

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. 20061048-CA
) v. )	
) F I L E D	
<u>Renee Strand</u> , et al., ) (July 27, 2007)	
)	
Defendants and Appellee. )	2007 UT App 256

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Second District, Farmington Department, 060700187  
The Honorable Michael G. Allphin

Attorneys: Cari Allen and Michael Strand, Bountiful, Appellants  
            Pro Se  
            Mary C. Corporon and Allison R. Librett, Salt Lake  
            City, for Appellee

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Before Judges Billings, Orme, and Thorne.

PER CURIAM:

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

Although not entirely clear from the pleadings, it appears that Strand and Allen allege that the district court erred because: (1) Appellee submitted an affidavit that did not conform with Utah Code section 62A-4a-403, see Utah Code Ann. § 62A-4a-403 (2006); and (2) Strand and Allen were not parties to any judicial action when the affidavit was filed with the trial court. These arguments were specifically addressed and rejected in this court's decision in Strand v. Telfer, 2007 UT App 121 (per curiam) (mem.).

In Telfer, this court noted that "'judges, jurors, witnesses, litigants, and counsel involved in a judicial proceeding have an absolute privilege against suits alleging defamation.'" Id. at ¶2 (quoting Krouse v. Bower, 2001 UT 28, ¶8,

20 P.3d 895). Telfer then recited the three-part test utilized 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." (quoting Krouse, 2001 UT 28 at ¶8)).

In Telfer, we ruled that "[t]he 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." Id. at ¶3. Next, we held that "[t]he custodial situation between parties to a divorce action and the welfare of their children are certainly relevant to the divorce proceeding." Id. at ¶4. Third, we held that the "statements were made in a pleading to the court by someone acting in the capacity of a judge, juror, witness, litigant, or counsel." Id. at ¶5. Each of these holdings apply equally to this case. Therefore, Appellee'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.

In addition, in Telfer we specifically rejected Strand and Allen's argument that any allegations of abuse should have been reported to the appropriate authorities under Utah Code section 62A-4a-403. "The judicial proceeding privilege is separate and distinct from any statutory scheme for reporting child abuse. Accordingly, the dictates of that statutory scheme are inapplicable in determining whether the judicial proceeding privilege applies." Id. at ¶6. Thus, the district court correctly dismissed Strand and Allen's complaint for failing to state a claim for which relief could be granted.

Affirmed.

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Judith M. Billings, Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge