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DISTRICT IV

December 14, 2015

To:

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Frank Gaura
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You are hereby notified that the Court has entered the following opinion and order:

2014AP2114

Frank Gaura v. James T. Quinn (L.C. # 2013CV337)

Before Higginbotham, Sherman and Blanchard, JJ.

Frank Gaura appeals a judgment dismissing his defamation complaint against James T. Quinn and Metcalf & Quinn, S.C. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm.

Quinn is an attorney who represented Nekoosa Port Edwards Bank in a foreclosure action against Gaura's sister, Veronika McCarthy. Quinn sent a letter to the circuit court judge

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

presiding over that action in which he stated that Gaura, acting as McCarthy's agent under WIS. STAT. § 244.52, could not represent McCarthy in the foreclosure action without violating WIS. STAT. § 757.30(2), which prohibits the practice of law without a license.

Gaura brought this defamation action, alleging that these following four statements in the letter were defamatory:

- (1) It may be that Mr. Gaura can be appointed to act as [McCarthy's] agent pursuant to [WIS. STAT.] § 244.52 []; however, he cannot act as her attorney without violating [WIS. STAT.] § 757.30 practicing law without a license;
- (2) The authority the principal grants to the agent (attorney-in-fact) is not authority to permit the agent to engage in criminal activity;
- (3) The fact that Mr. Gaura thinks he can appear in court and act as the attorney for Ms. McCarthy raises a suspicion that he has in fact been representing Ms. McCarthy all along in this proceeding, and in all of the other ... proceedings in which Ms. McCarthy represented to the court that she was appearing pro se; and
- (4) [T]his request ... is one more ploy of [McCarthy] to procrastinate the resolution of this litigation [and create] ... another issue to raise on appeal.

The circuit court granted Quinn's motion to dismiss, holding that three of the four statements were true or substantially true and that all of the statements were privileged.

A motion to dismiss challenges the legal sufficiency of the complaint. *Ladd v. Uecker*, 2010 WI App 28, ¶7, 323 Wis. 2d 798, 780 N.W.2d 216. When a plaintiff cannot recover under any circumstances, a motion to dismiss should be granted. *See id.*

One of the elements of a defamation claim is that the communication not be privileged. *See id.*, ¶8. Judicial proceedings are protected by an absolute privilege and whether that

privilege applies is a question of law, which we review independently. *Rady v. Lutz*, 150 Wis. 2d 643, 647-48, 444 N.W.2d 58 (Ct. App. 1989). A statement is protected by judicial privilege if the statement is “made in a procedural context that is recognized as affording absolute privilege” and it is “relevant to the matter under consideration.” *Id.* at 648. The privilege is not limited to statements made during trial, but may extend to pretrial communications relevant to the proceeding. *Id.* at 649.

The statements in Quinn’s letter fall within the scope of the absolute privilege. The statements were made to the circuit court presiding over a foreclosure action and they addressed the propriety of Gaura’s involvement in the case. The “procedural context” requirement is met. The question of who can properly represent a party before the circuit court is “relevant to the matter” and, therefore, the second requirement is also satisfied. Because the statements fall within the absolute privilege attendant to judicial proceedings, Gaura’s defamation claim fails.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals