IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 24, 2006 Session

ABDOL GHAYOUMI v. DAVID W. McMILLAN, Ph.D.

Appeal from the Circuit Court for Davidson County
No. 03C2225 Barbara N. Haynes, Judge

No. M2005-00267-COA-R3-CV - Filed on July 14, 2006

Plaintiff filed this action against a court-appointed psychologist contending the psychologist breached a confidential relationship by disclosing confidential information to Plaintiff's ex-wife. The psychologist had been appointed by a Kentucky trial court presiding over Plaintiff's divorce and post-divorce disputes to evaluate the family and make reports to the trial court regarding custody of and visitation. In this subsequent action, the psychologist filed a motion for summary judgment contending there was no disclosure of confidential information and he was entitled to immunity. The trial court summarily dismissed the action against the psychologist. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Brian Schuette, Bowling Green, Kentucky, and Larry L. Crain, Brentwood, Tennessee, for the appellant, Abdol Ghayoumi.

Don L. Smith and Samuel J. Welborn, Nashville, Tennessee, for the appellee, David W. McMillan.

OPINION

Abdol Ghayoumi, Plaintiff, and his now ex-wife, Yvonne Chambers, married in 1978 and had four children. The family resided in Kentucky at all times material to this action. In 2000, Ms. Chambers filed for a divorce in the Circuit Court for Warren County, Kentucky. The divorce action became most contentious, particularly regarding custody and visitation issues.

To aid the court in its determination of custody and visitation, the trial court ordered Plaintiff, Ms. Chambers, and their children to meet with and be evaluated by a clinical psychologist, David W. McMillan, Ph.D. (Defendant). Pursuant to the court's Order, Defendant was to meet with the family, to counsel with and evaluate all family members, and thereafter submit a report and recommendation to the Kentucky court regarding custody and visitation. Copies of the report were to be submitted to the parties.

Pursuant to the Order, which was entered in December of 2000, Defendant conducted several family counseling sessions with the Ghayoumi-Chambers family. Most of the sessions were joint sessions, meaning several family members were in attendance and participated. In February of 2001, Defendant submitted a Custody Evaluation Report to the Circuit Court for Warren County. In May of 2001, the Circuit Court of Warren County, Kentucky entered a final decree of divorce and awarded custody of the children to Plaintiff, with Ms. Chambers being awarded visitation.

Following the divorce, the children's relationship with their mother deteriorated. One of the more significant developments was that the youngest child, who had been closest to his mother, developed a fear of her. Ms. Chambers believed this was due to Plaintiff telling the children negative things about her. As distrust and tensions between the parents grew, the family relationships deteriorated. When the court learned of the acrimony, it quickly concluded that such hostility was not in the children's best interests. Consequently, on June 11, 2002, the court issued a second Order directing Plaintiff, Ms. Chambers, and their children to return to Defendant for a second wave of counseling with and assessment by Defendant. As before, the second Order also instructed Defendant to reassess the family and submit to the court a report and recommendation to aid the court in determining whether to modify custody and visitation.

The second series of family sessions with Defendant occurred between June and September 2002. As before, most of the sessions were joint and two of the sessions included the parties' son who was experiencing difficulties with his mother.

The discussion between Defendant and Ms. Chambers at the center of this controversy occurred on August 6, 2002, following one of the sessions. As the Complaint reads, "On August 6th, 2002 Defendant telephoned Plaintiff's ex-wife and disclosed to her that he had learned in a session that Plaintiff knew of the location of her then domicile." The Complaint further states, "This call was placed after a session between Plaintiff and Defendant had concluded and referenced confidential communications between Plaintiff and Defendant in that session which Plaintiff understood to be privileged and expected to be confidential."

On September 25, 2002, six weeks after the above referenced phone call, Ms. Chambers filed an affidavit in the Kentucky court stating Defendant phoned her on August 6, 2002 and informed her that her husband knew where she was living. The affidavit was filed in support of Ms. Chambers' petition for an Emergency Protective Order (EPO) and a Domestic Violence Order (DVO) against Plaintiff.[1] She stated in her affidavit that Defendant notified her that Plaintiff knew where she lived, and she was in fear for her safety. The Kentucky court issued an EPO, *ex parte*, on the filing of the Petition. Plaintiff was given notice of the EPO, and a hearing was conducted on November 7, 2002, to determine whether to issue a DVO. Plaintiff and his counsel appeared and resisted the DVO.

[1] Kentucky's EPO and DVO are similar to Tennessee's Order of Protection. In Kentucky, the complaining party files the petition, which the court may consider ex parte. If the court chooses to issue ex parte an Emergency Protective Order, it remains in effect for up to fourteen days. A hearing is to be conducted within fourteen days to determine whether to issue an interim Domestic Violence Order, which may remain in effect for the duration of the proceedings.

After hearing from the parties, the Kentucky court decided to dismiss the EPO and to not issue a DVO.

Thereafter, Plaintiff filed this action, contending he had a psychologist-patient relationship with Defendant, and that Defendant breached his duty to keep communications between Plaintiff and Defendant confidential. Defendant denied having a psychologist-patient relationship with Plaintiff and denied disclosing any confidential information. Specifically, Defendant contended his services were limited to performing an evaluation of the family and making a report and recommendation that was to be disclosed to the Court and parties.

In the Complaint, Plaintiff contended that Defendant breached a confidential relationship with him by telling Ms. Chambers that Plaintiff knew where she lived. During discovery, however, Plaintiff denied ever telling Defendant he knew where she lived. Following discovery, Defendant filed a motion for summary judgment asserting two contentions. One, he contended there was no disclosure of confidential information because, as Plaintiff insisted in his deposition, Plaintiff did not tell Defendant he knew where Ms. Chambers lived, thus, the disclosure attributed to Defendant could not constitute a breach of confidential information. Two, Defendant contended he was entitled to immunity as a court-appointed psychologist. The trial court granted Defendant's motion for summary judgment without stating a basis. This appeal followed.

STANDARD OF REVIEW

The issues were resolved in the trial court upon summary judgment. Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). We consider the evidence in the light most favorable to the non-moving party and resolve all inferences in that party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). When reviewing the evidence, we first determine whether factual disputes exist. If a factual dispute exists, we then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993); *Rutherford v. Polar Tank Trailer, Inc*., 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

Summary judgments are proper in virtually all civil cases that can be resolved on the basis of legal issues alone, *Byrd*, 847 S.W.2d at 210; *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001); however, they are not appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. The party seeking a summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that party is entitled to judgment as a matter of law. *Godfrey*, 90 S.W.3d at 695. Summary judgment should be granted at the trial court level when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion, which is the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State*

Farm Mut. Auto. Ins. Co., 49 S.W.3d 265, 269 (Tenn. 2001). The court must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, discard all countervailing evidence, and, if there is a dispute as to any material fact or if there is any doubt as to the existence of a material fact, summary judgment cannot be granted. *Byrd*, 847 S.W.2d at 210; *EVCO Corp. v. Ross*, 528 S.W.2d 20 (Tenn. 1975). To be entitled to summary judgment, the moving party must affirmatively negate an essential element of the non-moving party's claim or establish an affirmative defense that conclusively defeats the non-moving party's claim. *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

THE ISSUE PRESENTED

The singular issue Plaintiff presents in his brief is "[w]hether a treating psychologist is entitled to quasi-judicial immunity for a claim arising out of a breach of psychologist-client privilege, simply because the counseling was court-ordered." We find the issue as framed to be without merit because there is no genuine, material evidence of a pre-existing psychologist-client relationship between Plaintiff and Defendant. We also find Defendant is entitled to summary judgment as a matter of law for two reasons. One, as an agent of the court, Defendant is entitled to immunity. Two, Plaintiff denies making the statement he claims Defendant disclosed to Ms. Chambers; therefore, there was no disclosure of a confidential communication.

PLAINTIFF WAS NEVER A PATIENT OF DEFENDANT

Contractually implied rights and statutory rights of physician-patient confidentiality have evolved significantly during the past forty years. One of the early cases focusing on what was then an implied contract of confidentiality between a physician and patient was *Quarles v. Sutherland*, 389 S.W.2d 249 (Tenn. 1965)). Since *Quarles*, the General Assembly has enacted several statutes that expressly require a physician and others to keep a patient's medical records and identifying information confidential. *See* Tenn. Code Ann. §§ 63-2-101(b)(1) (1997); 68-11-1502 (2001); 68-11-1503 (2001). A detailed discussion of the current status of patient-physician confidentiality appears in *Givens v. Mullikin ex rel. Estate of McElwaney*, 75 S.W.3d 383, 407-408 (Tenn. 2002).[2]

Patients now have the right to expect their physician will keep the patient's information confidential. "This expectation arises at the time that the patient seeks treatment." *Givens*, 75 S.W.3d at 407.

> Any time a doctor undertakes the treatment of a patient, and the consensual relationship of physician and patient is established, two jural obligations (of significance here) are simultaneously assumed by the doctor. Doctor and patient enter into a simple contract, the patient hoping that he will be cured and the doctor

[2]The Supreme Court has just clarified the meaning of its holding in *Givens* as it relates to a trial court's discovery order in a medical malpractice action in *Alsip v. Johnson City Medical Center*, No. E2004-00831-SC-509-CV, 2006 WL 1765900 (filed June 29, 2006), ___ S.W.3d ___ (Tenn. 2006).

> optimistically assuming that he will be compensated. As an implied condition of that contract, this Court is of the opinion that the doctor warrants that any confidential information gained through the relationship will not be released without the patient's permission. . . . Consequently, when a doctor breaches his duty of secrecy, he is in violation of part of his obligations under the contract.

Givens, 75 S.W.3d at 407 (quoting *Hammonds v. Aetna Cas. & Sur. Co.*, 7 Ohio Misc. 25, 243 F.Supp. 793, 801 (1965)). As it went on to explain in *Givens*, "[a]n implied covenant of confidentiality can arise from the original contract of treatment for payment." *Id*. Here, however, there can be no covenant of confidentiality, implied or agreed, because the relationship between Plaintiff and Defendant resulted from a court order that necessitated disclosure of Defendant's communications with Plaintiff and his family members and mandated disclosure of his evaluations, report and recommendations to the Court and parties.

The first time Plaintiff met Defendant was in early 2001 at the first of several family sessions Plaintiff attended as ordered by the Kentucky trial court. Prior to that, Plaintiff and Defendant had no relationship, in fact they had never met or communicated. Therefore, no patient-psychologist relationship existed prior to the entry of the Kentucky trial court's order compelling Plaintiff to participate in family counseling and evaluation by Defendant. Thus, the question is whether Plaintiff and Defendant entered into a confidential relationship after the entry of the order at issue.

Plaintiff's claims of a confidential relationship are based upon two things: (1) his "assumptions" of a psychologist-patient confidential relationship, and (2) an intake form and contract Plaintiff completed immediately after the court's Order was entered. That contract, essentially an information form and agreement to assure Defendant would be paid for his services, stated, *inter alia*, the fees to be paid by Plaintiff and the sessions would be confidential.

Plaintiff, however, knew his discussions with Defendant would not be, indeed could not be, confidential because the Order that compelled Plaintiff to meet with Defendant also compelled Defendant to disclose his assessment of the family members and their respective relationships along with recommendations for custody and visitation. The Order, of which Plaintiff was fully aware when he signed the intake form and agreement, mandated the disclosure of what would normally be confidential. Thus, Plaintiff's assumption that he had a confidential relationship with Defendant is wholly without merit.

Plaintiff also contends he had a confidential relationship with Defendant based upon the in-take form he completed. We find this contention without merit because the agreement violates the Order of the Circuit Court of Warren County, Kentucky.

A contract, whether expressed or implied, must be for a lawful purpose and it may not be contrary to public policy. *See Home Beneficial Association v. White*, 177 S.W.2d 545, 546 (Tenn. 1944); *see also Sanders v. Sanders*, 288 S.W.2d 473 (Tenn. Ct. App. 1955). As our Supreme Court stated in *Johnson v. Central Nat'l Ins. Co.*, 356 S.W.2d 277, 281 (Tenn. 1962), a contract "must

result from a meeting of the minds of the parties in mutual assent to the terms, [and] must be based upon a sufficient consideration, free from fraud or undue influence, not against public policy and sufficiently definite to be enforced"); *Lay v. Fairfield Dev.*, 929 S.W.2d 352, 356 (Tenn. Ct. App. 1996). Furthermore, a contract is subject to public policy considerations, which considerations may trump physician-patient confidentiality.[3] *See Aslip v. Johnson City Medical Center*, No. E2004-00831-SC-509-CV, 2006 WL 1765900 (filed June 29, 2006), ___ S.W.3d ___ (Tenn. 2006).

Neither Plaintiff nor Defendant were at liberty to enter into a contract in violation of the court Order because doing so would run afoul of both principles. It would not be for a lawful purpose because it would violate the court's Order, which directed Plaintiff to meet with Defendant and which directed Defendant to make a report to the court based upon the meetings with Plaintiff and his family. Further, it would violate public policy because it would restrict the exchange of information meant to aid the court in making decisions regarding the best interests of the children in custody and visitation matters.

Accordingly, and assuming *arguendo* the parties mutually agreed to maintain Plaintiff's statements in confidence, such an agreement would be unenforceable and, therefore, is no basis to support a claim of a confidential relationship.

IMMUNITY

Although no Tennessee court has held that a psychologist ordered to conduct an assessment of a family for the purpose of aiding the court in determinations of custody and visitation is entitled to immunity, the federal courts and numerous state courts have afforded immunity.

> The doctrine of absolute judicial immunity, which first arose under common law, has been extended to persons, other than judges, performing judicial or quasi judicial functions. *LaLonde v. Eissner*, 405 Mass. 207, 539 N.E.2d 538, 540 (1989); *Howard v. Drapkin, 222 Cal.App.3d 843, 271 Cal.Rptr. 893, 901 (1990); Harris v. Brustowicz*, 671 So.2d 440, 443 (La.Ct.App.1995).

Miller v. Niblack, 942 S.W.2d 533, 537 (Tenn. Ct. App. 1996). In *LaLonde*, a mother and child brought suit against the court appointed psychiatrist for allegedly conducting a negligent evaluation for the court, the result of which, the mother contended, was a continuation of the father's visitation privileges. *LaLonde*, 539 N.E.2d at 540. Dr. Eissner, the psychiatrist, contended he was entitled to quasi judicial immunity because he had been court appointed. *LaLonde*, 539 N.E.2d at 539. The Massachusetts Supreme Court agreed and afforded the psychiatrist absolute judicial immunity. The court reasoned:

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[3] With regard to public policy our Supreme Court has stated that, "[t]he public policy of the State is to be found in its Constitution, its laws, its judicial decisions and the applicable rules of common law. *Nashville Ry. & Light Co. v. Lawson*, 144 Tenn. 78, 229 S.W. 741 (Tenn.1921), *Home Beneficial Association v. White*, 180 Tenn. 585, 177 S.W.2d 545, 546 (Tenn.1944).

> Courts have expanded the doctrine of absolute judicial immunity to include these "quasi judicial" officers because they are involved in an integral part of the judicial process and thus must be able to act freely without the threat of a law suit. *Robichaud v. Ronan*, 351 F.2d 533, 535-538 (9th Cir.1965). When acting at a judge's direction, these "quasi judicial" officers enjoy the same absolute immunity for their conduct. *Temple v. Marlborough Div. of the Dist. Court Dep't*, 395 Mass. at 133, 479 N.E.2d 137 (1985).
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> Most jurisdictions have held that common law immunity protects persons appointed by a court to conduct a medical or psychiatric evaluation and render an opinion or to provide other expert assistance because of their integral relation to the judicial process. *See, e.g., Moses v. Parwatikar*, 813 F.2d 891, 892 (8th Cir.), *cert. denied*. 484 U.S. 832, 108 S.Ct. 108, 98 L.Ed.2d 67 (1987) (psychiatrist); *Myers v. Morris*, 810 F.2d 1437, 1467 (8th Cir.), *cert. denied*, 484 U.S. 828, 108 S.Ct. 97, 98 L.Ed.2d 58 (1987) (therapists in child sexual abuse case); Burkes v. Callion, supra [433 F.2d 318] at 319 [(9th Cir.1970)] (psychiatrists); *Bartlett v. Weimer*, 268 F.2d 860, 862 (7th Cir.1959), *cert. denied*, 361 U.S. 938, 80 S.Ct. 380, 4 L.Ed.2d 358 (1960) (physicians); *Williams v. Rappeport*, 699 F.Supp. 501, 507-508 (D.Md.1988) (psychiatrist and psychologist appointed during custody determination); *Miner v. Baker*, 638 F.Supp. 239, 241 (E.D.Mo.1986) (psychiatrist); *Doe v. Hennepin County*, 623 F.Supp. 982, 986 (D.Minn.1985) (therapists in child sexual abuse case); *Phillips v. Singletary*, 350 F.Supp. 297, 300 (D.S.C.1972) (physician); *Bartlett v. Duty*, 174 F.Supp. 94, 97-98 (N.D.Ohio 1959) (physician). These courts recognized that "[p]sychologists and other experts would be reluctant to accept court appointment if they thereby opened themselves to liability for their actions in this official capacity." *Doe v. Hennepin County*, supra at 986. *Moses v. Parwatikar*, supra at 892. Also, human nature indicates that court-appointed experts, faced with the threat of personal liability, will be less likely to offer the disinterested objective opinion that the court seeks. *Id*.

LaLonde, 539 N.E.2d at 540-41.

In the child custody case of *Howard v. Drapkin*, cited earlier in *Miller v. Niblack*, the court held that a psychologist ordered by the court to evaluate the family and render her findings and recommendations was entitled to absolute quasi judicial immunity in a suit by the parents alleging, inter alia, professional negligence. *Howard*, 271 Cal.Rptr. at 905. The court held the reason for granting immunity was "to promote uninhibited and independent decision making." *Miller*, 942 S.W.2d at 538 (quoting *Howard*, 271 Cal.Rptr. at 898).

The United States Sixth Circuit Court of Appeals has afforded immunity to court appointed psychologists. *Kurzawa v. Mueller*, 732 F.2d 1456, 1458 (6th Cir. Mich. 1984). The *Kurzawa* court applied the principles espoused in the United States Supreme Court opinion of *Briscoe v. LaHue*, 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983). *Briscoe* held that witnesses and other persons

who are integral parts of the judicial process are entitled to absolute immunity. The conclusion was reached by the Court after it examined "the legislative history of the Civil Rights Acts of 1866 and 1871 and determined that nothing in their legislative histories indicated a congressional intent to create an exception to the common law concepts of immunity normally afforded to witnesses, judicial and quasi-judicial officers." *Kurzawa*, 732 F.2d at 1459. The Supreme Court explained: "the common law provided absolute immunity from subsequent damages liability for all persons-governmental or otherwise-who were integral parts of the judicial process." *Briscoe,* 460 U.S. at 335, 103 S.Ct. at 1115-1116. The Court reasoned that "a person who performs these functions must be able to make a decision to move forward and be free from intimidation and harassment."[4] *Kurzawa,* 732 F.2d at 1458 (citing *Butz v. Economou*, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978)).

