

**COURT OF APPEALS
DECISION
DATED AND FILED**

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Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2701

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

MICHAEL DRENNAN,

PLAINTIFF-APPELLANT,

v.

DIANE J. IVERSON,

DEFENDANT-RESPONDENT,

XYZ INSURANCE COMPANY,

DEFENDANT.

APPEAL from a judgment of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Michael Drennan appeals a summary judgment dismissing his defamation action against Diane Iverson and her insurer. He argues

that material issues of fact exist as to whether (1) Iverson was acting as a volunteer or representative of her husband's business when she made the allegedly defamatory statements; and (2) assuming her statements were conditionally privileged, she abused that privilege. Because the facts are undisputed, and the statements were conditionally privileged as a matter of law, we affirm the judgment.

Drennan's defamation claims arise out of statements made in a letter Diane wrote to Drennan's employer, Anheuser-Busch Companies, after an incident at a promotional music concert. Diane is married to Rick Iverson, who is the marketing manager for Park Ridge Distributing, a beer distributorship for Anheuser-Busch. Diane is not employed by either Park Ridge Distributing or Anheuser-Busch, but works as the director of student services at University of Wisconsin—Stout. Rick testified, however, that Diane has attended numerous business functions to help him as an unpaid volunteer. He views her as part of his team.

William Bowe, the owner of Park Ridge Distributing, testified that he was aware that Diane has fulfilled the function of a volunteer and has worked with her husband on behalf of Park Ridge. Bernadette Perryman, the Wisconsin sales director for Anheuser-Busch, testified that spouses of employees often attend promotional functions. She also testified that spouses are part of "the team," and "part of the package." Additionally, she testified that it was her expectation that representatives of the company conduct themselves professionally at promotional functions and generate goodwill. She believed that quality of life has to be part of the job.

Diane also testified that on many occasions, she has worked with her husband at various functions associated with his employment at Park Ridge. She testified that one such occasion was the Country Music Fest in Cadott, a promotional event sponsored in part by Anheuser-Busch. Rick testified that he and Diane worked as a team with customers at the event. At approximately 11 p.m., Rick sent Diane to the Anheuser-Busch recreational vehicle, located on the festival grounds, to clean it up before he brought guests in.

Diane testified that she entered the trailer with some "towelettes" for the restroom. As she entered, she was startled by a man sitting on the couch whom she did not recognize. The man, who later identified himself as Drennan and an employee of Anheuser-Busch, made certain comments to Diane that she found to be offensive and intimidating. Diane left the trailer and sought out her husband, who confronted Drennan with respect to the incident. Drennan and Rick returned to the picnic table area where Diane was sitting and another conversation ensued. The substance of the conversations is disputed.

The next day, Diane drafted a letter to Perryman, Drennan's supervisor. Although she did not consult Rick while drafting the letter, she showed it to him when it was completed. The letter was not written on Park Ridge stationery. Perryman considered the letter to be a complaint from Diane regarding Drennan's comments.

Following his termination from Anheuser-Busch, Drennan commenced this action for defamation. Diane moved for summary judgment of dismissal, which the trial court granted, on the ground that the allegedly defamatory statements were conditionally privileged.

The standard methodology for review of summary judgment requires that we apply § 802.08, STATS., in the same manner as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis.2d 304, 314-15, 401 N.W.2d 816, 820 (1987). We review summary judgment without deference to the circuit court. *Id.* If the moving party has stated a prima facie case for summary judgment, we examine the affidavits and other proofs submitted by the opposing party to determine whether a material issue of fact is presented or whether the moving party is entitled to judgment as a matter of law. *Id.*

Drennan argues that the record reveals a dispute of material facts with respect to whether Diane was working as a volunteer on behalf of her husband's business. Drennan argues that because there is room for doubt with respect to Diane's status, the court erred when it concluded as a matter of law that her letter was a conditionally privileged communication. We are unpersuaded.

Defamatory conduct otherwise actionable may escape liability because the statement is conditionally privileged. *Olson v. 3M Co.*, 188 Wis.2d 25, 36-37, 523 N.W.2d 578, 582 (Ct. App. 1994). A defamatory statement may be conditionally privileged if it is made on a subject matter in which the person making the statement and the person to whom it is made have a legitimate common interest. *Posyniak v. School Sisters of St. Francis*, 180 Wis.2d 619, 628, 511 N.W.2d 300, 305 (Ct. App. 1993). Regardless whether the communication is defamatory, it cannot support an action for defamation if it is conditionally privileged. *Id.* at 628-29, 511 N.W.2d at 305. For example, a common interest privilege attaches to an employer's communication to its employees that it had terminated an employee for falsification of employment forms, because the employer had an interest in informing its employees about the subject of the discharge. *Olson*, 188 Wis.2d at 37, 523 N.W.2d at 582.

