# STATE OF MICHIGAN

# COURT OF APPEALS

RICHARD GRAZIANO,

Plaintiff-Appellant,

v

JOANNE HAWKINS,

Defendant-Appellee.

UNPUBLISHED
November 15, 2005

No. 255030
Wayne Circuit Court
LC No. 04-404163-CZ

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is a teacher employed by the Gibralter School District, and is certified to teach all subjects from kindergarten through eighth grade. Plaintiff sought a position as a middle school physical education teacher, but the school district deemed him unqualified for the position. The matter proceeded to arbitration, and plaintiff prevailed. Plaintiff's union filed suit in circuit court seeking to enforce the arbitration award. The school district attempted to rely on a 1991 letter from the physical education coordinator at Eastern Michigan University, who opined that plaintiff's lack of formal training in physical education rendered him unqualified to teach the subject. The circuit court declined to admit the letter on the ground that it had not been introduced at the arbitration hearing, and enforced the arbitration award in plaintiff's favor.

The school district appealed the circuit court's decision to this Court.[1] At a meeting on October 22, 2003, the Gibralter School Board, of which defendant is a member, voted 5-2 to dismiss the appeal.[2] Defendant cast her vote against dismissing the appeal. At the next school board meeting, held on October 28, 2003, defendant, over the objections of the board president,

[1] Court of Appeals Docket No. 250949.

[2] Subsequently, this Court entered a stipulated order dismissing the appeal. See *Gibraltar Ed Ass'n v Gibraltar School Dist*, unpublished order of the Court of Appeals, entered October 29, 2003 (Docket No. 250949).

read portions of the 1991 letter into the record. Defendant stated that she did so in order to inform the public that there were "two sides" to the matter.

Plaintiff filed suit against defendant only, alleging false light invasion of privacy and public disclosure of private facts. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that as a school board member she was entitled to absolute immunity for remarks made during the course of board meetings, and that no issue of fact existed as to whether her comments on October 28, 2003 related to a legitimate public concern, i.e., plaintiff's qualifications for a particular teaching assignment, and not to any private matter regarding plaintiff. The trial court granted defendant's motion, finding that defendant spoke on a matter of public concern and was protected by absolute immunity.

We review a trial court's decision on a motion for summary disposition de novo, as a question of law. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001); see also *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Where the circumstances of an allegedly defamatory communication are undisputed, the issue whether a privilege attaches to the challenged communication is also a question of law subject to review de novo. See *Tocco v Piersante*, 69 Mich App 616, 628; 245 NW2d 356 (1976). Upon such review, we find no error in the trial court's conclusion that the communication at issue here was absolutely privileged and that, therefore, summary disposition of plaintiff's suit for defamation was appropriate.

In the context of a suit for defamation, "[c]ommunications deemed absolutely privileged are not actionable, even when spoken with malice." *Kefgen v Davidson*, 241 Mich App 611, 618; 617 NW2d 351 (2000). The doctrine of absolute privilege has been extended to apply to "communications made by a public official in furtherance of an official duty during proceedings of subordinate legislative and quasi-legislative bodies," including those rendered by a public official at a duly convened meeting of a school board. *Id*. at 618-619; see also *Nalepa v Plymouth-Canton Community School Dist*, 207 Mich App 580, 586-587; 525 NW2d 897 (1994). The doctrine of absolute privilege is, however, narrow and applies only when a comment is related to a matter of public concern. *Froling v Carpenter*, 203 Mich App 368, 371; 512 NW2d 6 (1993).

Here, it is clear that the statements at issue were made by defendant during the course of her official duties. As noted above, defendant was a duly elected member of the Gibralter School Board, and made the remarks about which plaintiff complains during a public meeting of that board. Moreover, to the extent that defendant's statements concerned the dispute in which plaintiff and the school district had been engaged, i.e., plaintiff's qualifications to teach physical education, they were also related to a matter of public concern. Consequently, defendant's public comments regarding that matter were absolutely privileged. *Kefgen*, *supra*; *Froling*, *supra*. That the matter was considered by a majority of the board to have been resolved at its last meeting does not affect the privileged nature of defendant's comments. Indeed, as found by a panel of this Court in *Froling*, *supra* at 372, "[t]he fact that [a] defendant's statement were not made during a debate on an agenda item or in response to comments by another person does not defeat the privilege." See also *Chonich v Ford*, 115 Mich App 461, 466-469; 321 NW2d 693 (1982). Moreover, although defendant is correct that the mere fact that "a public official is a member of a legislative body and is in attendance at a duly convened proceeding of such body does not afford him an invitation to undertake an unrestricted slanderous campaign against

whomever he pleases, concerning whatever he pleases," see *Gidday v Wakefield*, 90 Mich App 752, 756; 282 NW2d 466 (1979), we do not conclude that a defendant's comments relating to a decision of a public body at its last most recent meeting constitute such an "unrestricted" campaign. The trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray