North (18:49:52 – 19:00:02)		
		Subject to the protective order.		
		subject to the protective order.		

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