STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0468

Steven Dahl,
Respondent,

vs.

Pamela Quinn,
Appellant.

Filed November 23, 2020
Affirmed
Larkin, Judge

Washington County District Court
File No. 82-CV-19-2947

Marshall H. Tanick, Meyer Njus Tanick, PA, Minneapolis, Minnesota (for respondent)

Joshua S. Casper, Casper Law, PLLC, Roseville, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

In this interlocutory appeal, appellant-defendant challenges the district court's denial of her motion to dismiss respondent-plaintiff's defamation suit, arguing that she is

entitled to the protection of several immunities as a matter of law. We analyze the appeal as taken from denial of a motion to dismiss under Minn. R. Civ. P. 12.02(e). Because it is possible on any evidence that might be produced to reject appellant's claimed defenses and to grant the relief demanded in respondent's complaint, the complaint is sufficient to withstand the motion. We therefore affirm.

FACTS

In February 2018, the district court appointed appellant Pamela Quinn to serve as a custody evaluator in a child-custody dispute between B.O. and T.B. At the time, respondent Steven Dahl was in a relationship with B.O., and the two were living together. Dahl was not a party to the custody proceeding.

In March 2019, Dahl sued Quinn for defamation. He alleged that on July 12, 2018, Quinn made false statements about him to B.O. and other individuals involved in the custody case. Quinn moved the district court to dismiss the case, arguing that she was entitled to the protections of quasi-judicial immunity, absolute privilege, and expert-witness immunity. The district court denied Quinn's motion to dismiss, and this interlocutory appeal followed.[1]

[1] After the appeal was filed, this court determined that the district court's order was appealable under the collateral-order doctrine because it was based on legal issues relating to immunity, and not fact issues pertaining to the merits of the claim.

D E C I S I O N

I.

Quinn challenges the district court's refusal to dismiss Dahl's defamation suit, arguing that she is entitled, as a matter of law, to the protections of quasi-judicial immunity, absolute privilege, and expert-witness immunity. Before we address the merits of Quinn's argument, we identify the appropriate analytical framework.

Minn. R. Civ. P. 12.02(e) provides that a defense for "failure to state a claim upon which relief can be granted" may be raised by motion. When reviewing a motion to dismiss for failure to state a claim, courts must consider only the facts alleged in the complaint. *In re Individual 35W Bridge Litig.*, 806 N.W.2d 811, 815 (Minn. 2011). "If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . . ." Minn. R. Civ. P. 12.02. In that situation, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." *Id.* But a court may consider documents referenced in the complaint without converting the motion to dismiss to a motion for summary judgment. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004).

Minn. R. Civ. P. 12.03 provides: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Judgment on the pleadings is proper when the defendant relies on an affirmative defense that does not raise material issues of fact. *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010).

When reviewing such a motion, the court must accept the facts in the complaint as true. *Id.*

Quinn contends that her motion to dismiss was based on rule 12.03 and that this court should review the district court's order as one denying judgment on the pleadings. Quinn argues that because her request was for judgment on the pleadings, the record before this court includes her responsive pleading and any documents referred to therein.

Although Quinn's written motion to dismiss in district court cited Minn. R. Civ. P. 12.03, she described the motion as one for failure to state a claim upon which relief can be granted, which is the standard set forth in rule 12.02(e). Specifically, her written motion requested the following relief: "Pursuant to the Minnesota Rules of Civil Procedure, Rule 12.03, dismissing the Plaintiff's case with prejudice for failing to state a cause of action for which relief can be granted." Similarly, Quinn's briefing on appeal cites rule 12.03 for the proposition that "[i]f Plaintiff fails to state a legally sufficient claim for relief, the matter should be dismissed by the District Court."

The district court treated Quinn's motion as one for relief under Minn. R. Civ. P. 12.02(e). It expressly declined to convert the motion to dismiss into one for summary judgment, even though both parties submitted documents outside of the pleadings for the court's consideration. Because Quinn relied on the standard set forth in rule 12.02(e) and the district court addressed her motion under rule 12.02(e), we also apply that rule.

