

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Richard Mettke,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-1083 (C.P.C. No. 12CVH02-2244)
Melinda Mouser,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 28, 2013

Richard P. Mettke, pro se.

Wright & Noble L.L.C. and Robert D. Noble, for appellee.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Plaintiff-appellant, Richard Mettke ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for summary judgment and granting a motion for summary judgment filed by defendant-appellee, Melinda Mouser ("appellee"). Because we conclude that appellee was entitled to judgment as a matter of law based on the doctrine of absolute privilege, we affirm.

{¶ 2} Appellant and appellee were involved in a romantic relationship that terminated in November 2010. After the relationship ended, there was some communication between appellant and appellee. In July 2011, appellee filed an ex parte petition with the Franklin County Court of Common Pleas, Division of Domestic Relations, seeking a domestic violence civil protection order. The petition included a

statement from appellee explaining the basis for seeking a protection order. The domestic relations court denied appellee's ex parte petition and ultimately dismissed the petition for lack of prosecution.

{¶ 3} Appellant subsequently filed a complaint in the Franklin County Court of Common Pleas asserting that appellee defamed him through her statements in the petition for a civil protection order. Appellant and appellee each moved for summary judgment on the defamation claim. The trial court denied appellant's motion for summary judgment and granted appellee's motion for summary judgment, concluding that appellee's statements in the affidavit in support of the petition for a civil protection order were covered by an absolute privilege from civil liability.

{¶ 4} Appellant appeals from the trial court's judgment, assigning two errors for this court's review:

I. Did the Franklin County Common Pleas Court make a material error in law in summarily dismissing the Plaintiff's defamation claim citing absolute privilege based on *M.J. DiCorpo, Inc. v. Sweeney* (1994), 69 Ohio St. 3d 497 and citing Civ. R. 56(E)?

II. Was the Franklin County Common Pleas Court rulings [sic] against the plaintiff biased, inappropriate and unprofessional based on the courts [sic] comments in the order that stated "Plaintiff's claim against Defendant can only be characterized as complete and utter garbage."?

{¶ 5} In his first assignment of error, appellant asserts that the trial court erred by concluding that appellee's statements were covered by absolute privilege and granting summary judgment in favor of appellee. We review a trial court's ruling on a summary judgment motion de novo. *Capella III, L.L.C. v. Wilcox*, 190 Ohio App.3d 133, 2010-Ohio-4746, ¶ 16 (10th Dist.), citing *Andersen v. Highland House Co.*, 93 Ohio St.3d 547, 548 (2001). "De novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." (Citations omitted.) *Holt v. State*, 10th Dist. No. 10AP-214, 2010-Ohio-6529, ¶ 9. Summary judgment is appropriate where "the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and that conclusion is

adverse to the party against whom the motion for summary judgment is made." *Capella III* at ¶ 16, citing *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6. "When considering whether summary judgment is appropriate, a court must construe the evidence in the nonmoving party's favor." *Pate v. Quick Solutions, Inc.*, 10th Dist. No. 10AP-767, 2011-Ohio-3925, ¶ 20, citing *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio St.3d 250, 2010-Ohio-1027, ¶ 103.

{¶ 6} The Supreme Court of Ohio discussed the doctrine of absolute privilege in *M.J. DiCorpo, Inc. v. Sweeney*, 69 Ohio St.3d 497 (1994). Quoting an earlier decision, the court explained that on certain occasions, " 'the law recognizes that false, defamatory matter may be published without civil liability.' " *Id.* at 505, quoting *Bigelow v. Brumley*, 138 Ohio St. 574, 579 (1941). The privileged occasions in which this principle applies are divided into two classes: (1) those that are subject to absolute privilege, and (2) those that are subject to a qualified privilege. *Id.* The distinction between qualified privilege and absolute privilege " 'is that the absolute privilege protects the publisher of a false, defamatory statement even though it is made with actual malice, in bad faith and with knowledge of its falsity; whereas the presence of such circumstances will defeat the assertion of a qualified privilege.' " *Id.*, quoting *Bigelow* at 579. Absolute privilege applies in a limited number of circumstances, including "judicial proceedings in established courts of justice." *Id.*

{¶ 7} In *DiCorpo*, the court concluded that an affidavit submitted to a prosecutor reporting the actual or possible commission of a crime is part of a judicial proceeding, and the informant is entitled to an absolute privilege against civil liability for statements in the affidavit that bear some reasonable relation to the activity reported. *Id.* at syllabus. This court has applied the holding in *DiCorpo* to conclude that absolute privilege applies to shield individuals from civil liability for statements made to prosecutors or police reporting possible criminal activity. See *Lee v. Upper Arlington*, 10th Dist. No. 03AP-132, 2003-Ohio-7157, ¶ 14-19.

