

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0179**

Aaron Olson,
Appellant,

vs.

Central Housing Associates LP, et al.,
Defendants,

Christopher Kalla,
Respondent.

**Filed October 4, 2021
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-19-10584

Aaron Olson, Minneapolis, Minnesota (*pro se* appellant)

Christopher T. Kalla, Hanbery & Turner, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Slieter, Judge; and Rodenberg,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant claims the district court erred by denying his motion to join respondent-attorney Christopher Kalla as a defendant to this action. Appellant wished to amend his complaint against his former landlord to allege defamation by Kalla.¹ Because the district court correctly concluded that Kalla possessed absolute privilege, the motion was properly denied, and we affirm.

FACTS

Appellant Aaron Olson sued his former landlord, Central Housing Associates LP (CHA), alleging various claims including purported violations of the Minnesota Human Rights Act. In an underlying eviction action, CHA sought to remove appellant from the Holmes Greenway apartments. Holmes Greenway is an apartment building for individuals with physical disabilities. The sole issue in this appeal involves review of the district court's decision to deny appellant's motion, initiated long after responsive pleadings were served, to join respondent Christopher Kalla—an attorney who had represented CHA in the underlying eviction proceedings. Appellant wished to sue Kalla for defamation based upon comments he allegedly made while representing CHA.²

¹ The dismissal by the district court of all other claims by appellant against his former landlord is not before us.

² Kalla was named as a defendant to claims other than defamation in appellant's initial complaint against CHA. The district court dismissed all claims against Kalla in an October 16, 2019 order, concluding that the claims alleged either were untimely, were more properly asserted against CHA, or otherwise failed as a matter of law.

Appellant's motion to add Kalla indicated that it was "based on new evidence acquired through discovery and not known to [appellant] previously despite his diligent investigation." (quotation omitted). In denying the joinder motion, the district court concluded that appellant's claims of defamation were "futile" due to Kalla's absolute privilege as an attorney for CHA. This appeal follows.

DECISION

Once a responsive pleading has been served, "a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Minn. R. Civ. P. 15.01. "Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). "Whether the district court has abused its discretion on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003), *rev. denied*, (Minn. Oct. 21, 2003). Such questions of law are reviewed *de novo*. *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306 (Minn. 2007).

Appellant argues that the district court erred by concluding that Kalla was entitled to absolute privilege and, consequently, it would be "futile" to grant the joinder motion. We disagree.

The district court properly applied the law as it relates to the privilege afforded to attorneys in the context of defamation. In *Mahoney & Hagberg v. Newgard*, the supreme court, in examining a claim of defamation against a former law firm secretary, held that:

[s]tatements, even if defamatory, 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) the statement at issue is relevant to the subject matter of the litigation.

Id. at 306. “When absolute privilege applies, the speaker is completely shielded from liability for her statements, even statements that are intentionally false or made with malice.” *Id.* “Absolute privilege extends to statements published prior to the judicial proceeding, but in order for the privilege to apply, such statements must have some relation to the judicial proceeding.” *Id.*

The district court concluded that the alleged defamatory statement was (1) made by an attorney (Kalla), (2) during a judicial proceeding (the March 2018 eviction proceeding), and (3) relevant to the subject matter of the litigation (the investigation of appellant’s conduct with relation to a possible physical disability). The record supports the district courts conclusion.

CHA was represented by Kalla as its attorney in an eviction action against appellant. The basis of its eviction action against appellant was that he was not physically disabled as required for tenancy at Holmes Greenway apartments. During appellant’s deposition of one of the partners of CHA, the partner relayed to appellant a statement from Kalla suggesting that appellant fraudulently claimed to be physically disabled. It is undisputed that Kalla made the alleged defamatory statements while acting as attorney for CHA during the March 2018 eviction proceedings. Moreover, Kalla’s statement directly related to the subject matter of the litigation—appellant’s eviction. Therefore, all the requirements for absolute privilege are satisfied. *Id.*

Appellant argues that absolute privilege should not be granted where, as allegedly occurred here, the statements in question were “false” and were made without any intent to “further[] the litigation.” However, as made clear in *Mahoney*, absolute privilege equally applies to false statements. *Id.*

Because Kalla was entitled to absolute privilege, the claims for which appellant sought to join Kalla to this matter could not have been maintained. Therefore, the district court did not abuse its discretion in denying the motion. *Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 95 (Minn. App. 1991) (“[A]n amendment to a complaint may properly be denied when the additional alleged claim cannot be maintained.”).

Affirmed.