A district court's ruling on a motion to dismiss for failure to state a claim under Minn. R. Civ. P. 12.02(e) is reviewed de novo. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). An appellate court "accept[s] the facts alleged in the complaint as true

and construe[s] all reasonable inferences in favor of the nonmoving party." *Id.* "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Id.* at 603. Because Quinn's motion was decided under rule 12.02(e), the record before us is limited to Dahl's complaint and any documents referenced in the complaint.

With this framework in mind, we turn to the merits of Quinn's motion to dismiss.

II.

Immunities are based on the "special status of a defendant" and the principle that "though the defendant might be a wrongdoer, social values of great importance required that the defendant escape liability." *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997) (quotation omitted). An immunity protects a defendant from suit. *Id.* at 332-33. The party claiming an immunity has the burden of showing she is entitled to it. *Id.* at 333. The applicability of an immunity is a legal question that appellate courts review de novo. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599 (Minn. 2016).

Quinn claims the protections of quasi-judicial immunity, absolute privilege, and expert-witness immunity. We address each doctrine in turn.

Quasi-Judicial Immunity

Quasi-judicial immunity is a form of judicial immunity. "Judicial immunity precludes judges from being held liable for 'acts done in the exercise of judicial authority.'" *Sloper v. Dodge*, 426 N.W.2d 478, 479 (Minn. App. 1988) (quoting *Linder v. Foster*, 295 N.W. 299, 300 (Minn. 1940)). Because the purpose of judicial immunity is to protect the

judicial process, quasi-judicial immunity "extends to persons who are integral parts of that process." *Id.* Minnesota courts have extended quasi-judicial immunity to protect public defenders, court-appointed guardians ad litem, therapists, and arbitrators. *VanGelder v. Johnson*, 827 N.W.2d 430, 434 (Minn. App. 2012), *review denied* (Minn. Jan. 15, 2013). But quasi-judicial immunity applies to court-appointed officials only when they act within the scope of their court appointment. *Myers v. Price*, 463 N.W.2d 773, 776 (Minn. App. 1990), *review denied* (Minn. Feb. 4, 1991).

This court has declined to extend quasi-judicial immunity to custody evaluators who are not appointed by the court. *Zagaros v. Erickson*, 558 N.W.2d 516, 523 (Minn. App. 1997), *review denied* (Minn. Apr. 17, 1997). There is no precedent indicating whether quasi-judicial immunity protects court-appointed custody evaluators from suit. However, the rationales underlying quasi-judicial immunity would seem to support application of such immunity to a court-appointed custody evaluator who is directed to provide the court with an opinion about a subject central to the court's judicial function in a custody proceeding. Although caselaw supports Quinn's attempt to avail herself of the protections of quasi-judicial immunity based on her undisputed court appointment as a custody evaluator, Quinn is not entitled to quasi-judicial immunity unless she was acting within the scope of her court-ordered duties when she allegedly made the challenged statements regarding Dahl. *See Myers*, 463 N.W.2d at 776.

Absolute Privilege

Absolute privilege is similar to quasi-judicial immunity, but it applies specifically to defamation claims.[2] Defamatory statements "may be protected by absolute privilege in a defamation lawsuit if the statement is (1) made by a judge, judicial officer, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) . . . relevant to the subject matter of the litigation." *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306 (Minn. 2007) (citing *Matthis v. Kennedy*, 67 N.W.2d 413, 417 (Minn. 1954)). Absolute privilege protects even statements that are intentionally false or made with malice. *Id.* However, the applicability of absolute privilege is limited, and courts "will not apply absolute privilege unless the 'administration of justice requires complete immunity from being called to account for language used.'" *Id.* (quoting *Matthis*, 67 N.W.2d at 417). Absolute privilege applies to both judicial and quasi-judicial proceedings. *Matthis*, 67 N.W.2d at 417.

