

SUITE 2600
NEW ORLEANS, LA 70112
COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

Plaintiff/appellant, Walter Morris (“Morris”), brought an action against the defendant/appellee, the District Attorney for the Parish of Orleans, stemming from his incarceration. The trial court granted an exception of no cause of action in favor of the district attorney based on the civil immunity granted to that office. An appeal was taken from that ruling.

Morris filed a petition in the Civil District Court for the Parish of Orleans on 5 June 2002, wherein he named Harry Connick, in his official capacity as the District Attorney of Orleans Parish, and Charles C. Foti, Jr., in his official capacity as Criminal Sheriff of Orleans Parish, as defendants. Morris’s claim stems from his incarceration in Orleans Parish Prison from 28 January 2001 until 6 June 2001.

The petition alleges that on 28 January 2001, Morris was arrested for a purported violation of La. R.S. 14:68 relative to the unauthorized use of a movable. He was unable to make bail and remained incarcerated. On 28 March 2001, Morris made his first appearance in Orleans Parish Magistrate Court on a rule to show cause in accordance with La. C.Cr.P. art. 701.

Morris's petition alleges that on that day, an assistant district attorney erroneously advised the Court that the district attorney had accepted charges, when, in fact, Morris's case had not yet been screened. The petition goes on to claim that as a result of the false statements, Morris wrongfully remained in custody.

On 5 June 2001, at a hearing before the Magistrate Court, an assistant district attorney advised the Court that his office was going to refuse the charges against Morris. Morris was released from custody on 6 June 2001, and instituted the present action.

The district attorney filed an exception of no cause of action on 20 September 2002, asserting immunity from civil liability. The trial court granted the exception on 29 October 2002. An appeal from that judgment was timely filed.

Morris, in his first assignment of error, submits that the trial court erred in reading his petition as alleging that the wrongful prosecutorial conduct in question was the screening of the charges against him rather than in the ministerial duty of relaying information concerning the screening decision. Specifically, Morris argues that the assistant district attorney had a ministerial duty to accurately inform the court as to the status of the case. In Morris's case, the assistant district attorney erroneously informed the court

that charges had been accepted against him. Morris asserts that when the assistant district attorney relayed the incorrect information, he was not engaged in the decision-making process for which immunity applies. Rather, Morris contends that the assistant district attorney was performing a ministerial duty to which immunity did not extend.

Morris's second assignment of error is that the trial court incorrectly granted the district attorney absolute immunity. Morris argues that the application of the law on prosecutorial immunity articulated by the Louisiana Supreme Court in *Knapper v. Connick*, 96-0434 (La. 10/15/96), 681 So.2d 944, 950, does not extend to the actions of the assistant district attorney in this case. Morris asserts that *Knapper* did not grant total immunity to prosecutors, and cites the following holding of the court:

A determination that prosecutors are entitled to absolute immunity for conduct within the course and scope of their prosecutorial functions does not mean that a prosecutor will be immune from suit in all cases. Immunity is granted only in those instances where the function is advanced by the extension of the immunity. For instance, in *Buckley v. Fitzsimmons*, 509 U.S. 259, 113 S. Ct. 2606, 125 L.Ed. 2d 209 (1993), the United States Supreme Court held that while the actions of a prosecutor that are intimately associated with the judicial phase of the criminal process and which occur in the course of a prosecutor's role as an advocate for the state are entitled to immunity, where prosecutors act in an investigatory, administrative, ministerial or other role that has no functional tie to the judicial process, only a

qualified immunity is afforded.

Morris argues that *Knapper* does not apply here because first, no criminal proceeding was instituted against him, and second, the misinformation presented by the assistant district attorney cannot be viewed as an extension of the decision-making or screening process. Morris therefore submits that immunity should not be afforded in the instant case.

In opposition, the district attorney argues that our jurisprudence is clear that the district attorney and his employees are immune from civil liability. *Hall v. City of New Orleans*, 385 So.2d 1253 (La. App. 4 Cir. 1980). He further relies on *Knapper* for the position that prosecutors have absolute immunity from claims of prosecutorial misconduct that is intimately associated with the judicial phase of the criminal process and for acts in initiating a prosecution and in presenting the state's case, i.e., conduct falling within the course and scope of the prosecutorial function.

