

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:09-CV-44-H

ROBERT E. SALYER PLAINTIFF

v.

THE SOUTHERN POVERTY DEFENDANT
LAW CENTER, INC.

MEMORANDUM OPINION AND ORDER

Plaintiff, Robert E. Salyer, has filed a First Amended Complaint against Defendant, The Southern Poverty Law Center, alleging claims of defamation and intentional infliction of emotional distress or outrage, each premised on the same internet publication.

Defendant has moved to dismiss the outrage claim on the grounds that under Kentucky law, such a claim will not be allowed where the actors' conduct amounts to the commission of one of the traditional torts, such as assault, battery, or negligence for which recovery for emotional distress is allowed, and the conduct was not intended only to cause extreme emotional distress to the victim. *Banks v. Fritsch*, 39 S.W.3d 474, 481 (Ky. Ct. App. 2001), *Rigazio v. Archdiocese of Louisville*, 853 S.W.2d 295, 299 (Ky. Ct. App. 1993). This well established rule under Kentucky law clearly applies in our circumstances. Plaintiff's traditional tort action is one in defamation, which allows damages for emotional distress. Consequently, a claim of outrage has no place in the lawsuit as there is no gap to fill within the traditional tort of defamation.

In the First Amended Complaint, Plaintiff has not alleged that Defendant's actions were taken solely for the purpose of causing extreme emotional distress. This is a decision this Court can make based on the pleadings and the current state of Kentucky law.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Defendant's motion to dismiss the claim of outrage is SUSTAINED and Plaintiff's claim of outrage is DISMISSED WITH PREJUDICE.

This is not a final order.

cc: Counsel of Record