STATE OF MICHIGAN

COURT OF APPEALS

LEONARD M. FORTON, SR.,

Plaintiff-Appellant,

v

ST. CLAIR COUNTY PUBLIC GUARDIAN, AMANDA SEALS, ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH, and ANN MARIE DANIELS-HILLMAN,

Defendants-Appellees,

and

VISION QUEST RECOVERY, LLC, and ANN PURAUY,

Defendants.

FOR PUBLICATION
September 23, 2021
9:10 a.m.

No. 354825
St. Clair Circuit Court
LC No. 19-000390-NO

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

In this action related to a guardianship proceeding, plaintiff appeals as of right the trial court's orders granting summary disposition under MCR 2.116(C)(7) to defendants Ann Marie Daniels-Hillman, an employee of defendant St. Clair County Community Mental Health ("SCC Community Mental Health"), and Amanda Seals, an employee of defendant St. Clair County Public Guardian ("the Public Guardian").[1] Specifically, defendants were apprised that a legally incapacitated court ward was advising other residents at her residential treatment facility that she was subject to sexual abuse by her legal guardian's husband, plaintiff. Consequently, defendants

[1] Plaintiff filed a claim of appeal following the order stipulating to dismiss the last defendant Purauy for lack of service. However, plaintiff only challenges the underlying orders granting summary disposition to defendants Seals and Daniels-Hillman.

took measures to protect the court ward: (1) by requesting the removal of the legal guardian; (2) by seeking a personal protection order to prevent plaintiff's contact with the court ward; (3) by referring the matter to investigating agencies; and (4) by seeking the appointment of individuals to act for the court ward's benefit. Thus, in the course of fulfilling their responsibilities to protect the court ward, defendants prepared documents and made statements before the probate court. When it was reported to defendant Seals that plaintiff was present in a hospital room with the court ward, she apprised the probate court, and it issued a show cause for plaintiff's alleged violation of a no-contact provision. However, the show cause was dismissed once it was learned that recorded evidence of the violation was lacking and that the court ward was hospitalized and confused. Although a criminal investigation occurred, the police did not pursue criminal charges against plaintiff. Thereafter, plaintiff, acting *in propria persona*, filed a multi-count complaint against defendants seemingly contending that defendants conspired and raised false allegations against him. The trial court properly granted summary disposition in favor of defendants. Defendants were entitled to quasi-judicial immunity because their statements, made during the course of judicial proceedings, are absolutely privileged. The statements were relevant, material, or pertinent to the issue being tried, the need for a suitable legal guardian to supervise and protect the court ward. The fact that recorded evidence did not exist to support defendants' statements did not abrogate the privilege; rather, the privilege must be liberally construed to allow participants in judicial proceedings to be free to express themselves without fear of retaliation. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of the related probate proceeding concerning the guardianship of a legally incapacitated nonparty ("NK"). Plaintiff alleged that he met NK at a bus stop years earlier, the pair bonded, and he allowed NK to live in a trailer on his property. In May 2016, plaintiff's wife, Lynne Forton, petitioned to be named as NK's guardian. Forton alleged that NK was legally incapacitated as a result of both mental illness and chronic intoxication. The probate court granted the petition, finding that NK was "totally" incapacitated as a result of the alleged conditions, and the court appointed Forton as NK's full guardian. The probate court also appointed a guardian ad litem (GAL) to represent NK.

Following a review hearing in May 2017, the probate court ordered NK to "make arrangements to live at Vision Quest," which is a residential treatment facility for substance abuse, "until further order of the court." In July 2017, defendant Daniels-Hillman completed a "Contact Note" documenting a telephone call that she had received in the course of her employment with defendant SCC Community Mental Health from the "Vision Quest Home Manager," defendant Ann Purauy.[2] According to the note, Purauy expressed concerns for NK because NK had advised the residents of Vision Quest that she performed sexual favors for plaintiff in exchange for money. NK reportedly went to plaintiff's home on a daily basis, would not return to Vision Quest "until bed time," consumed alcohol at plaintiff's home, and brought alcohol back with her to Vision Quest. In response to the report, Daniels-Hillman contacted Adult Protective Services (APS) and

[2] In her brief on appeal, Daniels-Hillman contends that the manager's last name was "Parway" not "Purauy," and that she died before this litigation commenced.

the probate court's liaison, to whom she reported Purauy's allegations. Later that day, Daniels-Hillman met with the court liaison and defendant Seals at the probate court.

As a result of that meeting, Daniels-Hillman filed a petition with the probate court to modify NK's guardianship by appointing the Public Guardian as NK's guardian in lieu of Forton. In support, Daniels-Hillman indicated that she had received allegations from Vision Quest staff and others that plaintiff and Forton were possibly purchasing alcohol for NK and that plaintiff "was asking for sexual favors in exchange for money[.]" Daniels-Hillman also filed a "Notification of Noncompliance" with the probate court, again repeating Purauy's report that NK was not complying with her court-ordered substance abuse treatment.

On August 3, 2017, Daniels-Hillman filed a petition in the probate court requesting an emergency guardianship hearing. In support, she relayed Purauy's concerns that plaintiff had contact with NK while she was hospitalized, including his presence while NK was changing clothes. Purauy had also reported that plaintiff had given NK "Benadryl," which resulted in NK being hospitalized again because it caused her difficulty with breathing and swallowing. Daniels-Hillman expressed concern that Forton, as NK's guardian, was not available during NK's last two hospitalizations because Forton had "medical issues of her own." Indeed, when transportation was necessary for NK, it was provided by plaintiff, not Forton. At the ensuing hearing, which the probate court held that same day, it questioned Daniels-Hillman concerning Purauy's allegations. After considering the matter, the probate court removed Forton as guardian, appointed the Public Guardian as NK's temporary guardian, and ordered "no contact" between NK and plaintiff (or Forton) outside the presence of either "hospital staff" or a representative of the Public Guardian.

The allegations against plaintiff were subsequently investigated by both APS and the police. NK eventually admitted to her GAL and an APS caseworker that, before Forton was appointed as NK's guardian, NK and plaintiff had engaged in a "consensual" sexual relationship, about which Forton was aware. According to NK, plaintiff indicated that Forton had medical conditions that left her unable to "perform sexually," and he asked NK to "give him his needs." In return for having sex with plaintiff, NK received alcohol, cigarettes, and prescription drugs (including opiates) from plaintiff and Forton. NK advised that plaintiff used Viagra and condoms during their sexual encounters that occurred either in a trailer or plaintiff's bed. Although NK was "disgusted" by her sexual relationship with plaintiff and "didn't feel comfortable doing it," she nevertheless consented to it. Their quid pro quo sexual relationship continued after Forton was appointed as NK's guardian, and plaintiff and Forton continued to supply NK with drugs and alcohol after Forton's appointment as guardian.

When interviewed by the police, plaintiff admitted that he gave NK alcohol, cigarettes and fast food. He denied giving NK any opiates, but claimed that he gave NK "aspirin type pills." When questioned about a sexual relationship, plaintiff stated that NK once told him that the pair had sex, but he could not remember it. Plaintiff explained that his lack of recollection occurred because "he smoked lots of marijuana." Plaintiff presented documentation listing medications that he took for a degenerative disc condition and chronic pain and indicated that he had erectile dysfunction. Plaintiff declined to admit to any sexual relationship with NK despite being advised that NK reported any sexual acts were consensual. He also advised that he was a paralegal. When walking out of the interview, plaintiff reportedly told the interviewing officer, "Honestly, I didn't think you'd believe me," to which the officer responded, "I don't." Nonetheless, charges were not

pursued in light of NK's mental and medical issues, her admission to consensual sex and occasional manipulation of plaintiff, Forton's removal as guardian, and the court's order that plaintiff not have contact with NK.

In August 2017, Seals, who was performing as NK's guardian on behalf of the Public Guardian's office, informed Daniels-Hillman that she was planning to seek a personal protection order against plaintiff on NK's behalf. Seals explained that she had received a report that plaintiff had visited NK in the hospital "over the weekend," though it was unclear whether he did so in violation of the probate court's "no contact" order because Seals did not know whether hospital staff had been present during the visit.

At an ensuing review hearing, the probate court asked Seals to inform the court about what had "been happening with [NK]" since the Public Guardian's appointment in this matter. As relevant here, Seals answered:

> So [NK] was hospitalized since the last hearing, after she had violated her substance abuse order. [Plaintiff] was at the hospital, they have him on security footage, even though there is, was in the last order that there should be no contact without CMH or adults present. He was in the room alone with, with [NK]. She couldn't, when I talked to her about it, she couldn't really remember that happening. She was very incoherent at times in the hospital. She's very confused.

