IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ADIL LAHRICHI, REGINE CSIPKE, T.L., M.L., Y.L., A.L., and Y.L.,	)	No. 65144-7-I
Appellants,	)	DIVISION ONE
AZIZA BENAZZOUZ,	)	
Plaintiff,	)	
v.	)	
KEELIN A. CURRAN, ZAHRAA V. WILKINSON, MOLLY M. DAILY, STOEL RIVES, LLP, TIMOTHY LONDERGAN, RALUCA DINU, DAN JIN, HENRY HU, HANN WEN GUAN, GIGOPTIX, and MICROVISION,	)	UNPUBLISHED OPINION FILED: October 31, 2011
Respondents,	)	
THOMAS D. MINO and TIMOTHY PARKER,	)	
Defendants.	)	

Becker, J. — An attorney, witness, or party has absolute immunity for actions taken during the course of litigation, provided that the actions were performed in the course of an earlier judicial proceeding and were pertinent to or

material to the relief sought in that proceeding. Because respondents were immune from the suit brought by appellants, the trial court correctly dismissed it.

Adil Lahrichi was employed by Lumera Corporation as vice president of technology development. Thomas Mino was Lumera's chief executive officer. A related technology company, Microvision, provided support to Lumera. Lumera terminated Lahrichi's employment in 2002. In 2004, Lahrichi sued Lumera, Mino, and Microvision in superior court for unlawful discrimination. The defendants removed the case to the United States District Court for the Western District of Washington. The federal district court dismissed Lahrichi's suit on summary judgment in March 2006. After at least one limited remand to the district court, the Ninth Circuit Court of Appeals affirmed the dismissal in 2011.

In April 2007, Lahrichi and members of his family brought this case in superior court against the defendants, their attorneys, and witnesses involved in the discrimination case. The complaint named attorneys Keelin Curran, Zahraa Wilkinson, and Molly Daily, along with their law firm Stoel Rives LLP, as defendants. Witnesses named as defendants included former employees of Lumera Timothy Londergan, Raluca Dinu, Dan Jin, Henry Hu, and Hann Wen Guan. The complaint also named companies Microvision and GigOptix. According to the complaint, GigOptix is a company that merged with Lumera in 2009.

The complaint contained a long list of legal theories, alleging:

> violation of Plaintiff's privacy, intentional and negligent dissemination of their information, libel and defamation, intentional misrepresentation of information to inflict harm on Plaintiffs,

> conspiracy to defame and harm Plaintiffs, breach of contract, breach of trust, exploitation, negligence and infliction of emotional distress, bad faith, fraud, malpractice, obstruction of the course of justice, perjury, intentional and malicious acts to harm Plaintiffs, misappropriation of others' identity to inflict harm and obstruct justice, exploitation of privileges and trust to inflict harm on Plaintiffs, and intentional and bad faith acts to prevent Plaintiffs to mitigate ongoing damages.

The complaint does not specify what claims are made against which defendants.

The complaint also contains approximately 80 numbered paragraphs of factual allegations. The attorney defendants characterize the allegations as falling into the following categories of alleged wrongful acts: (1) referring to evidence protected by a mediation confidentiality agreement or protective orders in depositions, and including such evidence in pleadings; (2) introducing defamatory evidence; (3) abusive conduct during depositions; (4) tampering with or concealing evidence; (5) rehearsing questions with witnesses before depositions; (6) delaying the course of litigation and filing frivolous motions; and (7) impersonating appellants' counsel while interviewing employees of the defendant employer. While Lahrichi disagrees with this characterization of his complaint, we find it to be an accurate and helpful summary.

The defendants moved in federal court to enjoin the action. They argued that the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283, authorized the district court to enjoin the action in order to protect or effectuate its judgment. The superior court stayed the case pending a decision from federal court.

The federal court denied the requested injunction in November 2009. The

court noted in its order that it was "easy to understand the attorneys' frustration in this case, because litigation immunities will likely shield them from most tort liability. But the Court's prognostications about the merits of Lahrichi's state-court lawsuit are unequivocally outside the scope of the issues presented here."[1]

After the superior court lifted the stay on Lahrichi's lawsuit, the defendants moved to dismiss under CR 12(b)(6). The defendants filed three separate motions to dismiss, one from the attorneys, a second from GigOptix and the witnesses, and a third from Microvision. All the defendants contended that the litigation privilege barred the claims against them. GigOptix and Microvision additionally asserted the defense of the statute of limitations.

The court granted the motions to dismiss after hearing argument on February 5, 2010. Lahrichi appeals.

