**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

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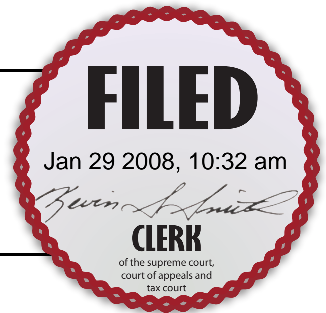


# IN THE
# COURT OF APPEALS OF INDIANA

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| WILLIAM M. FELSHER, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| vs. | ) | No. 82A01-0707-CV-327 |
| | ) | |
| UNIVERSITY OF EVANSVILLE, | ) | |
| UNIVERSITY OF EVANSVILLE PRESS, | ) | |
| DR. GEORGE C. KLINGER, | ) | |
| | ) | |
| Appellees. | ) | |

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Wayne S. Trockman, Special Judge
Cause No. 82C01-0607-PL-346

**January 29, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

Dr. William Felsher appeals the grant of summary judgment in favor of the University of Evansville, the University of Evansville Press, and Dr. George Klinger (collectively "the Defendants"). We affirm.

## Issue

Felsher presents one issue for our review, which we restate as whether the trial court properly granted summary judgment in favor of the Defendants.

## Facts

Felsher was a French professor at the University of Evansville ("UE") from 1970 until UE fired him in 1991. On October 1, 1990, the department chair, Dr. David Seamen, came to Felsher's classroom to conduct an observation and evaluation. The students were taking an exam that day, so after a few minutes Seamen attempted to leave. Felsher blocked his exit and told him to sit down, even after Seamen made repeated attempts to leave. Seamen yelled from a classroom window that he was being held against his will, and campus security eventually arrived and freed Seamen.

After this incident, UE fired Felsher. Felsher contested the firing, but UE's position was upheld by UE's Board of Trustees, the trial court, and this court. See Felsher v. University of Evansville, No. 82A05-9806-CV-294 (Ind. Ct. App. Sept. 15, 1999). Local and national media reported details of incident. In 2003, the Defendants published a book entitled *We Face the Future Unafraid: A Narrative History of the University of Evansville*. The book includes a summary of the October 1, 1990 incident involving Felsher in a chapter called "The Felsher Case." On July 17, 2006, Felsher filed

suit against defendants alleging that the chapter was defamatory and portrayed him in a false light. The Defendants filed a motion for summary judgment. Following an April 4, 2007 hearing, the trial court granted the Defendants' motion. This appeal followed.

**Analysis**

We review the propriety of granting summary judgment by using the same standard applied by the trial court. Beineke v. Chemical Waste Mgmt. of Indiana, LLC, 868 N.E.2d 534, 537 (Ind. Ct. App. 2007). Summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C); Beineke, 868 N.E.2d at 537. "During our review, all facts and reasonable inferences drawn from them are construed in favor of the nonmoving party." Beineke, 868 N.E.2d at 537. A grant of summary judgment may be affirmed on any theory or basis supported by the record. Id.

Felsher does not provide us with the summary judgment motions, memoranda, and evidence designated to the trial court when it granted the Defendants' motion for summary judgment. The appellant bears the burden of presenting a complete record on appeal. Graddick v. Graddick, 779 N.E.2d 1209 (Ind. Ct. App. 2002). Felsher is not excused from this burden because he is proceeding pro se. Pro se litigants are held to the same standards as trained counsel and are required to follow the same procedural rules. Evans v. State, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), trans. denied.

Where the appellant fails provide us with the record that was before the trial court, we have no basis to re-evaluate the trial court's conclusion. Finke v. Northern Ind. Public Serv. Co., 862 N.E.2d 266, 272 (Ind. Ct. App. 2006). "We cannot review a claim that the trial court erred in granting a motion for summary judgment when the appellant does not include in the record all the evidence designated to the trial court and before it when it made its decision." Id. This failure to provide these documents in the preparation of the appendix does not leave us entirely unable to conduct a meaningful review of the issues presented by Felsher. We find that the appendix provided by the Defendants, although incomplete, includes enough relevant information to allow us to reach the merits.[1]

"To maintain an action for defamation, a plaintiff must prove a communication with four elements: 1) defamatory imputation; 2) malice; 3) publication; and 4) damages[.]" Branham v. Celadon Trucking Serv. Inc., 744 N.E.2d 514, 522 (Ind. Ct. App. 2001), trans. denied. "However, not all defamation is actionable." Id. "True statements never give rise to liability for defamation." Id. The record before this court includes excerpts from the book in question and from Felsher's own deposition. The three paragraph excerpt subtitled "The Felsher Case" begins with a one paragraph factual account of the classroom confinement incident between Felsher and Seamen. Felsher admitted in his deposition that he did not take issue with that paragraph. The second paragraph begins: "Although confinement is legally a felony, the University chose not to file charges." Appellant's App. p. 21. Felsher insists that statement is defamatory, but he

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[1] We remind the parties to include the motions for summary judgment, the memorandums, and the evidence designated to the trial court in their appendices. See Ind. Appellate Rule 50(A)(2).

does not dispute that confinement is a felony. See Ind. Code § 35-42-3-3 (defining criminal confinement as Class D felony when the perpetrator knowingly or intentional confines another person without the other person's consent). Felsher's admission of the accuracy of the factual recitation establishes the complete defense of truth to Felsher's defamation claims.

The trial court also concluded that Felsher could not establish three of the four elements of defamation – defamatory imputation, malice, and damages. Felsher failed to establish the existence of these elements on appeal as well. Concluding that the allegedly defamatory statements by the Defendants were truthful and that Felsher was unable to establish three of the four elements of defamation, the trial court properly granted summary judgment in favor of the Defendants. See Branham, 744 N.E.2d at 522 (finding that "true statements never give rise to liability for defamation" and that plaintiff must prove all four elements to maintain an action for defamation).

Invasion of privacy is term used to describe four distinct injuries: 1) intrusion upon seclusion, 2) appropriation of name or likeness, 3) public disclosure of private facts, and 4) false light publicity. Lovings v. Thomas, 805 N.E.2d 442, 445-46 (Ind. Ct. App. 2004). Unlike defamation actions that reach injury to reputation, privacy actions involve emotional and mental suffering. Id. at 446. Felsher contends the Defendants inflicted harm through false light publicity because they publicized information with "false imputation of felonious criminal confinement. . . [which] would be highly offensive to a reasonable person." Appellant's App. p. 17. Felsher does not dispute the factual accuracy of the recounting of the classroom incident, nor does any evidence before this

court establish that those facts are false. In fact, major newspapers published the very same facts of the confinement incident. Felsher even admits distributing the media accounts of the event to professors at various colleges throughout the country. Because the information was not false, was already public knowledge, and Felsher admits to voluntarily publicly circulating the information, he cannot succeed on a false light claim. See Doe v. Methodist Hospital, 690 N.E.2d 681, 693 (Ind. 1997) (holding that there is no liability when defendants merely give further publicity to information that is already public) (internal citations omitted); Branham, 744 N.E.2d at 525 (holding that plaintiff's false light claim must fail because the allegedly tortious communication was not false). The trial court properly granted summary judgment.

**Conclusion**

Felsher did not meet his burden of providing an adequate record on appeal nor did he meet his burden of establishing that summary judgment was improperly granted. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.