As a result of Seals's report, the probate court issued an order for plaintiff to appear and show cause why he should not be held in contempt for violating the court's no-contact order. At the ensuing show cause hearing, which plaintiff attended with counsel, the court indicated that the parties had met in chambers to discuss the anticipated proofs. In out-of-court statements, NK had indicated that plaintiff had, in fact, violated the no-contact order at the hospital, but plaintiff denied having done so. Because there was "no video" or "other objective proof" concerning the alleged contumacious conduct, and given that NK was not available to testify in court because she remained hospitalized, Seals and NK's GAL both agreed that the contempt charge against plaintiff should be dismissed for lack of proof. After dismissing the contempt charge, the probate court admonished plaintiff "to get on with [his] life" and avoid any further violations—or near violations—of the no-contact order.

In February 2019, plaintiff, acting *in propria persona*, filed a complaint against defendants, which included the following six counts: (1) intentional infliction of emotional distress, (2) malicious prosecution, (3) abuse of process, (4) negligent infliction of emotional distress, (5) concert of action, and (6) civil conspiracy.[3] Defendants moved for summary disposition premised on immunity, and the trial court granted summary disposition under MCR 2.116(C)(7). This appeal followed.

[3] Although plaintiff identified six counts in his complaint, he did not delineate the actions of each defendant within the claims raised and primarily used the singular "defendant" in his allegations.

II. ANALYSIS[4]

Plaintiff contends that the trial court erred by granting summary disposition under MCR 2.116(C)(7) to defendants Daniels-Hillman and Seals and by denying his motion to amend his complaint. We disagree.

A trial court's decision concerning a motion to amend pleadings is reviewed for an abuse of discretion. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 53; 684 NW2d 320 (2004). "A trial court abuses its discretion when it chooses an outcome falling outside the range of reasonable and principled outcomes, or when it makes an error of law." *Planet Bingo, LLC v VKGS, LLC*, 319 Mich App 308, 320; 900 NW2d 680 (2017) (quotation marks and citation omitted). A trial court's ruling regarding a motion for summary disposition is reviewed de novo. *Heaton v Benton Constr Co*, 286 Mich App 528, 531; 780 NW2d 618 (2009). Summary disposition is appropriate pursuant to MCR 2.116(C)(7) when the moving party is entitled to "immunity granted by law." When reviewing a motion for summary disposition premised on immunity, this Court examines the affidavits, depositions, admissions and other documentary evidence to determine whether the moving party is entitled to immunity as a matter of law. *Margaris v Genesee Co*, 324 Mich App 111, 115; 919 NW2d 659 (2018). If documentary evidence is submitted, it must be admissible in evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

"Quasi-judicial immunity is an extension of absolute judicial immunity to non-judicial officers[.]" *Serven v Health Quest Chiropractic, Inc*, 319 Mich App 245, 254; 900 NW2d 671 (2017) (quotation marks and citation omitted). "The doctrine of quasi-judicial immunity as developed by the common law has at least two somewhat distinct branches[.]" *Denhof v Challa*, 311 Mich App 499, 511; 876 NW2d 266 (2015). "[O]ne branch focuses on the nature of the job-related duties, roles, or functions of the person claiming immunity, and one branch focuses on the fact that the person claiming immunity made statements or submissions in an underlying judicial proceeding." *Id*. As our Supreme Court explained in *Maiden*, 461 Mich at 134:

> [W]itnesses who testify during the course of judicial proceedings enjoy quasi-judicial immunity. This immunity is available to those serving in a quasi-judicial adjudicative capacity as well as those persons other than judges without whom the judicial process could not function. Witnesses who are an integral part of the judicial process are wholly immune from liability for the consequences of their testimony or related evaluations. Statements made during the course of judicial proceedings are absolutely privileged, provided they are relevant, material, or pertinent to the issue being tried. Falsity or malice on the part of the witness does not abrogate the privilege. The privilege should be liberally construed so that

[4] On appeal, plaintiff contends that application of immunity does not comport with the due process demands of the 14th Amendment. However, this issue was never raised in the trial court and is not preserved for appellate review. *Mouton v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014). The failure to raise this issue in the trial court results in the waiver of review of the issue on appeal. *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008). Deviation from this general rule is unwarranted in light of plaintiff's deficient pleadings and briefing of the issues.

> participants in judicial proceedings are free to express themselves without fear of retaliation. [Quotation marks and citations omitted.]

