


IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT W. LUECK, ESQ.,  
Appellant,  
vs.  
JANE ELIZABETH JOHANSON, AN  
INDIVIDUAL; AND BRUCE I.  
SHAPIRO, ESQ., AN INDIVIDUAL,  
Respondents.

No. 50559

**FILED**

APR 08 2009  
TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court dismissal in a tort action. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

FACTS

Appellant filed a complaint in district court alleging two causes of action, libel and abuse of process, based on respondents' actions in connection with appellant's request for a reduction in child support and respondents filing a writ petition in this court. Respondents filed a motion to dismiss, arguing that they were protected from the libel claim by an absolute privilege because the alleged libel occurred during court proceedings and in court filed documents, and that appellant could not meet the factors to support an abuse of process claim. Appellant responded by arguing that respondents' conduct fell outside of the absolute privilege and that he alleged a sufficient basis for an abuse of process claim because respondents unnecessarily prolonged the issue regarding a reduction in child support and there was no reason for filing the writ petition except to cause appellant harm in his election campaign. The district court granted the motion to dismiss, finding that the respondents

were protected under an absolute privilege because all the alleged actions occurred in court filings and proceedings. This appeal followed.

### DISCUSSION

We review an order granting a motion to dismiss rigorously; dismissal of a complaint is only proper “if it appears beyond a doubt that [appellant] could prove no set of facts, which, if true, would entitle [appellant] to relief.” Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. \_\_\_, \_\_\_, 181 P.3d 670, 672 (2008). Having reviewed the briefs and appendix on appeal, we affirm the district court’s dismissal of appellant’s complaint.

#### Libel cause of action

In regards to the libel cause of action, the district court properly concluded that the alleged defamatory statements were protected under an absolute privilege. We have previously stated that there is an absolute privilege for communications made or published within judicial proceedings, and that the privilege “precludes liability even where the defamatory statements are published with knowledge of their falsity and personal ill will toward the plaintiff.” Fink v. Oshins, 118 Nev. 428, 433, 49 P.3d 640, 643 (2002). As all of the alleged defamatory statements were made in the context of judicial proceedings, the absolute privilege applies to prevent any claim for libel against respondents. We reject appellant’s arguments that the absolute privilege does not apply in this case because the defamation falls under an exception to the privilege, as these arguments lack merit.

#### Abuse of process claim

As to appellant’s abuse of process claim, we conclude that dismissal was appropriate, although for a different reason than that relied

upon by the district court. See Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (stating that this court will affirm the district court's order "[i]f it reached the correct result, albeit for different reasons"). While the district court relied on the absolute privilege in dismissing this claim, this court has thus far not extended the privilege to claims beyond those involving defamatory statements.<sup>1</sup> We need not consider whether the privilege should extend to include abuse of process claims in this case, however, because appellant cannot prove any set of facts to support his abuse of process claim.


The elements for an abuse of process claim are: "(1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding." LaMantia v. Redisi, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) (internal quotations and citations omitted). "The action for abuse of process hinges on the misuse of regularly issued process . . . ." Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972), superseded by statute on other grounds as stated in Countrywide Home Loans v. Thitchener, 124 Nev. \_\_\_, 192 P.3d 243 (2008). Although appellant may have set forth sufficient allegations to avoid dismissal regarding the first element, appellant failed to set forth any allegations that could support a finding under the second element. Respondents' decision not to settle the child support payment issue did not constitute improper actions within the regular conduct of a judicial proceeding.

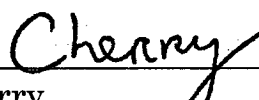
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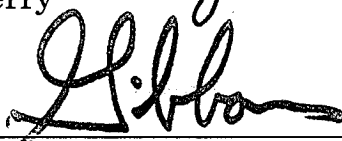
<sup>1</sup>We recognize, however, that this privilege has been extended to apply to abuse of process claims by at least California courts. See Silberg v. Anderson, 786 P.2d 365, 371 (Cal. 1990).

Likewise, respondents' filing of the writ petition in this court was not an improper use of the legal process outside regular conduct. While not dispositive, see LaMantia, 118 Nev. at 30, 38 P.3d at 879, this conclusion is supported by the fact that this court ultimately granted the writ in favor of respondents. See Johanson v. Dist. Ct., 124 Nev. \_\_\_, 182 P.3d 94 (2008). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Hardesty

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Eighth Judicial District Court Dept. 8, District Judge  
Carolyn Worrell, Settlement Judge  
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Eighth District Court Clerk