The supreme court has held that absolute privilege applies to statements made before the judicial proceeding, as long as the statements "have some relation to the judicial proceeding." *Mahoney*, 729 N.W.2d at 306. But absolute privilege does not apply to "all speech by government employees related to their work." *Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014). "[J]udges and officers of government whose duties

[2] The parties and the district court sometimes use the term "absolute immunity," but caselaw refers to this concept as "absolute privilege." The Minnesota Supreme Court has stated that absolute privilege is different than an immunity and is likely sometimes referred to as an immunity because "it has the effect of making the publisher of a defamatory statement immune from suit." *Bol v. Cole*, 561 N.W.2d 143, 147 (Minn. 1997).

relate to the judicial process enjoy absolute privilege, but only as to statements made in the exercise of their judicial functions." *Id.*

Expert-Witness Immunity

Experts who are appointed by the court pursuant to Minn. R. Evid. 706 "are entitled to immunity for duties performed pursuant to their appointment." *Peterka v. Dennis*, 764 N.W.2d 829, 836 (Minn. 2009). In *Peterka*, the supreme court granted immunity to an expert for the statements he made in his report to the court and in his testimony. *Id.* The rationale for extending immunity to court-appointed experts is to protect the experts from "harassing litigation" and because the experts "exercise discretionary judgment and provide assistance to the court." *Id.* at 834. Although it is better practice for the district court to indicate in its order that it is appointing an expert under rule 706, "the rule itself does not specifically require such a reference." *Id.* The Minnesota Supreme Court has determined that an individual was a rule 706 expert when the court's appointment of that expert met each requirement for appointment under rule 706, and the parties' conduct indicated that he was a rule 706 expert. *Id.* at 833-34.

Application of the Doctrines

The three forms of protection on which Quinn relies are similar in that they are not available unless Quinn made the challenged statements when she was acting within the scope of her court appointment (quasi-judicial immunity), exercising her judicial function (absolute privilege), or performing duties pursuant to her appointment (expert-witness immunity). The allegations in Dahl's complaint do not support a conclusive determination regarding any of those circumstances. Moreover, Dahl asserts that evidence will show that

Quinn made the statements at a meeting with B.O., T.B., and their attorneys, and that the purpose of the meeting was for Quinn to present the findings of her custody investigation to the parties before she submitted her report to the court. Dahl also asserts that evidence will show that after Quinn made the challenged statements, Quinn told B.O. to sign Quinn's proposal regarding custody and parenting time or Quinn would write a "scathing recommendation" to the judge. Dahl argues that neither the meeting nor Quinn's actions at the meeting were authorized by the court order appointing Quinn or by the statute governing custody evaluators. *See* Minn. Stat. § 518.167 (2018) (explaining the duties of a court-appointed custody evaluator). Thus, Dahl contends that evidence will show that Quinn is not entitled to the protections she claims.

Quinn argues that Minn. Stat. § 518.167 does not prohibit a custody evaluator from meeting with the parties to review her recommendations before she submits her report. The issue here is not whether Quinn was prohibited from meeting with B.O. and T.B. to discuss her custody evaluation. The issue is whether in doing so, Quinn was acting within the scope of her duties as a court-appointed custody evaluator, exercising her judicial function, or performing duties pursuant to her appointment. Quinn relies on extra-record documents as a basis to resolve that issue in her favor. Those documents include the court order appointing Quinn as the custody evaluator and documents that purportedly memorialize the district court's approval of a joint request to delay pretrial submissions in the custody case so the parties could meet with Quinn. Because those documents are not attached to or referenced in Dahl's complaint, we do not consider them.

Quinn also argues that Dahl's complaint is inadequate to state a claim upon which relief can be granted because it did not allege that Quinn exceeded the scope of her duties as a custody evaluator when she made the defamatory statements. But Minnesota is a notice-pleading state and "does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it." *Walsh*, 851 N.W.2d at 604-05 (quotation omitted). Quinn does not cite authority persuading us that Dahl was required to plead in the complaint the nonexistence of Quinn's claimed defenses.

Once again, in our de novo review of a motion to dismiss for failure to state a claim upon which relief can be granted, we accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party. *Id.* at 606. If it is possible on any evidence which might be produced to grant the relief demanded, the complaint is sufficient to withstand the motion. *Id.* at 603. Given that standard and the very limited record before us, we cannot say that Quinn is entitled to quasi-judicial immunity, absolute privilege, or expert-witness immunity as a matter of law. At this stage of the litigation, too little is known regarding Quinn's court appointment and the meeting at which she allegedly made the challenged statements. More facts are necessary to determine whether Quinn is entitled to any of the protections she claims. We therefore affirm and remand for further proceedings. On remand, Quinn is not prohibited from reasserting the protections she claims once the record is adequately developed.

Affirmed.