The district attorney further argues that an allegation of malice is required to state a cause of action against him regardless of whether he is acting in an administrative or prosecutorial capacity, citing *Johnson v. Foti*, 537 So.2d 232, 235 (La. App. 4 Cir. 1988). Further, the district attorney submits that this court stated in *Johnson* that no basis exists to differentiate between administrative functions and prosecutorial functions of the district

attorney's office because the administrative functions are intricately related with the actual prosecution. The district attorney argues that the facts in *Johnson* are similar to this case, and that the result here should be the same. In *Johnson*, the plaintiff alleged that he unnecessarily remained in custody due to the district attorney's failure to timely notify the court of vital information that would have released him from custody. He further points out that *Johnson* holds that absent proof of malice, he is not liable for acts of administrative negligence. *See also, West v. Foti*, 94-2139 (La. App. 4 Cir. 4/26/95), 654 So.2d 834.

Further, the district attorney asserts that the courts have held that the exception of no cause of action is the proper vehicle for addressing the issue of immunity. *Hayes v. Parish of Orleans*, 98-2388, p. 4 (La. App. 4 Cir. 6/16/99), 737 So.2d 959, 961. In the present case, the district attorney submits that Morris's petition does not allege malice by him, and therefore does not state a cause of action. Accordingly, he asserts that the trial court properly granted the exception of no cause of action in the present case.

Morris's petition alleges that the district attorney breached a ministerial duty by inaccurately informing the court that his office had accepted charges against Morris. The Louisiana Supreme Court in *Knapper* has held that "a prosecutor acting within the scope of his prosecutorial duties

as an advocate for the state is entitled to absolute immunity from suit for malicious prosecution as a consequence of conduct intimately associated with the judicial phase of the criminal process.” *Id.*, p. 10, 681 So.2d at 950. The court went further to state that such immunity extends even to prosecutorial actions taken in bad faith or with malice. *Id.*, p.11, 681 So.2d at 951.

In the case of *Johnson*, this court held that an allegation of malice was necessary to state a cause of action against a prosecutor. This reasoning, however, is now contrary to the later decision of *Knapper*, which recognizes absolute immunity even in the case of malice. *Keller v. McElveen*, 98-812 (La. App. 3 Cir. 6/2/99), 744 So.2d. 643. The *Johnson* case is factually similar to the present case, and stands for this court’s position that “we have no basis to differentiate between the various functions of the District Attorney's office. The D.A.'s administrative functions are intricately related and interwoven with his prosecution efforts. There can be no prosecution without the attendant paperwork.” *Johnson*, 537 So.2d at 236. We find that Morris’s argument that prosecutorial immunity applies to the decision-making or screening process, but not to administrative or ministerial duties, is without merit.

The Louisiana Supreme Court in *Knapper*, further recognized the

importance of defeating claims of prosecutorial immunity at the outset. The exception of no cause of action is the most effective vehicle for doing so. In so concluding, this court has stated in *Hayes v. Parish of Orleans*, 98-2388, p. 4 (La. App. 4 Cir. 6/16/99), 737 So.2d 959, 961 (*citing Knapper, supra*):

The prospect of having to endure countless trials on the merits second-guessing the innumerable prosecutorial decisions a prosecutor is likely to be called upon to make, even if assured of ultimate vindication, would have the effect of chilling "the vigorous prosecution of those charged with violating state statutes; that such fears may deter competent people from seeking office; and that defense of claims for malicious prosecution may drain valuable time and effort.

Our review of the petition in this matter reveals that the trial court was correct in granting the exception of no cause of action. None of the allegations in Morris's petition in connection with the ministerial duties of the district attorney are sufficient to state a cause of action in light of the doctrine of prosecutorial immunity established by the jurisprudence.

Accordingly, we affirm the trial court's judgment.

AFFIRMED