Courts have repeatedly extended this immunity to participants in court proceedings. See, e.g., *Diehl v Danuloff*, 242 Mich App 120, 128-133; 618 NW2d 83 (2000) (holding that a court-appointed psychologist "ordered to conduct a psychological evaluation and submit a recommendation to the trial court in a custody proceeding [wa]s entitled to absolute quasi-judicial immunity" in a subsequent lawsuit, given that the allegations against the psychologist were related to his "role in the custody proceeding," in which he "served as an arm of the court and performed a function integral to the judicial process") (quotation marks and citation omitted); see also *Denhof*, 311 Mich App at 511 (holding that immunity applied to statements made and actions taken by a county Friend of the Court during child support proceedings with regard to claims alleged by a child-support obligor); *JP Silverton Indus LP v Sohm*, 243 Fed Appx 82, 89 (CA 6, 2007) (holding that immunity applied to "a master commissioner conducting a foreclosure sale" pursuant to a court order); *Kolley v Adult Protective Servs*, 786 F Supp 2d 1277, 1299 (ED Mich, 2011) (holding that immunity applied to a GAL in guardianship proceedings involving a legally incapacitated adult).

The purpose and legal effect of guardianships is set forth by statute, *Univ Ctr, Inc v Ann Arbor Pub Sch*, 386 Mich 210, 217; 191 NW2d 302 (1971), and guardianships of legally incapacitated individuals are a mechanism that the Legislature intended to protect the interests of incapacitated wards, i.e., "a means of providing continuing care and supervision of the incapacitated individual[.]" MCL 700.5306(1). In this case, Seals and Daniels-Hillman fulfilled their roles to act in the interests of NK, as an incapacitated individual. Indeed, it is undisputed that NK reported to residents and the manager of Vision Quest that she was being sexually exploited by plaintiff. Once this information was relayed to Daniels-Hillman, she took steps to protect NK while an investigation occurred by seeking the removal of Forton, NK's guardian, and the report of abuse caused Seals to become involved. Additionally, Forton's ability to serve as NK's guardian was questioned in light of her own recent medical issues and the fact that plaintiff provided transportation and other assistance to NK during NK's hospitalizations. Thus, all of the claims asserted by plaintiff against Seals and Daniels-Hillman regarded either their testimony[5] or statements made in the guardianship proceedings or actions that they took, while acting as an "arm" of the court, to safeguard the interests of the legally incapacitated ward, NK. Such actions were an integral part of the guardianship proceedings. Therefore, the trial court did not err by holding that both Seals and Daniels-Hillman were absolutely immune from suit under the doctrine of quasi-judicial immunity, and thus were entitled to summary disposition under MCR 2.116(C)(7). See *Maiden*, 461 Mich at 134 ("The privilege should be liberally construed so that participants in

[5] Although the statement made by Seals was characterized as "testimony," there was no indication on the record that she was sworn prior to addressing the probate court. Nonetheless, her statements are protected. *Maiden*, 461 Mich at 134.

judicial proceedings are free to express themselves without fear of retaliation."); *Diehl*, 242 Mich App at 128-133.[6]

Additionally, the trial court did not abuse its discretion by denying plaintiff's motion to amend his complaint. Because summary disposition was granted under MCR 2.116(C)(7) on the basis of immunity granted by law, plaintiff was not entitled to amend his complaint pursuant to MCR 2.116(I)(5). See *Nowacki v State Employees' Retirement Sys*, 485 Mich 1037 (2010). Further, the probate court did not abuse its discretion by refusing to allow plaintiff to amend his complaint because amendment was futile. *Ormsby*, 471 Mich at 60. The proposed minor amendments merely added additional allegations concerning testimony that Seals and Daniels-Hillman offered in the probate proceedings or actions that they took, while acting as an "arm" of the court, to safeguard NK's interests.

Affirmed. As the prevailing parties, defendants Seal and Daniels-Hillman may tax costs.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ James Robert Redford

[6] We reject plaintiff's contention that defendants Seals and Daniels-Hillman were not entitled to quasi-judicial witness immunity because they offered "expert" opinion testimony in the probate proceedings, citing *Estate of Voutsaras v Bender*, 326 Mich App 667, 675; 929 NW2d 809 (2019). In *Estate of Voutsaras*, this Court held that expert witnesses "are not absolutely immunized" under the doctrine of quasi-judicial immunity from "professional-malpractice claims" that relate to something other than the expert witnesses' in-court testimony. In this case, however, plaintiff asserted no claims for professional malpractice, and there is no evidence that he was ever a client to whom either Seals or Daniels-Hillman owed any professional duty that might support a claim for malpractice. Moreover, Seals and Daniels-Hillman were never qualified as expert witnesses in the probate court, and they offered only factual testimony in the probate proceedings, not any expert-opinion testimony as defined by MRE 702. Thus, the expert-witness exception to quasi-judicial immunity set forth in *Estate of Voutsaras* is inapplicable here.