

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001175-MR

CONNIE MARSHALL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
ACTION NO. 03-CI-001813

LOUISE WELCH

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND TACKETT, JUDGES.

COMBS, CHIEF JUDGE: Connie Marshall ("Marshall") appeals from an order of the Jefferson Circuit Court dismissing her complaint for harassment and defamation against Louise Welch ("Welch").

After our review of the record and the applicable law, we find no error in the decision of the trial court. Thus, we affirm.

On February 28, 2003, Marshall filed a complaint alleging that Welch had harassed and defamed her in the Jefferson Family Court on March 5, 2002. At the time, Welch, an

attorney, was serving as one of the three court-appointed guardians of Marshall's former grandchildren. The mother's parental rights had been terminated, and Marshall had not preserved her visitation privileges according to KRS¹ 405.021(1). However, Marshall had made a motion for visitation, which was the subject of the hearing of March 5, 2002, at which Welch was called to testify concerning Marshall's motion.

Marshall had been awarded permanent custody of her grandchildren in 1999, but she had voluntarily returned them to the custody of the Cabinet for Families and Children. Welch accordingly believed that visitation by Marshall was not warranted. Noting that Marshall had no legal standing as a result of the termination of parental rights of the mother, the court dismissed her motion.

It was during the hearing at which that motion was argued that the cause of action for defamation against Welch allegedly arose. Welch impugned Marshall's credibility during the hearing, referring in open court to her conduct as "bizarre." Consequently, Marshall filed her complaint for defamation. She argued that she was willfully and intentionally defamed and harassed by Welch's comment that she was "bizarre." Marshall contends that her reputation was injured and that she was exposed to public hatred, contempt, ridicule, or degradation

¹ Kentucky Revised Statutes.

as a result. Marshall also contends that Welch's statements adversely affected her as to the court order entered on March 9, 2002.

On March 12, 2003, Welch filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted pursuant to CR² 12.02. On March 24, 2003, Marshall filed her written response. Following a hearing, the trial court entered an order on May 7, 2003, granting Welch's motion to dismiss with prejudice.

On May 14, 2003, Marshall filed a notice motion for reconsideration, which the court denied on June 5, 2003. That same day, Marshall filed a notice of appeal, *pro se*, from the order dismissing of May 7, 2003. She filed an amended notice of appeal four days later.

A CR 12.02 motion for dismissal for failure to state a claim "should only be granted if it appears that the pleading party could not prove any facts in support of his claim that would entitle him to relief." Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club, Ky., 551 S.W.2d 801, 803 (1977). We agree that Marshall could not have succeeded under any reasonable interpretation of the facts in support of her claim and that, therefore, the trial court properly dismissed Marshall's complaint pursuant to CR 12.02.

² Kentucky Rules of Civil Procedure.

Marshall emphasizes that Welch's statements were intentionally and willfully defamatory due to the fact that Welch was an attorney, a status which Marshall contended should have made Welch fully "aware of the damage she was doing by making the statement that she made in a conference room just before a meeting was about to start." Appellant's brief at 2. As a result of Welch's derogatory statements, Marshall contends that her public reputation was injured and that the court order of March 9, 2002, was tainted. We disagree.

First, the adjective *bizarre* is not inherently defamatory or slanderous. Marshall alleges that *bizarre* is synonymous with weird, freaky, odd in manner, grotesque. However, Webster's dictionary³ offers numerous definitions for *bizarre*, none of which is necessarily slanderous and none of which includes "freaky" or "grotesque" among the listed synonyms. The definitions listed include: "gallant, brave, liberal, odd, extravagant, eccentric in style or mode, fantastic, and strikingly out of the ordinary." Under Kentucky law, words must be analyzed by the "natural meaning and in the sense in which they would be understood by those to whom addressed." Gahafer v. Ford Motor Co., 328 F.3d 859 (6th Cir. 2003). We do not agree that the natural meaning of *bizarre* must

³ Webster's New International Dictionary of the English Language, G. & C. Merriam Co., (2d ed. 1955).

necessarily be characterized as slanderous, defamatory, or harassing.

Second, Marshall contends that her public reputation was injured. However, even if the language complained of were deemed injurious, we note that it was uttered in the context of the confidentiality surrounding a juvenile hearing. Marshall herself was the only person who has publicized the private contents of the hearing, which was closed to the public by its very nature. Additionally, statements made during the course of judicial proceedings are absolutely privileged from actions of libel or slander. Hayes v. Rogers, Ky, 447 S.W.2d 597 (Ky. 1969). Welch, who was acting as a court appointed guardian *ad litem*, had a duty to act in the best interests of her clients and was performing exclusively in that capacity in the course of the judicial proceeding.

Marshall argues that Welch did not enjoy immunity because she was not involved in the case. Although Jason Segeleon was the children's usual court-appointed guardian *ad litem*, Ms. Welch had also served as the children's guardian. Segeleon testified that Welch substituted for him on March 5, 2002, the date of the conference. The court had consulted Welch to ask her opinion of the motion because of her previous experience as guardian for the children. Welch was, therefore, acting in the capacity of an officer of the court.

We conclude that the trial court properly dismissed the case for failure to state a claim upon which relief could be granted. Therefore, we affirm the order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Connie Marshall, *pro se*
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BRIEF FOR APPELLEE:

C. Fred Partin
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