The *Kurzawa* court went on to acknowledge that immunity has been extended to protect witnesses, court appointed psychologists, and guardians ad litem who are sued in their individual capacities. *Kurzawa,* 732 F.2d at 1458; *see also Fullman v. Graddick*, 739 F.2d 553, 564 (11th Cir.1984) (recognizing witness immunity for claims arising from a witness' trial testimony); *Strength,* 854 F.2d at 423-25 (recognizing immunity for pretrial testimony); *see also Dolin on Behalf of N.D. v. West*, 22 F.Supp.2d 1343, 1350 (M.D.Fla. 1998) (holding the alleged conduct of defendants Dr. Day, Dr. Sutherlin, and Mr. Sims was pursuant to their respective roles as either a court appointed psychologist or guardian ad litem and each of them enjoyed absolute immunity from the plaintiff's claims).

As the authorities cited above establish, the federal courts and numerous state courts have expanded the doctrine of absolute judicial immunity to include persons serving as an integral part of the judicial process on the reasoning that these persons must be able to act freely without the threat of a law suit. These authorities have convinced us the doctrine of immunity in Tennessee should protect a psychologist appointed by the court to assist the court in the evaluation and assessment of a family in a domestic dispute so the psychologist will be free from intimidation and harassment by a dissatisfied litigant. As the other courts have warned, if these psychologists are faced with the threat of personal liability, the court-appointed psychologist may be less likely to engage in frank discussions with the family he or she is directed to evaluate and less willing to offer the disinterested objective opinion the court seeks. For these reasons we find it appropriate to extend immunity to psychologists who are sued for services rendered in their capacity as agents of the court.

Therefore, Defendant was entitled to summary judgment as a matter of law.

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[4] As the *Karwaza* court explained, "[m]uch of the Supreme Court's decision in *Briscoe* was based upon its decisions in *Butz v. Economou*, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978) and *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976)." *Kurzawa*, 732 F.2d at 1458. In *Butz*, the Supreme Court held that agency officials who perform functions analogous to a prosecutor are entitled to absolute immunity, reasoning That a person who performs these functions must be able to make a decision to move forward and be free from intimidation and harassment. This was the same underlying consideration in *Imbler* for the Court's decision that prosecutors are entitled to immunity. *Kurzawa*, 732 F.2d at 1458.

PLAINTIFF DENIES MAKING THE STATEMENT DISCLOSED

There is another fatal flaw in Plaintiff's case, one which we find most ironic. The gravamen of this action is that Defendant allegedly disclosed to Ms. Chambers a statement Defendant made in confidence; yet, Plaintiff now denies making the statement. The irony being, if Plaintiff never made the statement to Defendant, how could Defendant wrongfully disclose that which was not said.[5]

Although the parties dispute exactly what Defendant said to Ms. Chambers, in his discovery deposition Plaintiff insists he never told Defendant that he knew where his ex-wife was living. Defendant is in full agreement with Plaintiff on this fact, the fact being Plaintiff never told Defendant he knew where Ms. Chambers lived. Thus, it is undisputed that Plaintiff did not tell Defendant that which Defendant allegedly communicated to Ms. Chambers. The parties agreement notwithstanding, Plaintiff complains that Defendant told Ms. Chambers Plaintiff knew where she was living and doing so was a breach of a confidential communication that was never made.

While there may or may not have been a viable cause of action against Defendant for the alleged statement to Ms. Chambers about what Plaintiff did or did not know about her whereabouts, the fact is undisputed that Plaintiff did not make the statement that Defendant is alleged to have stated to Ms. Chambers. Therefore, there was no breach of a communication, confidential or otherwise.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Abdol Ghayoumi.

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FRANK G. CLEMENT, JR., JUDGE

[5]The argument conjures up memories of the circuitous question: If a tree falls in the forest and no one hears it fall, did it make a sound?