{¶ 8} Although this court has not previously addressed whether absolute privilege applies to an affidavit supporting a petition for a civil protection order, two other appellate courts have recently addressed the application of absolute privilege in similar cases. See *Hiddens v. Leibold*, 2d Dist. No. 06-CA-41, 2007-Ohio-6688; *Lasater v.*

Vidahl, 9th Dist. No. 26242, 2012-Ohio-4918. The defendant in *Hiddens*, Barbara Leibold, had previously obtained a civil stalking protection order against the plaintiff, Ann Hiddens. *Hiddens* at ¶ 7. Hiddens subsequently filed a complaint against Leibold and others, arguing, among other claims, that Leibold defamed her by filing a police report against her and referring to her as "crazy" in the petition for the civil protection order. *Id.* at ¶ 42. The trial court granted summary judgment in favor of Leibold on the defamation claim and all other claims. *Id.* at ¶ 10. On appeal, the Second District Court of Appeals affirmed the summary judgment ruling on the defamation claim. The court noted that Leibold did refer to Hiddens as "crazed" and "crazy" during her testimony at the hearing on the protection order but concluded that Leibold used these adjectives to describe her impression of Hiddens' behavior, rather than to characterize Hiddens as clinically insane. *Id.* at ¶ 44. Moreover, the court concluded that the statements were covered by absolute privilege because they were made in relation to a judicial proceeding and were reasonably related to the proceedings. *Id.*

{¶ 9} Similarly, in *Lasater*, the defendant, Lena Vidahl, had previously obtained a civil protection order against her sister, Janet Lasater. *Lasater* at ¶ 2. Vidahl filed multiple police reports alleging that Lasater violated the protection order and sent a letter to a magistrate of the domestic relations court seeking to have Lasater held in contempt for violating the protection order. *Id.* at ¶ 3-5. Lasater subsequently filed a lawsuit alleging that Vidahl placed her in a false light through her statements to the police and in the letter to the magistrate. *Id.* at ¶ 1. The trial court granted Vidahl's motion to dismiss the complaint, concluding, in part, that the letter to the magistrate was protected by absolute privilege as part of a judicial proceeding. *Id.* at ¶ 5. On appeal, the Ninth District Court of Appeals affirmed, concluding that the statements in Vidahl's letter to the magistrate were entitled to immunity as part of a judicial proceeding. *Id.* at ¶ 11.

{¶ 10} Based on this court's prior application of the doctrine of absolute privilege and the reasoning of our fellow courts in *Hiddens* and *Lasater*, which we find persuasive, we hold that a petitioner's statements in a petition for a civil protection order are covered by an absolute privilege from civil liability when the statements bear a reasonable relation to the subject of the petition. Absolute privilege applies because such statements are made as part of a judicial proceeding in an established court of justice. In this case, appellee's

statements in her petition for a civil protection order were reasonably related to the need for a civil protection order. Therefore, appellee was entitled to judgment as a matter of law, and the trial court did not err by granting summary judgment in favor of appellee. Moreover, we note that, despite appellant's assertions, appellee's handwritten statement in the petition did not claim that appellant engaged in any specific acts of domestic violence. To the extent that the petition for a civil protection order referred to appellant engaging in acts of domestic violence, those references were part of the standard language on the petition form.

{¶ 11} Accordingly, we overrule appellant's first assignment of error.

{¶ 12} In his second assignment of error, appellant asserts that the trial court's order was biased, inappropriate, and unprofessional. In the summary judgment ruling, the trial court stated that "[appellant's] claim against [appellee] can only be characterized as complete and utter garbage." (Dec. 27, 2012 Decision and Entry, 3.) Appellant argues that this statement demonstrates that the trial court was biased against him.

{¶ 13} An appellate court has no jurisdiction to vacate a trial court's judgment based on a claim of bias. *Cooke v. United Dairy Farmers, Inc.*, 10th Dist. No. 05AP-1307, 2006-Ohio-4365, ¶ 45, citing *Beer v. Griffith*, 54 Ohio St.2d 440, 441-42 (1978). If a plaintiff believes that the trial judge was biased against him, his remedy is to file an affidavit of prejudice with the clerk of the Ohio Supreme Court pursuant to R.C. 2701.03. *Id.* Therefore, we lack authority to address appellant's claim that the trial court was biased against him.

{¶ 14} Accordingly, we overrule appellant's second assignment of error.

{¶ 15} For the foregoing reasons, we overrule appellant's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and O'GRADY, JJ., concur.