We review de novo the trial court's dismissal decision under CR 12(b)(6) for failure to state a claim upon which relief can be granted. Jeckle v. Crotty, 120 Wn. App. 374, 380, 85 P.3d 931, review denied, 152 Wn.2d 1029 (2004). Such dismissals are appropriate only if it appears beyond a reasonable doubt that no facts exist that would justify recovery. Jeckle, 120 Wn. App. at 380. We accept as true the allegations in the plaintiffs' complaint and the reasonable inferences that can be drawn from the allegations. Jeckle, 120 Wn. App. at 380. Whether immunity applies is a question of law that is reviewed under the de novo standard. See Wynn v. Earin, 163 Wn.2d 361, 369, 181 P.3d 806 (2008)

[1] Clerk's Papers at 154 n.6.

(reviewing witness immunity issue de novo).

As a general rule, witnesses in a judicial proceeding are absolutely immune from suit based on their testimony. Bruce v. Byrne-Stevens & Assocs. Eng'rs, Inc., 113 Wn.2d 123, 125, 776 P.2d 666 (1989). This rule of absolute immunity extends not only to witnesses, but also to the parties and attorneys involved in the proceeding. See McNeal v. Allen, 95 Wn.2d 265, 267, 621 P.2d 1285 (1980); Jeckle, 120 Wn. App. at 386. The defense of absolute privilege or immunity avoids all liability. McNeal, 95 Wn.2d at 267. Thus, "allegedly libelous statements, spoken or written by a party or counsel in the course of a judicial proceeding, are absolutely privileged if they are pertinent or material to the redress or relief sought, whether or not the statements are legally sufficient to obtain that relief." McNeal, 95 Wn.2d at 267. "A statement is pertinent if it has some relation to the judicial proceedings in which it was used, and has any bearing upon the subject matter of the litigation." Demopolis v. Peoples Nat'l Bank of Wash., 59 Wn. App. 105, 110, 796 P.2d 426 (1990).

This rule protects the integrity of the courts. As the Supreme Court of the United States has explained in the context of witness immunity, the policy of the immunity is well established. It exists to further the truth-seeking function of judicial proceedings:

> The immunity of parties and witnesses from subsequent damages liability for their testimony in judicial proceedings was well established in English common law. . . .
>
> In the words of one 19th-century court, in damages suits against witnesses, "the claims of the individual must yield to the dictates of public policy, which requires that the paths which lead to the ascertainment of truth should be left as free and

> unobstructed as possible." A witness's apprehension of subsequent damages liability might induce two forms of self-censorship. First, witnesses might be reluctant to come forward to testify. And once a witness is on the stand, his testimony might be distorted by the fear of subsequent liability.

Briscoe v. LaHue, 460 U.S. 325, 330-33, 103 S. Ct. 1108, 75 L. Ed. 2d 96 (footnotes and citations omitted), cert. denied, 460 U.S. 1037 (1983). Similarly, applying the privilege to attorneys is "based upon a public policy of securing to them as officers of the court the utmost freedom in their efforts to secure justice for their clients." McNeal, 95 Wn.2d at 267.

The immunity is generally applied to bar suits alleging defamation. See Restatement (Second) of Torts §§ 586-588 (1977). The immunity, however, is not limited to defamation. T. Leigh Anenson, *Absolute Immunity from Civil Liability: Lessons for Litigation Lawyers*, 31 Pepp. L. Rev. 915, 927-28 (2004). As other courts have done, Washington courts have applied the privilege to bar other torts based on acts pertinent to or material to judicial proceedings. For example, in Jeckle, the plaintiff sued attorneys who had sued him before. Because the plaintiff's tort claims of interference with a business relationship, outrage, infliction of emotional distress, and civil conspiracy were based on acts related to and pertinent to earlier lawsuits, we held the claims were properly dismissed under CR 12 (b)(6). Jeckle, 120 Wn. App. at 386.

In this case, many of the acts Lahrichi complains of include conduct occurring during depositions, mediation, and court hearings. For example, Lahrichi alleges that during his deposition, Curran abused, exploited, humiliated,

and disgraced him, falsely accused him, pressured him, and attacked his character and integrity. Because the conduct complained of was related to and pertinent to the previous proceeding in federal court, recovery in tort based on such conduct is precluded. Similarly barred are Lahrichi's claims that the defendants violated privacy rights by disclosing protected private or confidential information through actions taken during the federal lawsuit.[2] Filing documents with the court are actions pertinent to or related to a judicial proceeding.

Lahrichi contends the filing of pleadings containing private information concerning himself and his family is conduct that supports claims for breach of

---

[2] The allegations include:

> 40. Parties signed a contract before they exchanged discovery. It required parties and counsel to keep certain information of parties confidential . . . .
>
> . . . .
>
> 44. Defendants pushed for an early mediation. Before mediation, parties signed another contract (the "mediation confidentiality agreement"). That contract was in accordance with clear law and court rules. It prohibited parties and their counsel to disclose, use for any purpose, and/or present as evidence information that parties and counsel would provide for mediation outside mediation.
>
> . . . .
>
> 60. Defendants filed pleadings to compel more discovery. They included primarily protected confidential and mediation information . . . .
>
> . . . .
>
> 80. Later, Dr. Lahrichi coincidentally discovered that some of his, his wife's, and minor children's confidential and protected information, mediation information, Defendants' misrepresentations of said information, and Defendants false statements and lies about him disseminated to the public.
>
> . . . .
>
> 82. . . . In many of their pleadings Defendants were admitting that the confidential information they were filing unsealed was confidential. As such Defendants repeatedly and admittedly violated the protective orders, privacy laws, court rules, the contracts they signed with Dr. Lahrichi including the mediation confidentiality agreement, and the contract they made before deposition . . . .

Clerk's Papers at 8, 11, 14-15.

contract as well as tort claims. He does not explain why the litigation privilege does not bar claims for breach of contract as well as tort claims, where the alleged disclosure meets the test of pertinence or materiality. The confidentiality agreements referred to by the complaint were all related to the employment discrimination lawsuit in federal courts, as were the pleadings allegedly filed in violation of these agreements.

The fact that information is privileged or confidential does not mean the privilege is inapplicable. See Kearney v. Kearny, 95 Wn. App. 405, 415, 974 P.2d 872 (questioning whether defendants, including an attorney, could be subject to civil liability under privacy act for offering declarations or testifying about private conversations), review denied, 138 Wn.2d 1022 (1999). What matters is whether the rationales underlying the privilege support its application. In this case, they do. The pleadings were communications with a federal court, not communications with third parties.

An attorney's failure to file confidential information under seal as required by a protective order may be a basis for sanctions or professional discipline. See Wynn, 163 Wn.2d at 379-80 (immunity rule does not bar professional discipline). Lahrichi does not cite authority supporting his argument that such conduct is sufficient to state an actionable claim for breach of contract.

Lahrichi contends that the companies and the law firm are vicariously liable for the acts of their agents, so that the litigation privilege does not extend to them. In the context of immunities of governmental officials, an agent's

immunity from civil liability does not establish a defense for the principal. Savage v. State, 127 Wn.2d 434, 439, 899 P.2d 1270 (1995). But Lahrichi cites no authority indicating that an employer or law firm can be held liable for acts committed by their employees that are protected by the litigation privilege. In fact, we have applied the litigation privilege to bar claims against both attorneys and their law firms. Jeckle, 120 Wn. App. at 386.

Lahrichi raises various new causes of action that were not pleaded in his complaint. These include claims for violations of the Uniform Health Care Information Act, chapter RCW 70.02, and the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-6. Because he raises these claims for the first time on appeal, we do not consider them. RAP 2.5; Sneed v. Barna, 80 Wn. App. 843, 847, 912 P.2d 1035, review denied, 129 Wn.2d 1023 (1996). In any event, the statutory claims fail. The Uniform Health Care Information Act imposes liability only upon health care providers. RCW 70.02.170; Jeckle, 120 Wn. App. at 385. The defendants are not health care providers. The Health Insurance Portability and Accountability Act does not provide a private right of action. See, e.g., Acara v. Banks, 470 F.3d 569, 571-72 (5th Cir. 2006).

Because we conclude that the litigation privilege barred all of Lahrichi's claims against all of the parties, we do not address whether his claims against some of the parties were also barred by any statute of limitation.

Lahrichi finally contends the trial court erred by refusing him a chance to pursue discovery and amend the complaint. The record does not support this contention. At the hearing on the motions to dismiss, Lahrichi made vague requests for more time, but the record shows that he agreed to the scheduled hearing, did not move to continue it, and did not move to amend the complaint under procedures outlined in the court rules. Pro se litigants are bound by the same rules of procedure and substantive law as attorneys. Westberg v. All-Purpose Structures Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

Affirmed.

Becker, J.

WE CONCUR:

Spearman, J.

Cox, J.