STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1379

Stand Up Mid America, MRI, P. A.,
Appellant,

vs.

Dr. Mary Jane Chiasson, et al.,
Respondents.

Filed March 8, 2011
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CV-10-6857

Randall D. Tigue, Golden Valley, Minnesota (for appellant)

Henry Adams Parkhurst, Jr., Gislason & Hunter LLP, Minneapolis, Minnesota (for respondents)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and Collins, Judge.*

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

KLAPHAKE, Judge

In this defamation action, appellant Stand Up Mid America, MRI, P.A., claims that the district court erred by granting summary judgment to respondents Dr. Mary Jane

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

Chiasson and others for statements Dr. Chiasson made while diagnosing a medical condition. We affirm because we conclude that (1) Dr. Chiasson's statements were protected under the doctrine of qualified privilege; and (2) the district court did not abuse its discretion by denying appellant's motion for reconsideration to consider evidence that was offered by appellant after the summary judgment hearing.

D E C I S I O N

An appellate court "review[s] a district court's summary judgment de novo," "determin[ing] whether the district court properly applied the law and whether there are any genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Group, LLC*, 790 N.W.2d 167, 171 (Minn. 2010); Minn. R. Civ. P. 56.03. "On appeal, [the court] must view the evidence in the light most favorable to the party against whom summary judgment was granted." *J.E.B. v. Danks*, 785 N.W.2d 741, 745 (Minn. 2010) (quotation omitted). No genuine issue for trial exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). We also review de novo the issue of whether immunity applies. *J.E.B.*, 785 N.W.2d at 752.

A defamation claim requires the plaintiff to prove that "(1) the defamatory statement is communicated to someone other than the plaintiff, (2) the statement is false, and (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community." *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919-

20 (Minn. 2009) (quotations omitted); *Nexus v. Swift*, 785 N.W.2d 771, 783 (Minn. App. 2010).

Qualified Privilege

Even if it is defamatory, a statement may not be actionable if it is subject to a privilege. *Strauss v. Thorne*, 490 N.W.2d 908, 911 (Minn. App. 1992), *review denied* (Minn. Dec. 15, 1992). Qualified privilege applies if a statement is

> made upon a proper occasion, from a proper motive, and [is] based upon reasonable or probable cause. When so made in good faith, the law does not imply malice from the communication itself, as in the ordinary case of libel. Actual malice must be proved, before there can be a recovery, and in the absence of such proof the plaintiff cannot recover.

Id. at 911-12. "Actual malice" is defined as "statements [that] are made . . . from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff." *Bahr*, 766 N.W.2d at 920. Actual malice is proved by either evidence extrinsic to the statement, such as "personal ill feeling," or by evidence intrinsic to the statement, such as "exaggerated language, the character of the language used, the mode and extent of publication." *Id.* (quotations omitted); *see Strauss*, 490 N.W.2d at 912 (stating that actual malice may be proved by "personal ill feeling, exaggerated language or the extent of publication"). "Whether a qualified privilege exists is a question of law for the court to decide." *Bol v. Cole*, 561 N.W.2d 143, 149 (Minn. 1997).

Appellant argues that the district court erred in granting summary judgment because it erroneously concluded that the contents of Dr. Chiasson's September 3, 2008 letter to the patient were subject to a qualified privilege. The letter states:

> I saw [the patient] in my clinic in consultation regarding a syndrome of cervical radiculopathy. Prior to coming to my office she obtained an MRI which was done [by appellant]. I reviewed the CD-ROM that was made available to me with the MRI films on it as well as the MRI report.
>
> In my opinion the quality of the MRI was inadequate to evaluate the problem that she was referred to the study for. The clinical indication stated on the report for the MRI was neck pain that radiates into the left shoulder and down into the left arm to the elbow. The MRI films are limited with limited cuts. There is a great deal of artifact and the resolution of the images is also very poor. At this time I do not believe that the MRI film that was obtained on [the patient] at [respondent] on 09/02/2008 was an adequate study for any diagnostic purposes.
>
> Your attention to this matter is greatly appreciated.

In addition to giving the patient this letter, Dr. Chiasson also requested that the patient undergo alternative radiographic testing.

On a motion for summary judgment, a claim of malice will not defeat a qualified privilege in the absence of some facts demonstrating the animosity of the adverse party. *Wallin v. State, Dep't of Corrections*, 598 N.W.2d 393, 402-03 (Minn. App. 1999), *review denied* (Minn. Oct. 21, 1999). Appellant has not offered any facts showing that Dr. Chiasson had actual malice toward appellant. More specifically, appellant has offered no facts to contradict Dr. Chiasson's statements that she gave the patient the letter for the sole purpose of assisting the patient in obtaining additional diagnostic studies that Dr. Chiasson concluded were necessary for treatment of the patient's condition. Further, Dr. Chiasson included the allegedly defamatory statements only in her letter to the patient; the letter did not contain any inflammatory language, nor did Dr. Chiasson

otherwise demonstrate ill will toward appellant. *Cf. Strauss*, 490 N.W.2d at 912 (reversing summary judgment on woman's defamation claim against doctor, who after receiving complaints from the woman about her husband's surgery, wrote notations in the husband's medical chart "to get back at" the woman for making the complaint, contacted the woman's pediatrician and suggested that the children were abused, and refused to delete the notations from the husband's medical charts when the family was thereafter unable to obtain medical insurance; the appellate court concluded that the woman offered substantial evidence of actual malice). Appellant's argument that malice can be implied by Dr. Chiasson's letter is contrary to the definition of actual malice. *See Bahr*, 766 N.W.2d at 920 (defining "actual malice"). Because we agree with the district court's conclusion that Dr. Chiasson's letter was subject to qualified privilege, appellant's claim fails as a matter of law.

Motion for Reconsideration

Appellant also claims that the district court abused its discretion by refusing to reconsider its summary judgment decision in light of the affidavit of appellant's business manager, Terri Karkoc, which was submitted over a week after the summary judgment hearing. Motions for reconsideration "are considered only at the district court's discretion." *In re Welfare of S.M.E.*, 725 N.W.2d 740, 743 (Minn. 2007). In general, the rules of civil procedure do not authorize motions for reconsideration. *Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996). Minn. R. Gen. Pract. 115.11 permits a court to grant a motion to reconsider upon a showing of compelling circumstances.

Here, appellant failed to offer compelling circumstances that would support reconsideration. Dr. Chiasson's deposition was held on January 27, 2010, and during that deposition she stated that she had not "been able to obtain a film from [appellant] before." Respondents moved for summary judgment on April 10, 2010, but appellant did not attempt to produce evidence to counter Dr. Chiasson's deposition testimony until May 29, after the May 20 summary judgment hearing. The district court's order denying the motion for reconsideration notes that it rejected the Karkoc affidavit as untimely in its initial and final orders granting summary judgment. The district court refused to reconsider its decision to grant summary judgment, stating that appellant "had an opportunity to submit affidavit testimony in response to Dr. Chiasson's deposition testimony before the [summary judgment] hearing" but did not do so. The district court's decision not to consider the late submission was a proper exercise of its discretion under the circumstances presented here.

Affirmed.