STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1764

Loren J. Zutz, et al.,
Appellants,

vs.

John Nelson, et al.,
Respondents.

Filed June 23, 2009
Affirmed
Collins, Judge[*]

Marshall County District Court
File No. 45-CV-08-59

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Considered and decided by Minge, Presiding Judge; Worke, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appealing from the district court's judgment on the pleadings dismissing their defamation and slander claims, appellants argue that respondents are not shielded by absolute immunity because as members of a subordinate, municipal-type body they are not entitled to protection of absolute privilege. We affirm.

FACTS

Appellants Loren Zutz and Elden Elseth and respondents John Nelson and Arlyn Stroble are appointed board members of the Middle Snake Tamarac Rivers Watershed District (district). This case arises out of statements made by respondents at a June 18, 2007 district board meeting questioning the legality of appellants' actions in accessing certain bank records regarding employee compensation. Appellants claim that respondents made three defamatory statements. First, in response to a question by another board member as to whether appellants violated the Minnesota Government Data Practices Act, Nelson stated, "I don't think there is much question that [Zutz and Elseth] did." Second, Nelson said, "Laws are being broken by Board Members—enough is enough!" And third, Stroble questioned, "Why should we provide legal counsel for actions that are against the law?"

Appellants sued respondents for defamation per se, slander, and negligent defamation. Respondents moved for judgment on the pleadings pursuant to Minn. R. Civ. P. 12.03, asserting, among other things, that respondents had absolute legislative privilege. After a hearing, the district court held that respondents hold an absolute

privilege and are immune from such suit, granted the motion, and dismissed appellants' complaint with prejudice. This appeal followed.

D E C I S I O N

We review a district court's grant of judgment on the pleadings de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). "Judgment on the pleadings is proper where the defendant relies on an affirmative defense or counterclaim which does not raise material issues of fact." *Jacobson v. Rauenhorst Corp.*, 301 Minn. 202, 206, 221 N.W.2d 703, 706 (1974). A reviewing court determines whether the complaint sets forth a legally sufficient claim for relief. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). In doing so, the court accepts as true all facts alleged in the complaint. *Bodah*, 663 N.W.2d at 553.

Government officials are protected from defamation suits when granting absolute immunity serves the public interest by allowing the official to freely address matters that are pertinent to job performance. *Carradine v. State*, 511 N.W.2d 733, 735-36 (Minn. 1994). Relying primarily on *Johnson v. Northside Residence Dev. Council*, 467 N.W.2d 826 (Minn. App. 1991), appellants contend that members of a municipal-type body such as the district board do not have absolute privilege to make defamatory statements about fellow board members. Although the *Johnson* court indicated that proceedings of municipal councils and other subordinate bodies are not within the policy underlying absolute immunity, 467 N.W.2d at 828, the Minnesota Supreme Court has since held that absolute immunity is not determined by the individual's "rank in the executive hierarchy," but rather is dependent on the "nature of the function assigned to the officer

and the relationship of the statements to the performance of that function." *Carradine*, 511 N.W.2d at 735-36 (quotation omitted). In reaching this conclusion, the supreme court observed that

> [i]mmunity is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government. The complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions, and we cannot say that these functions become less important simply because they are exercised by officers of lower rank in the executive hierarchy.

Id. at 735 (quoting *Barr v. Matteo*, 360 U.S. 564, 572-73, 79 S. Ct. 1335, 1340 (1959)). Rather than being dependent on the official's role in the governmental hierarchy, whether an official is protected by absolute privilege depends on several factors, including "the official's assigned functions, whether the statements made were integral to performing those functions, and the public interest furthered by allowing the official to speak freely about the statement's subject matter." *Bd. of Regents of Univ. of Minn. v. Reid*, 522 N.W.2d 344, 347 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994).

Here, as district board members, one of respondents' functions is to ensure that other board members are not participating in illegal activities. This is particularly critical given that watershed districts have the explicit power to sue and be sued. Minn. Stat. § 103D.335, subd. 1 (2008). Thus, it is well within the role of board members to vigilantly guard the district against lawsuits based on the conduct of individual board members. Because the comments at issue here were made in a public board meeting and

involved whether board members had violated the privacy of employees, the comments were integral to this function.

As in *Carradine*, public policy supports the extension of absolute privilege to respondents here, as it ensures the freedom of such board members to speak out in the performance of their required duties without fear of liability. *See Johnson v. Dirkswager*, 315 N.W.2d 215, 221 (Minn. 1982) (stating that the purpose of the privilege is to assure that public officials "have no excuse not to speak out in the performance of their duties," which promotes the public good). Were absolute immunity to be unavailable to government officials in these circumstances, board members may be deterred from raising questions about potentially illegal activities of other board members, leading to potentially negative consequences for the public being served by such a board. The public interests are best served here by open, frank communication from district board members. Thus, respondents, as holders of an absolute privilege, are immune from appellants' defamation and slander claims.

Because we affirm the district court's dismissal on this ground, we need not address whether respondents were entitled to dismissal based on their alternative asserted affirmative defenses.

Affirmed.