

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Gursky Ragan, P.A., etc., et al. v. Association of Poinciana Villages, Inc., etc.

No. 3D19-0696 · No. No. 3D19-0696 · Decided December 23, 2020

SUMMARY

The Third District Court of Appeal of Florida affirmed final summary judgment for the Association of Poinciana Villages in a defamation action arising from disclosure of a bar complaint attached to a separate replevin complaint. The court held that the absolute litigation privilege applied because the alleged defamatory statements bore some relation to the subject of the replevin proceeding.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Lindsey, J.; Fernandez, J.; Gordo, J.
JURISDICTION	Florida
DECIDED	December 23, 2020
DOCKET	No. 3D19-0696
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order entering final summary judgment for the appellee in a defamation action.
STANDARD OF REVIEW	Not expressly stated; appeal from final summary judgment.
PRECEDENTIAL VALUE	published
PARTIES	Gursky Ragan, P.A., Darrin Gursky, Marnie Ragan v. Association of Poinciana Villages

TOPICS

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PRACTICE AREAS

[defamation](#)[civil procedure](#)[appellate procedure](#)[remedies](#)

QUESTIONS PRESENTED

1. Whether the alleged defamatory statements were sufficiently related or connected to the subject of the separate replevin action to fall within Florida's absolute litigation privilege.
2. Whether the bar complaint privilege applied to the disclosure of the complaint outside the grievance process.

HOLDINGS

1. The absolute litigation privilege barred the defamation action because the alleged defamatory statements bore some relation to or connection with the subject of the replevin action.
2. The bar complaint privilege did not apply because the contents of the complaint were disclosed outside the grievance process; the judgment was affirmed instead on the absolute litigation privilege.

KEY QUOTATIONS

“The law has long recognized that judges, counsel, parties, and witnesses should be absolutely exempted from liability to an action for defamatory words published in the course of judicial proceedings, regardless of how false or malicious the statements may be, as long as the statements bear some relation to or connection with the subject of inquiry.” (at 1)

“In other words, defamatory statements are absolutely privileged when they are (1) published in the course of judicial proceedings and (2) bear some relation to or connection with the subject of inquiry.” (at 1)

“In recognition of the necessity of providing for the free flow of information, however, courts have not imposed a strict relevancy test in determining whether a statement made in the judicial process is entitled to immunity; rather, courts provide for absolute immunity if a statement is made during the course of the proceeding and ‘has some relation to the proceeding.’” (at 2)

FACTUAL BACKGROUND

The underlying defamation claim arose from disclosure of the contents of a bar complaint against Gursky and Ragan. The complaint was disclosed when it was attached to a pleading in a separate replevin action. The appellate court held that the alleged defamatory material bore some relation to the replevin proceeding.

PROCEDURAL HISTORY

Appellants brought a defamation action based on disclosure of the contents of a bar complaint against Gursky and Ragan. The bar complaint was attached to a complaint in a separate replevin action, and the circuit court entered final summary judgment for the Association of Poinciana Villages on the ground that the absolute litigation privilege barred the defamation claim. The Third District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- DelMonico v. Traynor, 116 So. 3d 1205, 1211 (Fla. 2013)

- Tobkin v. Jarboe, 710 So. 2d 975, 976 (Fla. 1998)
- Hope v. Nat'l All. of Postal & Fed. Emps., 649 So. 2d 897, 901 (Fla. 1st DCA 1995)
- Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co., 639 So. 2d 606, 608 (Fla. 1994)
- Myers v. Hodges, 44 So. 357, 362 (Fla. 1907)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed December 23, 2020. Not final until disposition of timely filed motion for rehearing. _____ No. 3D19-0696 Lower Tribunal No. 15-21845 _____ Gursky Ragan, P.A., etc., et al., Appellants, vs. Association of Poinciana Villages, Inc., etc., Appellee. An Appeal from the Circuit Court for Miami-Dade County, Spencer Eig, Judge.

Kluger, Kaplan, Silverman, Katzen and Levine, P.L., and Abbey L. Kaplan, and Ryan Bollman, for appellants. Patsko Law Group, and Joseph T. Patsko (Tampa), for appellee. Before FERNANDEZ, LINDSEY, and GORDO, JJ. LINDSEY, J. Appellants Gursky Ragan, P.A.; Darrin Gursky; and Marnie Ragan appeal an order entering final summary judgment in favor of Appellee Association of Poinciana Villages (“APV”).

The underlying defamation action stems from the disclosure of the contents of a bar complaint against Gursky and Ragan. Disclosure of the bar complaint occurred when it was attached to a complaint in a separate replevin action.

The lower court found that the absolute litigation privilege barred Appellants’ defamation action. We affirm on the sole basis that the alleged defamation bore some relation to the replevin action. “The law has long recognized that judges, counsel, parties, and witnesses should be absolutely exempted from liability to an action for defamatory words published in the course of judicial proceedings, regardless of how false or malicious the statements may be, as long as the statements bear some relation to or connection with the subject of inquiry.” *DelMonico v. Traynor*, 116 So.

3d 1205, 1211 (Fla. 2013). In other words, defamatory statements are absolutely privileged when they are (1) published in the course of judicial proceedings and (2) bear some relation to or connection with the subject of inquiry.

On appeal, Appellants limit their arguments to whether the alleged defamation bears some relation to or connection with the subject of inquiry. 1 We therefore limit our analysis to this inquiry, and we 1 We agree with Appellants that the bar complaint privilege does not apply here because the contents of the complaint were disclosed outside the grievance process.

See *Tobkin v. Jarboe*, 710 So. 2d 975, 976 (Fla. 1998) (“Bar complainants are 2 do not address whether the alleged defamatory statements were published in the course of judicial proceedings. In determining whether a statement bears some relation or connection with the subject inquiry, Florida courts apply a broad standard. See *id.* at 1213 (“[M]uch latitude must be allowed to the judgment and discretion of those who maintain a cause in court when determining what is pertinent.” (quoting *Myers v. Hodges*, 44 So.

357, 362 (Fla. 1907)) (internal quotation marks omitted)); see also *Hope v. Nat’l All. of Postal & Fed. Emps.*, 649 So. 2d 897, 901 (Fla. 1st DCA 1995) (“In recognition of the necessity of providing for the free flow of information, however, courts have not imposed a strict relevancy test in determining whether a statement made in the judicial process is entitled to immunity; rather, courts provide for absolute immunity if a statement is made during the course of the proceeding and ‘has some relation to the proceeding.’” (citing *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins.*

Co., 639 So. 2d 606, 608 (Fla. 1994))). Based solely on this broad standard, we affirm. protected by an absolute privilege in so far as the complainant makes no public announcement of the complaint outside of the grievance process, thus allowing the grievance procedure to run its natural course.”). 3