

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 14, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0293

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

David C. Kanz,

Plaintiff-Appellant,

v.

**Catherine M. Doyle and
Beth Kushner,**

Defendants-Respondents.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL J. SKWIERAWSKI, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and LaRocque, JJ.

PER CURIAM. David C. Kanz appeals from an order dismissing his defamation claim against Catherine M. Doyle and Beth Kushner. He claims the trial court erred in granting Doyle's motion to dismiss because the alleged defamatory statements were not relevant to the judicial proceeding and,

therefore, not absolutely privileged.¹ Because the alleged defamatory statements are absolutely privileged because they were made in the context of a judicial proceeding, we affirm.²

I. BACKGROUND

Kanz, an employee of WVCY, was subpoenaed to testify in a separate judicial proceeding, *Doyle v. WVCY*, Milwaukee Circuit Court, No. 93-017906, which alleged that WVCY defamed Doyle. Doyle filed a motion seeking to amend the complaint in *Doyle* in order to add more claims against WVCY based on Kanz's actions.

Based on this document, Kanz filed a defamation complaint alleging that the following seven statements constituted libel: (1) "In Exhibit A, Mr. Kanz accuses [Doyle] of a number of serious wrongdoings. Mr. Kanz further warns [Doyle] that she faces eternal damnation if she does not accept his version of appropriate religious belief"; (2) "In Exhibit A, Mr. Kanz repeats one of the defamatory statements for which his employer has been sued in this action, i.e. that [Doyle] has sought to entangle and influence government officials in her purported advocacy for abortion"; (3) "Mr. Kanz states in Exhibit A that, if [Doyle] does not agree in writing to Mr. Kanz's accusations about her, she will become liable to him, as a member of the Christian community, a Christian Broadcaster and a minister for One Hundred Million Dollars"; (4) Mr. Kanz describes himself in Exhibit A as being in the Country of Wisconsin which he states is not a part of the United States, and purports to act under a common law court system formed recently by a militia group which is the apparent successor to Posse Comitatus"; (5) Exhibit A is particularly threatening in view of its separatist sentiments and proximity in time to the Oklahoma City bombing"; (6) It appears that, in the course of his employment at WVCY, Mr.

¹ Kanz also claims: (1) that the trial court failed to investigate a fraud on the court; and (2) that he should be allowed to "replead" his case. Both of these arguments are raised for the first time on appeal and, therefore, we decline to address them. *First Bank v. H.K.A. Enters., Inc.*, 183 Wis.2d 418, 426-27 n.10, 515 N.W.2d 343, 347 n.10 (Ct. App. 1994) (court of appeals may decline to consider issues raised for the first time on appeal).

² Doyle has filed a motion seeking an award of appellate costs and attorney's fees on the grounds that Kanz's appeal is frivolous. We deny this motion.

Kanz was told a number of false and derogatory things about [Doyle] and that he drafted and sent Exhibit A to [Doyle] in response"; and (7) "Mr. Kanz has continued to engage in bizarre and threatening behavior, and WVCY has continued to acquiesce in it. Mr. Kanz was warned not to communicate with [Doyle]; in response, he promptly sent three cronies to her home at night to serve her with a subpoena he signed. Mr. Kanz has no legal authority to issue subpoenas and apparently did so for no reason other than to upset the plaintiff and her family. He succeeded."

After being served with Kanz's complaint in the instant case, Doyle filed a motion to dismiss on the basis that these statements were made in the context of a judicial proceeding and, therefore, absolutely privileged. The trial court granted the motion dismissing Kanz's complaint. Kanz appeals that decision.

II. DISCUSSION

Whether the facts alleged in a complaint are sufficient to state a claim for relief, and whether the statements alleged in Kanz's complaint are absolutely privileged are questions of law that we review *de novo*. *Busse v. Dane County Regional Planning Comm'n*, 181 Wis.2d 527, 534, 511 N.W.2d 356, 358 (Ct. App. 1993); *Rady v. Lutz*, 150 Wis.2d 643, 647, 444 N.W.2d 58, 59 (Ct. App. 1989). We have reviewed Kanz's complaint and conclude that these statements are absolutely privileged. Accordingly, he cannot pursue any action based on these statements and it was proper to dismiss his complaint.

Statements made in the course of judicial proceedings are absolutely privileged and do not give rise to liability for defamation. *Larson v. Zilz*, 151 Wis.2d 637, 642, 445 N.W.2d 699, 701 (Ct. App. 1989). The only requirements necessary to invoke the absolute privilege are: (1) the statements must be made in a procedural context that is recognized as affording the privilege; (2) the statements must be made by and to persons involved in and closely connected to the proceeding; and (3) the statements must be relevant to the proceeding. *Rady*, 150 Wis.2d at 647-49, 444 N.W.2d at 59-60.

Kanz does not dispute that the first two requirements are satisfied under the facts present in this case. He argues only that the statements are not privileged because they were not relevant to the judicial proceeding. We disagree.

To be relevant in this context, the statements must be of a general frame of reference and relation to the subject matter of the proceeding. *Spoehr v. Mittelstadt*, 34 Wis.2d 653, 663, 150 N.W.2d 502, 506 (1967). Moreover, the statements should be liberally construed in determining relevance, *id.* at 661-62, 150 N.W.2d at 505, and any doubt as to relevance must be resolved in favor of finding the statement privileged. *Rady*, 150 Wis.2d at 650, 444 N.W.2d at 60.

The statements referenced above clearly bear some general frame of reference and relation to the *Doyle v. WVCY* case. Doyle is seeking to amend her complaint based on the alleged conduct of WVCY's employee, Kanz. The statements merely describe conduct Kanz allegedly engaged in which may support an additional cause of action against WVCY. Because these statements are relevant to a judicial proceeding, they cannot form the basis for Kanz's defamation claim. They are absolutely privileged. Accordingly, the trial court acted properly in dismissing Kanz's complaint.³

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

³ The trial court's award of costs and attorney's fees is also affirmed. Kanz does not raise this issue until his reply brief and, even then, the argument is not developed. Therefore, we decline to consider it. See *W.H. Pugh Coal Co. v. State*, 157 Wis.2d 620, 634, 460 N.W.2d 787, 792 (Ct. App. 1990)