Diane's and her husband's testimony that they worked together as a team at promotional functions, including Country Fest, is uncontroverted. This testimony is consistent with that of Perryman's and Bowe's. Drennan raised no evidentiary facts in opposition to this testimony. Thus, the issue whether the facts fulfill a particular legal standard is a question of law. *Nottelson v. DILHR*, 94 Wis.2d 106, 115-16, 287 N.W.2d 763, 768 (1980). A question of law is suitable for summary judgment disposition. See *Brownelli v. McCaughtry*, 182 Wis.2d 367, 372, 514 N.W.2d 48, 49 (Ct. App. 1994).

The trial court correctly concluded, as a matter of law, that Diane was engaged in activities in furtherance of Park Ridge when she encountered Drennan and wrote the letter, and that the conditional privilege applied. The subject matter of the letter, which was the allegedly unprofessional conduct of an employee, was one in which the employer and Diane shared a legitimate common interest. Because Rick and Diane worked as a team, they shared with the employer and supplier the concern that at a promotional function other employees and company representatives treat them in a professional and non-intimidating manner. Cf. *Olson*, 188 Wis.2d at 37, 523 N.W.2d at 582 ("3M had an interest in common with its employees in maintaining a work environment free of harassment.").

Drennan contends that if Diane was a volunteer of Park Ridge and Anheuser-Busch at the time she attended the Fest, he does not dispute the existence of a common interest conditional privilege. He argues, however, that there is conflicting evidence. We disagree. Drennan points to the fact that the letter was not written on business stationery, and that Perryman understood it to be a complaint from Diane personally. He also argues that he was unaware that Diane performed any work, volunteer or otherwise, on behalf of Park Ridge or

Anheuser-Busch. We conclude that these issues are insufficient to raise a genuine dispute of material fact. The form the communication takes, whether oral, written, on business stationery or not, fails to rebut the uncontroverted fact that Diane was assisting her husband in promoting a business interest at the festival. The letter, while not on business stationery, grew out of an incident that occurred during a business function. Additionally, Drennan's lack of knowledge regarding Diane's volunteer status has no bearing on whether, in fact, she was fulfilling such a role.

Next, Drennan argues that the record discloses issues of disputed fact whether Diane abused the conditional privilege. We disagree. A conditional privilege is forfeited if:

(1) [D]efendant [had] knowledge or reckless disregard as to the falsity of the defamatory matter; (2) [t]he defamatory matter is published for some purpose other than that for which the particular privilege is given; (3) [t]he publication is made to some person not reasonably believed to be necessary for the accomplishment of the purpose of the particular privilege; (4) [t]he publication includes defamatory matters not reasonably believed to be necessary to accomplish the purpose for which the occasion is privileged; or (5) [t]he publication includes unprivileged matter as well as privileged matter.

Olson, 188 Wis.2d at 38, 523 N.W.2d at 583.

Drennan argues that the tone of the letter demonstrates that it was written with reckless disregard of the falsity of its contents, because the reader could infer the writer was sarcastic and indignant. Without reciting the contents of the letter, we are satisfied that while the letter indicates the writer was upset, there is nothing in its tone or in the record to suggest Diane wrote the letter with reckless disregard of its accuracy.

Drennan also argues that reckless disregard of the falsity of the statements is evidenced by Diane's admission that before the incident in question she did not know Drennan personally, yet in the letter stated that he "has done little to earn the respect of the local [Anheuser-Busch] people." He also argues that this remark is not reasonably necessary to accomplish the purpose of the communication. We disagree. In context, Diane's statement is based upon her personal confrontation with Drennan in the trailer at the festival. There is no indication that this statement was made with reckless disregard of the truth based upon her personal experience. Although this remark is somewhat broader than the more precise preceding statements, it is reasonably related to the correspondence's purpose, which was to inform Perryman of the problem Drennan's conduct caused Diane in a work environment. We are satisfied that this remark fails to raise any genuine issue of material fact whether Diane abused her conditional privilege.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

