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Recent Developments: Imperial v. Drapeau: Witness Statements Contained in Letters of Complaint to Government Representatives Are Entitled to Protection of Absolute Privilege

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Imperial v. Drapeau

In a four-three decision, the Court of Appeals of Maryland held that witness statements addressing public concerns in letters to Government representatives were shielded from liability for defamation, notwithstanding that the letters were sent to the incorrect authority. *Imperial v. Drapeau*, 351 Md. 38, 716 A.2d 244 (1998). In so holding, the court ruled that a witness' unqualified right to report complaints against medical personnel without fear of adverse consequences outweighed the possibility that the privilege could be abused.

Wayne Drapeau ("Drapeau") brought a defamation action against Dr. Roland Imperial ("Imperial"), alleging that Imperial had written malicious letters of complaint about Drapeau's capabilities as an emergency medical technician. The action arose from an incident in which Imperial, having determined that an elderly patient under his care required non-emergency transport to a hospital, contacted the Bethesda-Chevy Chase Rescue Squad, Inc. to transport his patient to Sibley Hospital. Drapeau, the dispatcher on duty with whom Imperial spoke, assigned a team of medical technicians to perform the transport. Upon arriving at the patient's residence, the medical team, which did not include Drapeau, determined that the patient's condition had

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By Anne Bodnar

deteriorated and required an emergency transport to the nearest hospital. The patient was transported to Suburban Hospital, where Imperial did not have privileges. This change, which Imperial felt undermined his authority as the attending physician, incited him to write letters of complaint about Drapeau's actions to Governor Parris N. Glendening and Congresswoman Constance A. Morella. These letters called for an investigation into Drapeau's conduct during the incident, questioning Drapeau's qualifications and competence, and the legality of his conduct. The letters were subsequently forwarded to the Maryland Institute for Emergency Medical Services Systems ("MIEMSS"), which conducted an investigation into Drapeau's actions. Consequently, MIEMSS

concluded that Drapeau's conduct had been appropriate. Drapeau filed the present action for defamation, claiming that Imperial's allegations were made solely with malicious intent.

Drapeau's suit for defamation was filed in the Circuit Court for Montgomery County where summary judgment was entered for Imperial on the basis of absolute privilege. Drapeau appealed the decision to the Court of Special Appeals of Maryland which reversed and remanded the case back to the circuit court. Imperial then filed a timely appeal to the Court of Appeals of Maryland which granted certiorari to address the scope of the absolute immunity rule concerning witness statements.

The absolute privilege rule protects witnesses testifying in judicial or administrative hearings from potential liability "even if their motives were malicious, or they knew the statement was false, or their conduct was otherwise unreasonable." *Imperial*, 351 Md. at 44, 716 A.2d at 247 (citing *Rosenberg v. Helinski*, 328 Md. 664, 676, 616 A.2d 866, 872 (1992)). In applying the absolute privilege doctrine to the instant case, the court first considered the original intent of the rule. *Id.* Derived from the common law, the purpose of the rule was to afford absolute protection to a witness testifying in a judicial proceeding, without fear of repercussions, in

order to promote the ideals of justice. *Id.* at 44, 716 A.2d at 248 (citing *Hunckel v. Voneiff*, 69 Md. 179, 198, 17 A. 1056, 1057 (1889)). In supporting this rationale, courts have extended the application of the rule to encompass certain administrative and other similar types of hearings. *Id.* at 45, 716 A.2d at 248 (citing *Keys v. Chrysler Credit Corp.*, 303 Md. 397, 404, 494 A.2d 200, 203 (1985)).

In considering whether the letters of complaint in the instant case fell within the scope of the rule, the court considered two factors relevant to its determination. *Id.* at 46, 716 A.2d at 248. (citing *Gersh v. Ambrose*, 291 Md. 188, 192, 434 A.2d 547, 549 (1981)). First, the court considered the “nature of the public function” served and second, the court considered “the adequacy of procedural safeguards . . . [to] minimize the occurrence of defamatory statements.” *Id.* at 46, 716 A.2d at 248 (citing *Gersh*, 291 Md. at 197, 434 A.2d at 551-52).

In weighing the public function of a particular action, courts in the past have held that the absolute privilege rule could be extended to non-judicial proceedings in cases where “society’s benefit from unfettered speech during the proceeding is greater than the interests of the individual who might be defamed.” *Id.* at 48, 716 A.2d at 249 (quoting *Odyniec v. Schneider*, 322 Md. 520, 531, 588 A.2d 786, 791 (1991)). Applying this rationale, the court in the

instant case determined that the competency of a medical technician to adequately administer care was of such importance to the public at large that this interest outweighed an individual’s right to protection against defamation. *Id.* at 50, 716 A.2d at 250. Although the complaint was not made in the context of a judicial hearing, the letters addressed to government officials fell within the scope of the rule in light of the strong public policy interest in reporting complaints of health care providers. *Id.* at 48, 716 A.2d at 249.

Next, the court considered whether statements contained in letters to officials would impart sufficient procedural safeguards for the target of the complaint to warrant application of the absolute privilege. *Id.* at 50, 716 A.2d at 251. The court determined that the administrative agency, MIEMSS, did have sufficient procedural safeguards to insure that Drapeau’s interests were preserved in this matter. *Id.* The court was persuaded that sufficient precautions were in place because: (1) the initial investigation required either Drapeau’s consent or compliance with necessary provisions; (2) a hearing was required before any disciplinary action could be taken; and (3) agency investigations were conducted confidentially. *Id.* at 50-51, 716 A.2d at 250-51.

Additionally, the court ruled that the fact that Imperial’s letter had been sent to the Governor and

a member of Congress, rather than directly to the proper authority, did not invalidate the right to invoke the privilege. *Id.* at 53, 716 A.2d at 252. Specifically, the court determined that sending the letter to the improper authority was too minimal of an error to override the right of the privilege. *Id.* The court reasoned that the “ordinary citizen,” in determining the controlling body of authority, could justly presume a complaint sent to their state or local representative would be forwarded to the proper officials. *Id.* at 53-54, 716 A.2d at 252.

In a powerful dissent, the minority agreed that there was a strong argument for preserving the right of the absolute privilege rule. *Id.* at 59-60, 716 A.2d at 255. However, the dissent asserted that the facts of the instant case undermined the rule’s intent. *Id.* The dissent argued that absolute privilege should not be unquestionably granted under circumstances in which the speaker “maliciously write[s] knowingly false and defamatory letters to high executive and legislative officials” under the auspices that it will eventually reach the proper authority. *Id.* at 55, 716 A.2d at 253. Finding a lack of correlation between the letters to an improper authority and a judicial-type proceeding, the dissent argued that the majority’s position effectively granted a license to recklessly defame without providing the speaker’s target with an adequate means of redressing the allegations. *Id.* at 56, 716 A.2d at

253.

In *Imperial v. Drapeau*, the court granted the right of absolute witness privilege to statements of public concern made to any government representative, even if the intent of the statement may have been purely malicious. By doing so, the court preserved the unconditional right of Maryland citizens to freely address public concerns without fear of incurring liability. While granting this privilege as absolute under these circumstances may lead to abuses of this right, the court concluded that the interests of the public as a whole in addressing legitimate medical grievances overrides an individual's interest in guarding against defamatory statements. By ensuring that adequate safeguards are in effect to prevent abusing the privilege, this ruling attempts to minimize the risk of abuse while best effectuating the intent of the rule.