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Spencer v. Klementi, 136 Nev. Adv. Op. 35 (July 9, 2020)

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Summary

In an opinion drafted by Justice Cadish, the Nevada Supreme Court considered whether public-comment periods of planning-commission and improvement-district meetings are quasi-judicial proceedings. The Court concluded that public-comment motions of the meetings are not quasi-judicial given that they lacked the basic due-process protections that are normally found in a court of law.

Background

This case arose out of a neighborly dispute that began when appellant built a fence around his property. Respondents complained about appellant's fence at the Douglas County Planning Commission meetings. At a later board meeting, respondents alleged that Spencer, who operated the District's snowplow, retaliated by blocking their driveways with snow and used to snowplow to cover one of the respondents with snow.

The dispute later culminated when appellant allegedly battered the respondent. Respondents then again complained about Spencer at the Douglas County Planning Commission meetings. Soon after, the district attorney's office charged appellant with a misdemeanor battery, and later enhanced the misdemeanor battery to felony elder abuse and added two more charges of elder abuse.

Respondent filed a civil complaint against appellant, seeking recovery for personal injuries. Appellant then filed a malicious prosecution counterclaim, alleging that they falsely accused him of criminal activity. One of the respondents then moved for summary judgment on the malicious prosecution counterclaim. After the district court heard the deputy district attorney testify that the respondent did not influence her decision to initially charge and prosecute the appellant, the district court grants the respondent's motion for summary judgment and granted attorney's fees.

Next, the district court granted respondents moved for summary judgment on the remaining malicious-prosecution counterclaims. The district court found that respondents' statements were protected under the judicial-proceeding privilege, which precludes liability for defamation. Appellant challenged the district court's summary judgment orders.

Discussion

Summary judgment in favor of malicious-prosecution counterclaim

Appellant argued that there was a genuine issue of material fact about respondent's participation in his criminal prosecution. The Court reviewed the lower court's summary judgment de novo.

Respondent argued that there was insufficient evidence to establish any of the elements necessary to prevail on a malicious-prosecution claim. Respondent attached various evidence that successfully pointed out that there was insufficient evidence to support appellant's counterclaim and met her burden as the moving party for summary judgment. However, in his

¹ By Nina Hebibovich.

opposition, appellant argued that respondent was actively involved in the continuation of his criminal prosecution, and therefore met Malicious-prosecution claim element. However, the Court held that the respondent calling the police after witnessing potentially illegal behavior does not establish that she played an active role in the district attorney's decision to amend the criminal complaint. Thus, appellant failed to meet his burden of showing a genuine dispute of material fact, and the Court affirmed district court's summary judgement.

Summary judgement in favor of respondents' defamation counterclaims

Appellant argued that Nevada has never extended the absolute privilege that attaches to judicial and quasi-judicial proceedings to statements made during the public-comment period of county meetings. The Court reviewed the separate summary judgments de novo.

The Court upheld that none of respondents' statements were defamatory or untrue, but that the judicial-proceedings privilege nonetheless protected their statements. The only statements that respondents did make were all statements of fact. Appellant did not present any evidence that the statements made about snow removal were untrue or that there were additional defamatory statements. Her merely alleged that the respondents did not have firsthand knowledge of such accusations. However, general allegations are insufficient to survive summary judgment.

However, the district court did err in granting summary judgement to two of the respondents. At a public meeting discussing snow removal, two of the respondents alleged that they saw the appellant speeding and put the blade down to splash one of the respondents' face. However, unlike the other respondents, these respondents did not argue that their statements were true or otherwise defamatory. Instead, they argued that the judicial-proceedings privilege, which provides absolute immunity for statement made during judicial and quasi-judicial proceedings, protected their statements. The Court addressed whether the judicial-proceedings privilege applies in this context where respondents did not address the elements of appellant's defamation counterclaim.

Prior to this case, the Nevada Supreme Court never expressly defined a quasi-judicial proceeding in the context of defamation suits. Thus, the Court clarified that a quasi-judicial proceeding in the context of defamation suits is one that provides basic due-process protections parallel to those provided in a court of law. To qualify as a quasi-judicial proceeding for purposes of absolute privilege a proceeding, at minimum, must: allow an opportunity to present and rebut evidence and witness testimony, require that such evidence and/or testimony is presented upon oath, and allow both parties to cross examine, impeach, or confront witnesses.²

Here, the public comment period of the county meetings provided parties the opportunity to present personal testimony, however, did not require an oath or affirmation. Additionally, while both parties could speak freely during the public-comment periods, neither was subject to cross-examination or impeachment. Given that these public-comment periods lacked basic due-process protections typically found in a court of law, they were not quasi-judicial.

Moreover, the Court did not apply the judicial-proceedings privilege based solely on public policy. Statements made during proceedings that lack due-process protection typically do not engender just or reliable outcomes. Thus, based on the fact that the public-comment periods lacked basic due-process protections, the Court concluded that public policy considerations do not weight in favor of applying the judicial-proceedings privilege in this matter.

² See *Knox v. Dick*, 99 Nev. 514, 517-18, 665 P.2d 267, 269-70 (1983).

The Court concluded that the absolute privilege that typically attaches to judicial and quasi-judicial proceedings does not apply in this case, and thus reversed the district court's order granting summary judgment for respondents.

Attorney fees under NRS 18.010(2)(b)

Under, NRS 18.010(2)(b)³, the district court awarded respondent's attorney fees after granting her motion for summary judgment on the malicious prosecution counterclaim. Additionally, the court awarded respondents' attorney fees after granting summary judgment on the remaining counterclaims, including the defamation counterclaims. Appellant challenged both awards of attorney fees, which the Court reviewed for abuse of discretion.

The Court affirmed the lower court's ruling that the court did not abuse its discretion when it awarded attorney fees to respondent on the malicious-prosecution counterclaim. NRS 18.010(2)(b)⁴ authorizes an award of attorney fees to respondent given that appellant brought a claim without reasonable ground. It was found that Spencer's malicious-prosecution counterclaim was groundless given that there was probable cause to criminally prosecute him, thus he could not prove a necessary element of his counterclaim.

Conclusion

The Court concluded that meetings that lack basic due-process protections that one would normally find in a court of law are not quasi-judicial. The Court reversed orders that relied exclusively on this privilege. The Court affirmed the district court's grant of summary judgment on appellant's defamation claims that relied on statements that were untrue. Additionally, the Court affirmed appellant's claim on summary judgment regarding malicious-prosecution, given that the district court did not erroneously apply the law.

³ NEV. REV. STAT. 18.010(2)(b).

⁴ *Id.*