

Illinois Office Holders Have Defamation Immunity But Citizens Don't

(May 11, 2016) Illinois office holders have absolute immunity to defame citizens who criticize their official duties, but the reverse is not true.

The Seventh Circuit reversed the trial court and granted summary judgment for Cook County Clerk Dorothy Brown, who had been sued for defamation and retaliation for filing a complaint against an attorney and issuing a press release about the complaint.

“This case highlights a fundamental asymmetry in Illinois law of absolute immunity. A government official may make defamatory statements, and may even do so with actual malice, about a political opponent so long as the communications pertain to the duties and responsibilities of her office,” the court wrote. But “that political opponent as a member of the public may be liable for defamation if he makes a similar statement about the public official with ‘actual malice,’ meaning ‘with knowledge that it was false or with reckless disregard’ for the truth. Absolute immunity under state law may therefore produce a form of incumbent advantage on occasion.”

Attorney David Novoselsky filed numerous lawsuits alleging impropriety by Brown in her capacity as Circuit Court Clerk. In turn, Brown filed a complaint with the Illinois Attorney Registration and Disciplinary Commission for allegedly breaching professional conduct rules. In a press release, Brown said the attorney was “guilty of misconduct,” had “wasted taxpayer money,” and had engaged in conduct that was “clearly not professional.”

Brown and Cook County filed a motion for summary judgment, arguing they were immune from any lawsuit because the comments were made in her capacity as clerk. The trial court denied the motion.

On appeal, the Seventh Circuit said, “Illinois courts have long held that executive branch officials of state and local governments cannot be civilly liable for statements within the scope of their official duties.” The appellate court found the clerk’s office was part of the executive branch.

“We conclude that all of the arguably defamatory communications in this case are protected by this official immunity,” the opinion states. “Brown’s complaint to the ARDC was within the scope of her official duties. Novoselsky’s numerous lawsuits against Brown alleged her dereliction of the office’s responsibilities—failure to segregate court fees into separate bank accounts, failure to audit court funds, and unlawful use of court funds for personal gain. Brown’s complaint focused on these issues and pointed to the Illinois provisions regulating her conduct in each of these areas.”

In addition, the court wrote that, even “if the true thrust and purpose of the press release was personal and nefarious, that would not defeat Brown’s immunity under Illinois law. In this regard, the absolute privilege is absolute. It is not defeated by malicious intent or improper motivation.”

Novoselsky v. Dorothy Brown and Cook County, 7th Cir. No. 15-1609, issued May 10, 2016.

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