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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Corey Clark,

10 Plaintiff,

11 v.

12 John Minore, et al.,

13 Defendants.

No. CV16-1148 PHX DGC

ORDER

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15 Pro se Plaintiff Corey Clark filed a complaint in April 2016 against Defendant
16 John Minore alleging various defamation-related claims. Doc. 1. Defendant moves for
17 summary judgment, arguing that Plaintiff's discovery disclosures have failed to provide
18 any evidence or witnesses to prove his allegations. Doc. 35. The Court ordered
19 supplemental briefing and evidence regarding the applicability of Arizona's absolute
20 privilege for attorney statements in court proceedings. Docs. 44, 50. The briefing is now
21 complete and oral argument will not aid the Court's decision. *See* Fed. R. Civ. P. 78(b);
22 LRCiv 7.2(f). For reasons stated below, the Court will enter summary judgment for
23 Defendant.

24 **I. Introduction.**

25 Plaintiff has sued Defendant, an attorney for Plaintiff's wife in their divorce case,
26 for Defendant's speech during a court hearing on April 21, 2015, and a police report
27 Defendant filed that made the same assertions. Doc. 1 at 2; Doc. 40 at 2-3, ¶¶ 3, 5-6.
28 Plaintiff alleges that Defendant made various false statements and threats in the hearing

1 and police report, and bases his claims in this case on those statements. He sues
2 Defendant for various torts and one federal crime, including (1) defamation and libel,
3 (2) commercial disparagement and trade libel, (3) misappropriation of image or likeness,
4 (4) trade malpractice, (5) false light invasion of privacy, (6) injurious falsehood, (7) fraud
5 upon the court, and (8) false statements. Doc. 1 at 4-11. Plaintiff seeks \$22.5 million in
6 damages, an injunction barring further defamatory statements, and an order vacating the
7 state-court divorce judgment. *Id.* at 11-14.

8 Defendant's motion is not carefully focused on relevant legal issues, and
9 Plaintiff's response wanders through wrongdoing of his wife, his wife's step-father, and
10 the judge, various violations of his parental rights, and finally to the court proceeding
11 where the allegedly tortious speech occurred.

12 Throughout their briefing, the parties did not address the most glaring deficiency
13 in this case – the absolute privileges that apply to statements made by lawyers in court
14 and in complaints to police. The Court ordered supplemental briefing and evidence on
15 Defendant's role in the April 2015 hearing as permitted by Rule 56(f)(2). Docs. 44, 50.
16 Having received the supplemental filings, the Court now enters summary judgment for
17 Defendant.¹

18 **II. Discussion.**

19 Summary judgment is appropriate if the evidence, viewed in the light most
20 favorable to the non-moving party, shows “that there is no genuine dispute as to any
21 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
22 56(a).

23 **A. Absolute Immunity – Participants in Court Proceedings.**

24 “In the area of absolute privileges, one of the most common is that involving the
25 participant in judicial proceedings.” *Green Acres Tr. v. London*, 688 P.2d 617, 621 (Ariz.

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27 ¹ The Court notes that the parties did not comply with the Court's order that they
28 exchange letters and schedule a telephone conference before briefing summary judgment.
See Doc. 23 ¶ 11. And Plaintiff's filings fail to comply with LRCiv 7.1(b)(1), making
them quite difficult to read.

1 1984). “The privilege protects judges, parties, lawyers, witnesses and jurors. The
2 defense is absolute in that the speaker’s motive, purpose or reasonableness in uttering a
3 false statement [does] not affect the defense.” *Id.*

4 The Arizona Supreme Court derives “[a]n attorney’s absolute privilege to defame
5 in connection with a judicial proceeding” from the Restatement (Second) of Torts. *Id.*
6 The relevant section provides:

7 An attorney at law is absolutely privileged to publish defamatory matter
8 concerning another in communications preliminary to a proposed judicial
9 proceeding, or in the institution of, or during the course and as a part of, a
10 judicial proceeding in which he participates as counsel, if it has some
11 relation to the proceeding.

12 Restatement (Second) of Torts § 586. The immunity “focuses on the status of the actor”
13 as a lawyer and “immunizes an attorney for statements made ‘while performing his
14 function as such.’” *Green Acres*, 688 P.2d at 621 (quoting § 586 cmt. c). The
15 immunized statements “need not be ‘strictly relevant,’ but need only have ‘some
16 reference to the subject matter of the proposed or pending litigation.’” *Id.*

17 The parties dispute whether Defendant was a participant in the April 2015 hearing.
18 Doc. 45 at 2-3; Doc. 46 at 7-8. Yuma County Superior Court records resolve this issue.
19 Defendant was not present to represent his client – Plaintiff’s former wife – when the
20 hearing began. Doc. 51-1 at 2. For this reason, the minute entry suggests that Mrs. Clark
21 appeared in *propria persona*. *Id.* But Defendant arrived later, and both the minute entry
22 and the transcript reflect his appearance as counsel for Mrs. Clark. *Id.* at 2, 52. In his
23 capacity as counsel for Mrs. Clark, Defendant made the allegedly defamatory statements
24 during an official court proceeding. *Id.* at 64-75.

25 The parties also disagree on whether Defendant’s statements related to the court
26 proceeding. Doc. 45 at 4-5; Doc. 46 at 7-8. Again, the court records resolve the issue.
27 The matter before the court was a petition by Mrs. Clark for an order of protection
28 against Plaintiff. Doc. 51-1 at 2. The judge, who was presiding over the divorce case as
well, addressed a wide range of issues related to the petition for an order of protection,

1 child custody, the status of the divorce, and communication difficulties between the
2 parties and counsel. *See id.* at 51-146. Allegations of threats of violence among the
3 parties and counsel were relevant, especially considering that the hearing was for an order
4 of protection. The Court finds that Defendant’s in-court statements are subject to
5 absolute immunity.

6 **B. Absolute Immunity – Police Reports.**

7 In Arizona, civil claims based on police reports are barred as a matter of law. *See*
8 *Ledvina v. Cerasani*, 146 P.3d 70, 75-76 (Ariz. Ct. App. 2006) (“putative crime victims
9 are entitled to absolute immunity when they complain to the police”). Defendant’s
10 allegedly defamatory statements to the police are therefore subject to absolute immunity.

11 **C. The Scope of Absolute Immunity.**

12 “[A]bsolute immunity immunizes absolutely.” *Sobol v. Alarcon*, 131 P.3d 487,
13 490 (Ariz. Ct. App. 2006). “When statements are absolutely privileged, the speaker is
14 immune from civil liability and courts do not inquire into the declarant’s motives or
15 whether the statements were made in good faith.” *Ledvina*, 146 P.3d at 72. The Arizona
16 Court of Appeals has explained:

17 To accomplish this, it is necessary for them to be protected not only from
18 civil liability but also from the danger of even an unsuccessful civil action.
19 To this end, it is necessary that the propriety of their conduct not be
20 inquired into indirectly by either court or jury in civil proceedings brought
21 against them for misconduct in their position. Therefore the privilege, or
22 immunity, is absolute and the protection that it affords is complete. It is not
conditioned upon the honest and reasonable belief that the defamatory
matter is true or upon the absence of ill will on the part of the actor.

23 *Sobol*, 131 P.3d at 490 (quoting Restatement (Second) of Torts div. 5, ch. 25, topic 2, title
24 B, introductory note (1977)).

25 Plaintiff’s contention that the Court must consider whether Defendant abused his
26 absolute privilege is misplaced. Doc. 46 at 5-8. Such an inquiry is only required for the
27 application of qualified immunity. *Green Acres Tr.*, 688 P.2d at 624 (“Arizona law
28 establishes a two-part analysis for determining whether a qualified privilege exists”). It is

1 irrelevant to absolute immunity. *See Ledvina*, 146 P.3d at 72 (motives and bad faith are
2 irrelevant).²

3 **D. Fraud Upon the Court.**

4 Plaintiff asserts a claim for fraud upon the court and seeks an order vacating the
5 state court's judgment. Doc. 1 at 10-11. In Arizona, the "superior court may set aside a
6 judgment at any time when the moving party proves the judgment was the product of
7 fraud upon the court." *Clark v. Kreamer*, No. 1 CA-SA 17-0141, 2017 WL 5352662, at
8 *3 (Ariz. Ct. App. Nov. 14, 2017). The ability of a state court to set aside one of its
9 judgments for fraud, however, does not mean that a federal court may set aside a state-
10 court judgment on that basis. Indeed, the U.S. Supreme Court has long held that diversity
11 jurisdiction does not extend to the issuance or modification of divorce, alimony, or child-
12 custody decrees. *See Ankenbrandt v. Richards*, 504 U.S. 689, 701-03 (1992). For this
13 reason, the Court lacks jurisdiction to grant the requested relief based on fraud in the
14 state-court domestic relations proceeding.

15 **IT IS ORDERED:**

- 16 1. Defendant's motion for summary judgment (Doc. 35) is **granted**.
17 2. All remaining motions (Docs. 37, 41) are **denied as moot**.
18 3. The Clerk is directed to **terminate** this action.

19 Dated this 27th day of November, 2017.

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David G. Campbell
United States District Judge

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26 ² The Court notes that summary judgment is warranted on the alleged violation of
27 a federal criminal statute, 18 U.S.C. § 1001. Doc. 1 at 11. Nowhere in the statute is there
28 any indication that Congress intended to create a private right of action. *Cent. Bank of
Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994) ("We
have been quite reluctant to infer a private right of action from a criminal prohibition
alone"), *superseded by statute on other grounds*, 15 U.S.C. § 78t(f). But even if it did,
that private right of action would be barred by absolute immunity.