

Plaintiff's Claim Based on Threatening Statements Barred by Illinois' Absolute Litigation Privilege

Lawyers for the Profession® Alert | 3 min read

May 13, 2021

Bedin v. Northwestern Memorial Hosp., 2021 IL App (1st) 190723-U

Brief Summary

An Illinois appellate court affirmed the dismissal of plaintiff's intentional infliction of emotional distress (IIED) claim based on the absolute litigation privilege. The court agreed that defendant's alleged threatening statements directed at causing plaintiff financial, physical, and emotional hardship were related to the potential or ongoing guardianship claim concerning plaintiff's mother. The alleged statements were thus absolutely privileged.

Complete Summary

In 2010, plaintiff's mother was diagnosed with pancreatic cancer. While plaintiff's mother was in defendant hospital's care, plaintiff was told that her mother could not walk without assistance. Later that day, a physician informed plaintiff that her mother could walk without assistance, that Medicare would no longer pay for her hospitalization, and that plaintiff would be charged \$2,500/day if she did not agree to discharge her mother. Defendant also allegedly stated that plaintiff's mother would lose her home to satisfy the hospital bills and that if plaintiff did not discharge her mother, defendant would seek to have a public guardian assigned to make all decisions for the mother. Defendant eventually filed petitions for temporary guardianship, appointment of a guardian for a disabled person, and to invalidate plaintiff's power of attorney.

Plaintiff further alleged that defendant's representatives made several other threatening remarks throughout this process, such as: that defendant "had powerful attorneys that could destroy her;" that plaintiff's mother would never see her children again; that defendant would place plaintiff's mother "in a nursing home in South Chicago,

and would leave her there until she died,” that plaintiff would not know her mother was dead until after the fact; that they would take plaintiff’s brother from his home and put him in a facility for “adults with Down Syndrome;” and that defendant “would have a Sheriff arrest [plaintiff’s mother], evict her from the hospital, and put her on the street in a wheelchair.”

Plaintiff later filed claims for abuse of process and IIED. Defendant moved to dismiss, arguing that the two-year statute of limitations governing claims for abuse of process and IIED barred their claims, and that the IIED claim was also barred by absolute litigation privilege. The trial court granted the motion to dismiss, finding that the two-year statute of limitations started to run when the agreed order in the guardianship proceeding was entered, and that plaintiff did not file the complaint until over two years later. The trial court did not address defendant’s argument regarding the absolute litigation privilege.

The appellate court upheld the trial court’s decision that the abuse of process claim was time-barred. However, it held that plaintiff’s IIED claim was not barred because defendant allegedly made additional threats when plaintiff’s mother was discharged and at the guardianship proceedings.

On remand, defendant filed another motion to dismiss, arguing that the IIED claim was barred by the absolute litigation privilege because the claim was based entirely on defendant’s filing the petitions in the guardianship action. The trial court again granted defendant’s motion to dismiss.

On appeal, plaintiff argued that defendant did not offer evidence to demonstrate that the threatening statements were made pursuant to the guardianship litigation or in contemplation of that action. The appellate court disagreed and held that the statements were sufficiently related to the guardianship action to be barred by the absolute litigation privilege.

The court noted that the absolute litigation privilege is an affirmative defense that permits the use of defamatory statements during all communications made before, during, or after litigation, and that it applies “regardless of the defendant’s motive or the unreasonableness of his conduct.” The only requirement for the privilege to apply “is that the communication must pertain to proposed or pending litigation.” The court reasoned that defendant’s statements were “sufficiently related and pertinent to the guardianship action, which defendant thought was necessary to affect discharge planning and placement.” The court stated that plaintiff was contesting defendant’s finding that her mother should be discharged, and any statements regarding Medicare and the financial consequences for failing to discharge her mother were in contemplation of any future guardianship action.

Further, the privilege also covered alleged statements to plaintiff’s mother asking her if she wanted to “die in peace instead of on a machine” because the statements were an attempt to persuade plaintiff’s mother to cancel plaintiff’s power of attorney related to the pending guardianship action. The court concluded that defendant “is not liable for statements that have any bearing to the guardianship action regardless of its motive or the unreasonableness of its conduct.” Thus, the absolute litigation privilege applied and barred plaintiff’s IIED claim.

Significance of Decision

This case demonstrates that the absolute litigation privilege will protect any statements—however harsh or unreasonable—so long as they relate to proposed or pending litigation.

Related People



Terrence P. McAvoy

Of Counsel

 312-704-3281