

IN THE COURT OF APPEALS OF IOWA

No. 7-209 / 06-1213
Filed April 25, 2007

SHIRLEAN NORTHRUP
a/k/a SHIRLEAN MARTIN,
Plaintiff-Appellant,

vs.

PAMELA JO LEWIS,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs,
Judge.

Plaintiff appeals the district court's grant of summary judgment to
defendant in an action for slander. **AFFIRMED.**

Shirlean Northrup, Cedar Rapids, appellant pro se.

Pamela Jo Lewis of Lewis Law Offices, Cedar Rapids, appellee pro se.

Considered by Vaitheswaran, P.J., and Eisenhauer, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

On January 2, 2006, Shirlean Northrup filed a pro se petition alleging Pamela Lewis had engaged in slander by intentionally making the false statement that Northrup had “improperly touched her children.”¹ Lewis is an attorney and she represents, as the guardian ad litem, an adult ward who is subject to a guardianship. Attorney Kenneth Dolezal contacted Lewis on behalf of Northrup, who sought to gain visitation with the ward.² It was in a conversation between Lewis and Dolezal, in May 2005, that the alleged slanderous statement was made. In January 2006, Dolezal filed an application in the guardianship proceeding for visitation by Northrup.

Lewis filed a pre-answer motion to dismiss, motion for summary judgment, request for sanctions, and motion to quash discovery. Lewis claimed the statement was subject to an absolute privilege because it was made to another attorney in anticipation of legal proceedings. Northrup filed a resistance stating Dolezal’s representation on the visitation issue was not relevant to the present case. She also admitted the statement was made “between attorney and attorney.”

A hearing on the motions was held on April 21, 2006. The district court granted summary judgment to Lewis, finding the statement was protected by an absolute privilege. The court found the statement was a communication made

¹ In our discussion of this case we make absolutely no findings as to whether the alleged slanderous statement was true or false. Also, solely for the sake of our discussion of other issues in this case we will assume the statement was made.

² Northrup is the biological mother of the ward. Her parental rights were terminated on July 26, 1990.

preliminary to a judicial proceeding, and the statement had some relationship to the judicial proceeding. The court determined the motion to quash discovery was moot. The court denied Lewis's request for sanctions.

Northrup filed a request for reconsideration. The district court denied the request for reconsideration. Northrup appealed the district court's decisions.

II. Standard of Review

We review a ruling on a motion for summary judgment for a correction of errors at law. Iowa R. App. P. 6.4. Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the nonmoving party. *Eggiman v. Self-Insured Servs. Co.*, 718 N.W.2d 754, 758 (Iowa 2006).

III. Merits

Northrup claims the district court erred in granting summary judgment to Lewis based on an absolute privilege. She states no judicial proceedings were taking place at the time the statement was made. Northrup points out that the statement was made in May 2005, and Dolezal did not file an application for her in the guardianship case until January 2006.

"An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding" *Kennedy v. Zimmermann*, 601 N.W.2d 61, 64 (Iowa 1999) (citing Restatement (Second) of Torts § 586, at 247 (1977)). This absolute

privilege “is based upon a public policy of securing to attorneys as officers of the court the utmost freedom in their efforts to secure justice for their clients” *Robinson v. Home Fire & Marine Ins. Co.*, 242 Iowa 1120, 1127, 49 N.W.2d 521, 525 (1951). The absolute privilege encourages the open resolution of disputes by removing the cloud of later suits from statements made in judicial proceedings. *Tallman v. Hanssen*, 427 N.W.2d 868, 870 (Iowa 1988).

Conferences and other communications by an attorney preliminary to a judicial proceeding may be protected by the absolute privilege. *Kennedy*, 601 N.W.2d at 65; *see also Robinson*, 242 Iowa at 1127, 49 N.W.2d at 525 (“The publication of defamatory matter by an attorney is protected not only when made in the institution of the proceedings or in the conduct of litigation before a judicial tribunal, but in conferences and other communications preliminary thereto.” (citation omitted)).

In April 2005 Dolezal, on behalf of Northrup, contacted Lewis, as guardian ad litem for the ward, seeking to establish visitation for Northrup with the ward. A telephone conversation ensued between Lewis and Dolezal in May 2005, when the alleged slanderous statement was made. Further letters were sent between Dolezal and Lewis. Lewis informed Dolezal that staff at the institution where the ward resided did not recommend contact with Northrup at that time. Then in January 2006, Dolezal filed for Northrup an application requesting visitation with the ward. The application stated, “A written request for contact through Guardian ad Litem, Pam Lewis, has been denied, apparently based on a false allegation or

assumption that this applicant has allegedly personally sexually abused the ward.”

We find no error in the district court’s conclusion that the statement was made in communications preliminary to judicial proceedings. The fact that several months passed before the application was filed does not change the situation—the communication concerned the exact same matter as the later application filed in a judicial proceeding. The communications between Dolezal and Lewis were preliminary to judicial proceedings, and concerned those proceedings. We determine the communication between two attorneys about a legal matter on behalf of their clients, and which was preliminary to judicial proceedings, was subject to an absolute privilege.

Northrup also claims the district court erred in not granting her discovery requests. We have determined the district court properly granted summary judgment to Lewis on the slander claim brought in this case. For this reason, Northrup’s discovery requests are moot.

We affirm the decision of the district court.

AFFIRMED.