

NORTH DAKOTA SUPREME COURT

Zutz v. Kamrowski

787 N.W.2d 286 (N.D. 2010) · Decided August 17, 2010

SUMMARY

The North Dakota Supreme Court affirmed dismissal of a defamation action against a contract investigator and investigative agency. Applying Minnesota law, the court held that statements in the investigator’s report to the Marshall County Attorney were subject to an absolute privilege because they were integral to the county attorney’s official investigative and advisory functions. The court also treated the dismissal motion as one for summary judgment because materials outside the pleadings had been submitted and not excluded.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Gerald W. Vande Walle, Chief Justice; Carol Ronning Kapsner; Mary Muehlen Maring; Daniel J. Crothers; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	August 17, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed a district court order dismissing their defamation, negligent defamation, and defamation per se claims against a contract investigator and his investigative agency. Because the parties submitted materials outside the pleadings and the district court did not expressly exclude them, the North Dakota Supreme Court treated the motion to dismiss as one for summary judgment.
STANDARD OF REVIEW	The court reviewed the motion under the summary-judgment standard because matters outside the pleadings were presented and not excluded. Summary judgment is proper when there are no genuine issues of material fact or when resolving disputed facts would not alter the result.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Loren J. Zutz, Elden J. Elseth v. Douglas Kamrowski, RoughRider Legal Support Services, Inc.

TOPICS

defamation

motions to dismiss

summary judgment

interstate disputes

torts

PRACTICE AREAS

torts

defamation

civil procedure

conflict of laws

QUESTIONS PRESENTED

1. Whether the motion to dismiss should be reviewed as a motion for summary judgment because the parties submitted materials outside the pleadings.
2. Whether Minnesota law governed the plaintiffs' defamation claims.
3. Whether statements made by a private contract investigator in an investigative report prepared for a county attorney were protected by an absolute privilege under Minnesota law.
4. Whether the defendants were entitled to dismissal notwithstanding the plaintiffs' allegations that the report contained false and defamatory statements.

HOLDINGS

1. When matters outside the pleadings are presented in response to a motion to dismiss and are not excluded by the district court, the motion must be treated as a motion for summary judgment.
2. Minnesota law governs the plaintiffs' defamation claims.
3. Statements made by a contract investigator in a report to a county attorney, prepared in response to the county attorney's request and as part of the county attorney's official function, are protected by an absolute privilege under Minnesota law.

KEY QUOTATIONS

"We conclude statements in the contract investigator's report to the Marshall County Attorney were part of the function of the Marshall County Attorney and were subject to an absolute privilege under the rationale applicable to the police report in Carradine." (294-95)

"We hold the plaintiffs' allegations regarding alleged defamatory statements in Kamrowski's report are subject to an absolute privilege under Minnesota law for defamation." (295)

FACTUAL BACKGROUND

Loren Zutz and Elden Elseth were appointed members of a Minnesota watershed district and investigated what they believed were financial improprieties in the district's operations. At the request of the Marshall County Board of Commissioners, the Marshall County Attorney hired RoughRider Legal Support Services and its employee Douglas Kamrowski to investigate. Kamrowski sent the county attorney a November 19, 2007 report containing statements the plaintiffs alleged were false and defamatory, including statements that they were engaged in a witch hunt, harassing employees, and contributing to dysfunction within the watershed district.

PROCEDURAL HISTORY

The plaintiffs sued in North Dakota state court after Kamrowski issued an investigative report to the Marshall County Attorney concerning alleged misconduct by members of a Minnesota watershed district. The district court applied Minnesota law and dismissed the claims, concluding the report was absolutely privileged; it alternatively concluded the result would be the same under North Dakota law. The North Dakota Supreme Court reviewed the matter as summary judgment and affirmed.

DISPOSITION

affirmed

CASES CITED

- Van Valkenburg v. Paracelsus Healthcare Corp., 2000 ND 38, ¶ 8 n. 1, 606 N.W.2d 908
- Keator v. Gale, 1997 ND 46, ¶ 5 n. 2, 561 N.W.2d 286
- Livingood v. Meece, 477 N.W.2d 183, 187 (N.D. 1991)
- In re Estate of Dionne, 2009 ND 172, ¶ 8, 772 N.W.2d 891
- Nodak Mut. Ins. Co. v. Wamsley, 2004 ND 174, ¶ 13, 687 N.W.2d 226
- Daley v. American States Preferred Ins. Co., 1998 ND 225, ¶¶ 10-12, 587 N.W.2d 159
- Matthis v. Kennedy, 243 Minn. 219, 67 N.W.2d 413, 416-17 (1954)
- Bol v. Cole, 561 N.W.2d 143, 146-51 (Minn. 1997)
- Carradine v. State, 511 N.W.2d 733, 734-37 (Minn. 1994)
- Johnson v. Dirkswager, 315 N.W.2d 215, 220 (Minn. 1982)
- Erickson v. County of Clay, 451 N.W.2d 666, 671-72 (Minn. Ct. App. 1990)
- Zutz v. Nelson, 2009 WL 1752139 (Minn. Ct. App. 2009)
- Zutz v. Nelson, 601 F.3d 842, 846-50 (8th Cir. 2010)