

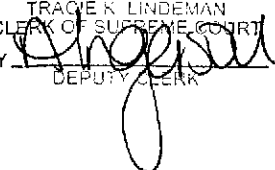
IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT FINANCIAL CORPORATION, A  
NORTH DAKOTA CORPORATION;  
AND BRADLEY J. SCOTT, AN  
INDIVIDUAL,  
Appellants,  
vs.  
LAYNE K. MORRILL, AN  
INDIVIDUAL,  
Respondent.

No. 61627

FILED

JAN 21 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court summary judgment in a defamation action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellants brought a claim for defamation against respondent, an opposing counsel in a separate lending fraud action in which appellants are defendants, alleging that respondent made defamatory statements to two percipient witnesses in the lending fraud action. Respondent moved for summary judgment, arguing that his statements were absolutely privileged under the judicial privilege, which the district court granted. This appeal followed.

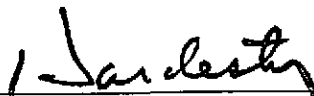
This court reviews summary judgments de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. *Id.* We also review the applicability of an absolute privilege de novo. *Cucinotta v. Deloitte &*

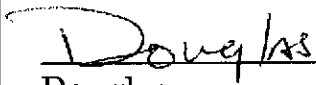
*Touche, L.L.P.*, 129 Nev. \_\_\_, \_\_\_, 302 P.3d 1099, 1101 (2013). The determination of whether the absolute privilege applies is a matter of law for the court to decide. *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 62, 657 P.2d 101, 105 (1983).

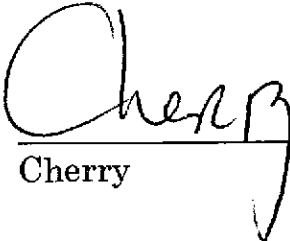
The common law absolute privilege rule precludes liability for communications made during the pendency of judicial proceedings, even where the statements are published with knowledge of their falsity and with personal ill will, provided that the communications “are in some way pertinent to the subject of controversy.” *Id.* at 60, 657 P.2d at 104; see *Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc. (VESI)*, 125 Nev. 374, 382, 213 P.3d 496, 502 (2009). This court has interpreted the absolute privilege as being very broad, meaning that a communication “need have only some relation to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged.” *Circus Circus*, 99 Nev. at 61, 657 P.2d at 104 (internal quotation marks omitted); see also *VESI*, 125 Nev. at 382, 213 P.3d at 502 (“[A] court determining whether the privilege applies should resolve any doubt in favor of a broad application.”); *Fink v. Oshins*, 118 Nev. 428, 433-34, 49 P.3d 640, 644 (2002) (“[C]ourts should apply the absolute privilege liberally, resolving any doubt in favor of its relevancy or pertinency.” (internal quotation marks omitted)). Nevertheless, “[a]n attorney’s statements to someone who is not directly involved with the actual or anticipated judicial proceeding will be covered by the absolute privilege only if the recipient of the communication is significantly interested in the proceeding.” *Fink*, 118 Nev. at 436, 49 P.3d at 645-46 (internal quotation marks omitted); *VESI*, 125 Nev. at 383, 213 P.3d at 502.

Having reviewed the parties' arguments and the record on appeal, we conclude that the district court did not err in finding that the absolute privilege applied to respondent's statements to the witnesses in the lending fraud action. Substantial evidence supports the district court's determination that the witnesses were "directly involved with the actual" lending fraud action and that the allegedly defamatory statements made to those witnesses were "in some way pertinent to the subject of controversy" in that action. *See Fink*, 118 Nev. at 436, 49 P.3d at 646; *Circus Circus*, 99 Nev. at 60, 657 P.2d at 104; *see also Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (stating that a "district court's factual findings . . . are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence"). Based on those factual findings, it was not error for the district court to determine that the absolute privilege applied to respondent's statements and to grant summary judgment in his favor. *Circus Circus*, 99 Nev. at 62, 657 P.2d at 105; *see also Cucinotta*, 129 Nev. at \_\_\_, 302 P.3d at 1101. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

  
\_\_\_\_\_, J.  
Douglas

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

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<sup>1</sup>We have considered appellants' other arguments and conclude that they lack merit.

cc: Hon. Jerry A. Wiese, District Judge  
Thomas J. Tanksley, Settlement Judge  
Kemp, Jones & Coulthard, LLP  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk