

IN THE UTAH COURT OF APPEALS

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Michael Strand and Cari Allen,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiffs and Appellants,)	
)	Case No. 20060853-CA
v.)	
)	F I L E D
Diana Telfer,)	(April 12, 2007)
)	
Defendant and Appellee.)	2007 UT App 121

Third District, Salt Lake Department, 060910816
The Honorable Joseph C. Fratto Jr.

Attorneys: Michael Strand and Cari Allen, Bountiful, Appellants
 Pro Se
 Mark L. Shurtleff and J. Clifford Petersen, Salt Lake
 City, for Appellee

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Michael Strand and Cari Allen appeal from the district court's order dismissing their complaint against Diana Telfer. Strand and Allen claim that the district court erred in concluding that Telfer was immune from suit under the judicial proceeding privilege. We affirm.

Generally, "judges, jurors, witnesses, litigants, and counsel involved in a judicial proceeding have an absolute privilege against suits alleging defamation." Krouse v. Bower, 2001 UT 28, ¶8, 20 P.3d 895. Utah courts have developed a three part test to determine whether a particular statement qualifies for protection under this judicial proceeding privilege. See id. "To establish the judicial proceeding privilege, the statements must be (1) made during or in the course of a judicial proceeding; (2) have some reference to the subject matter of the proceeding; and (3) be made by someone acting in the capacity of judge, juror, witness, litigant, or counsel." Id. (quotations and citation omitted). Here, the comments made by Telfer satisfy the judicial proceeding privilege test.

First, there is no question that the statements of which Strand and Allen complain were made during the course of a judicial proceeding. The alleged defamatory statements were made during a divorce proceeding between Rex and Renee Strand. The fact that Strand and Allen were not parties to that action is irrelevant.

Second, the statements Strand and Allen allege are defamatory were related to the subject matter of the proceeding. Specifically, Telfer, as guardian ad litem for the children of Rex and Renee Strand, filed a motion for a temporary restraining order, arguing that it was not in the best interest of the children to have frequent contact with Strand and Allen or to stay in their home while they visited their father, who was living with Strand and Allen at the time.¹ As such, Telfer argued that Renee Strand should have temporary custody pending resolution of the divorce action. The custodial situation between parties to a divorce action and the welfare of their children are certainly relevant to the divorce proceeding. Therefore, Telfer satisfied this element of the test.

Finally, there is also no question that the third element of the test is satisfied. The statements were made in a pleading to the court by someone acting in the capacity of a judge, juror, witness, litigant, or counsel. Telfer made the statements acting in her capacity as counsel for the children of Rex and Renee Strand. Therefore, Telfer's statements satisfied all three elements of the judicial proceeding privilege test, and she was entitled to immunity from the claims filed by Strand and Allen. See Cline v. State, 2005 UT App 498, ¶36, 142 P.3d 127 (concluding that child welfare worker who testified in court was protected under the judicial proceeding privilege).

However, Strand and Allen allege that Telfer lost her immunity because she excessively published the allegedly defamatory statements. See Krouse, 2001 UT 28 at ¶15 (stating that the "judicial proceeding privilege may be lost due to excessive publication"). Specifically, they argue that Telfer should have reported any allegations of abuse to the appropriate authorities under Utah Code section 62A-4a-403, thereby making the allegations confidential. By failing to do so, they opine that Telfer excessively published the allegedly defamatory statements by including them in her memorandum to the district court. The judicial proceeding privilege is separate and distinct from any statutory scheme for reporting child abuse.

¹The allegations set forth in Telfer's motion were based upon the affidavits of two individuals related to both Michael Strand and Rex Strand.

Accordingly, the dictates of that statutory scheme are inapplicable in determining whether the judicial proceeding privilege applies. Cf. Cline, 2005 UT App 498 at ¶30 (stating that statutory scheme concerning child abuse or neglect reporting does not create a private right of action). Therefore, because Telfer's statements were protected by the judicial proceeding privilege, the district court correctly dismissed Strand and Allen's complaint for failing to state a claim for which relief could be granted.

Affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge