

2006

Michael Strand and Cari Allen v. Renee Strand : Petition for Rehearing

Utah Court of Appeals

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Cari Allen; Pro Se.

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IN THE UTAH COURT OF APPEALS

MICHAEL STRAND and CARI
ALLEN,

Plaintiffs/Appellants,

vs.

RENEE STRAND, et al,

Defendant/Appellee.

Case No. 20061048-CA
Lower Court Case No. 060700187

APPELLEE'S PETITION FOR REHEARING

Petition for Rehearing from the Memorandum Decision
filed in the Utah Court of Appeals, on July 27, 2007.

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Memorandum Decision of the Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

MICHAEL STRAND and CARI ALLEN,

Plaintiffs/Appellants,

vs.

RENEE STRAND, et al,

Defendant/Appellee.

PETITION FOR REHEARING

Case No. 20061048-CA
Lower Court Case No. 060700187

APPELLEE'S PETITION FOR REHEARING

DEFENDANT/APPELLEE submits the following Petition for Rehearing, pursuant to Rule 35, UTAH R. APP. P.

ARGUMENT

Defendant/Appellee, Renee Strand, responded to an appeal on the trial court's decision to dismiss Appellants' complaint for libel and slander. The Defendant alleged within her reply brief that the pleadings filed by the Appellants, Michael Strand and Cari Allen, were not well taken and requested attorney's fees.

On July 27, 2007, the Utah Court of Appeals affirmed the trial court's dismissal of the Appellants' complaint based upon a previous decision in *Strand v. Telfer*, 2007 UT App. 121 (per curiam) (mem.). However, the appellate court did not address Appellee's request for attorney's fees. Therefore, Defendant/Appellee believes this court has overlooked the law in this matter as follows:

I. APPELLEE/DEFENDANT SHOULD BE AWARDED ATTORNEY'S FEES INCURRED ON THE APPEAL AND IN DEFENDING THE LOWER COURT JUDGMENT, AS A MATTER OF LAW.

Within the responsive brief before this court, the Defendant/ Appellee specifically requested attorney's fees. Attorney's fees should have been afforded her for defending this case on appeal, due to the fact that the complaint was not well taken and was dismissed due to lack of a valid claim.

Similarly, the Plaintiffs/Appellants proceeded to continue with litigation, pursuing this despite the rejection of the lower court. The law in this case is clear. It is the Defendant's/Appellee's stance that the Plaintiff/Appellants are continuing with such litigation in order to punish her for issues that were raised in her divorce proceeding. Moreover, the Appellee asserts that this litigation was pursued vexatiously. Pursuant to Rule 54, UTAH R. CIV. P., attorney's fees are awarded unless expressly provided for by other statute or in Rule 56 to the prevailing party,

unless the court otherwise directs. Based upon Rule 56 of Utah R. Civ. P., Defendant/Appellee should be awarded her attorney's fees. Moreover, because the Defendant/Appellee also prevailed on appeal, then the costs for the appeal proceeding should be awarded to the Defendant. Because the Defendant/Appellee was entitled to attorney's fees by law, she should be entitled to attorney's fees incurred on appeal in defending the lower court decision. *Coates v. American Economy Insurance Co.*, 627 P.2d 92 (Utah 1981); *Wallis v. Thomas*, 632 P.2d 39 (Utah 1981).

As recognized within the attached opinion, the court did not take into consideration or make any determinations based upon Appellee's request for attorney's fees that should be due her as a matter of law.

CONCLUSION

For these reasons Defendant/Appellee respectfully petitions the court for a rehearing of her request for attorney's fees.

RESPECTFULLY SUBMITTED this ____ day of August, 2007.

CORPORON & WILLIAMS, P.C.

MARY C. CORPORON
ALLISON R. LIBRETT
Attorneys for Defendant/Appellee

CERTIFICATE OF GOOD FAITH AND NO DELAY

Pursuant to Rule 35 of the Utah Rules of Appellate Procedure, I hereby certify that this Petition for Rehearing is presented in good faith and not for the purpose of delay.

SUBMITTED this ____ day of April 2007.

CORPORON & WILLIAMS


Mary C. Corporon
Allison R. Librett
Attorneys for Defendant/Appellee

CERTIFICATE OF GOOD FAITH AND NO DELAY

Pursuant to Rule 35 of the Utah Rules of Appellate Procedure, I hereby certify that this Petition for Rehearing is presented in good faith and not for the purpose of delay.

SUBMITTED this 2 day of April 2007.

CORPORON & WILLIAMS

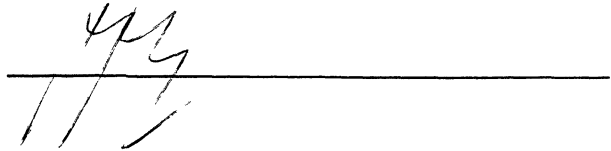


Mary C. Corporon
Allison R. Librett
Attorneys for Defendant/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 2 day of April 2007, I caused to be served by U.S. mail, postage prepaid, two true and correct copies of the foregoing, to the following:

Michael Strand
Cari Allen
Plaintiffs/Appellants *pro se*
1199 South 1500 East
Bountiful, Utah 84010



CERTIFICATE OF SERVICE

I hereby certify that on the __ day of April 2007, I caused to be served by U.S. mail, postage prepaid, two true and correct copies of the foregoing, to the following:

Michael Strand
Cari Allen
Plaintiffs/Appellants *pro se*
1199 South 1500 East
Bountiful, Utah 84010

ADDENDUM

IN THE UTAH COURT OF APPEALS

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Michael Strand and Cari Allen,)	MEMORANDUM DECISION	
Plaintiffs and Appellants,)	(Not For Official Publication)	
v.)	Case No. 20061048-CA	
<u>Renee Strand</u> , et al.,)	F I L E D	
Defendants and Appellee.)	(July 27, 2007)	
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2007 UT App 256		

Second District, Farmington Department, 060700187
The Honorable Michael G. Allphin

Attorneys: Cari Allen and Michael Strand, Bountiful, Appellants
Pro Se
Mary C. Corporon and Allison R. Librett, Salt Lake
City, for Appellee

Before Judges Billings, Orme, and Thorne.

PER CURIAM:

Michael Strand and Cari Allen appeal from the district court's order dismissing their complaint. Strand and Allen claim that the district court erred in concluding that Appellee was immune from suit under the judicial proceeding privilege. We affirm.

Although not entirely clear from the pleadings, it appears that Strand and Allen allege that the district court erred because: (1) Appellee submitted an affidavit that did not conform with Utah Code section 62A-4a-403, see Utah Code Ann. § 62A-4a-403 (2006); and (2) Strand and Allen were not parties to any judicial action when the affidavit was filed with the trial court. These arguments were specifically addressed and rejected in this court's decision in Strand v. Telfer, 2007 UT App 121 (per curiam) (mem.).

In Telfer, this court noted that "'judges, jurors, witnesses, litigants, and counsel involved in a judicial proceeding have an absolute privilege against suits alleging defamation.'" Id. at ¶2 (quoting Krouse v. Bower, 2001 UT 28, ¶8,

20 P.3d 895). Telfer then recited the three-part test utilized to determine whether a particular statement qualifies for protection under this judicial proceeding privilege. See id. ("To establish the judicial proceeding privilege, the statements must be (1) made during or in the course of a judicial proceeding; (2) have some reference to the subject matter of the proceeding; and (3) be made by someone acting in the capacity of judge, juror, witness, litigant, or counsel." (quoting Krouse, 2001 UT 28 at ¶8)).

In Telfer, we ruled that "[t]he alleged defamatory statements were made during a divorce proceeding between Rex and Renee Strand. The fact that Strand and Allen were not parties to that action is irrelevant." Id. at ¶3. Next, we held that "[t]he custodial situation between parties to a divorce action and the welfare of their children are certainly relevant to the divorce proceeding." Id. at ¶4. Third, we held that the "statements were made in a pleading to the court by someone acting in the capacity of a judge, juror, witness, litigant, or counsel." Id. at ¶5. Each of these holdings apply equally to this case. Therefore, Appellee's statements satisfied all three elements of the judicial proceeding privilege test, and she was entitled to immunity from the claims filed by Strand and Allen.

In addition, in Telfer we specifically rejected Strand and Allen's argument that any allegations of abuse should have been reported to the appropriate authorities under Utah Code section 62A-4a-403. "The judicial proceeding privilege is separate and distinct from any statutory scheme for reporting child abuse. Accordingly, the dictates of that statutory scheme are inapplicable in determining whether the judicial proceeding privilege applies." Id. at ¶6. Thus, the district court correctly dismissed Strand and Allen's complaint for failing to state a claim for which relief could be granted.

Affirmed.

Judith M. Billings, Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge