

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1204**

Brent A. Ristow,
Appellant,

vs.

Amanda Cunningham,
Respondent.

**Filed April 18, 2022
Affirmed
Johnson, Judge**

St. Louis County District Court
File No. 69DU-CV-20-1564

Brent Alan Ristow, West Saint Paul, Minnesota (*pro se* appellant)

Jerome D. Feriancek, Julie R. Benfield, Trial Group North, Duluth, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Brent A. Ristow was denied admission to the Minnesota bar based on a determination by the Board of Law Examiners that he lacks the required good character and fitness to practice law. He later learned that Amanda Cunningham, with whom he previously had had a romantic relationship, had provided both an oral statement and a

written statement to the board before it made its decision. Ristow sued Cunningham for defamation. The district court rejected Ristow's claims on Cunningham's motion for partial summary judgment. We conclude that Cunningham is immune from liability on Ristow's defamation claims based on a rule governing admission to the bar. Therefore, we affirm.

FACTS

Ristow graduated from law school in 2014. He passed the bar examination that year but was denied admission because the board determined, for 14 reasons, that he had not satisfied his burden to show good character and fitness to practice law. *See* Minn. R. Admission to Bar 5.B.

Between early 2016 and early 2017, Ristow and Cunningham had a romantic relationship. After the relationship ended, Cunningham sued Ristow in conciliation court to recover \$3,641 that she claimed to have lent him to pay for a repair of his vehicle. A conciliation court judge found that the parties had not agreed that Ristow would repay Cunningham for the amount of the repairs and entered judgment in favor of Ristow.

In December 2017, Ristow applied for admission to the bar a second time. He passed the bar examination in February 2018. The board again conducted an assessment of his character and fitness. In October 2018, a member of the board's staff called Cunningham to gather information. Cunningham told the staff member that Ristow had threatened to kill her on two occasions. The staff member asked Cunningham to provide an affidavit restating the information that she had shared during the telephone call. Cunningham submitted an affidavit in which she stated that Ristow twice had said that he

would shoot her if he ever found her with another man. She also stated in the affidavit that Ristow had not repaid money that she had lent him.

In February 2019, an attorney representing the board sent Ristow a ten-page letter informing him that his application for admission to the bar was denied, for multiple reasons, including a pattern of dishonesty in financial dealings, failure to timely file income-tax returns, and false statements to the board and others. The letter did not mention Cunningham and did not refer to the statements that she had provided to the board.

Ristow pursued an administrative appeal of the board's adverse determination. The board held an evidentiary hearing in July 2019. Cunningham testified under oath at the hearing. The board upheld its decision to deny Ristow admission to the bar.

Shortly after the board's evidentiary hearing, Ristow commenced this action against Cunningham in the Ramsey County District Court. A month later, Ristow amended the complaint. In the amended complaint, Ristow alleges that Cunningham defamed him by making statements in October 2018 to the board staff member that he had threatened to kill her and that he had not repaid a debt to her. In addition, Ristow alleges that Cunningham made the same two statements to two other persons.

In May 2020, Cunningham moved for partial summary judgment. Cunningham argued that Ristow's claims concerning her statements to the board are barred by the doctrine of absolute privilege and that she is immune from liability based on rule 13.B. of the Minnesota Rules Governing Admission to the Bar.

In August 2020, the district court filed an order in which it granted Cunningham's motion. In an accompanying memorandum, the district court discussed both the doctrine

of absolute privilege and the immunity provided by rule 13.B. In the same order, the district court granted Cunningham’s motion to transfer venue to St. Louis County, where she lives.

In March 2021, Cunningham moved for summary judgment on Ristow’s remaining claims, which concern statements Cunningham allegedly made to two other persons. The St. Louis County District Court granted Cunningham’s second summary-judgment motion in July 2021. The district court entered final judgment in September 2021.

Ristow appeals. He challenges only the grant of partial summary judgment on his claims concerning statements that Cunningham made to the board.

DECISION

Ristow argues that the district court erred by granting Cunningham’s motion for partial summary judgment on the ground that her allegedly defamatory statements to the board are not protected by the doctrine of absolute privilege. In response, Cunningham argues that she is entitled to summary judgment on Ristow’s claims based on her statements to the board for two reasons: absolute privilege and rule 13.B. immunity.

A district court must grant a motion for summary judgment “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We apply a *de novo* standard of review to the district court’s legal conclusions on summary judgment and

view the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

To prevail on a defamation claim, a plaintiff must prove that

(1) the defamatory statement was communicated to someone other than the plaintiff; (2) the statement is false; (3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community; and (4) the recipient of the false statement reasonably understands it to refer to a specific individual.

Larson v. Gannett Co., 940 N.W.2d 120, 130 (Minn. 2020) (quotation omitted). If a plaintiff establishes these four elements, a defendant nonetheless may avoid liability if the allegedly defamatory statement is protected by the doctrine of absolute privilege. *Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014). Absolute privilege applies if the allegedly defamatory statement is “(1) made by a judge, judicial officer, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) . . . relevant to the subject matter of the litigation.” *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306 (Minn. 2007).

In this case, the district court applied the *Mahoney* three-part test and determined that each requirement is satisfied. Ristow challenges the district court's reasoning with respect to the second requirement. He contends that Cunningham did not make statements to the board in a quasi-judicial proceeding because she did not make the statements in an adversarial hearing for which Ristow was given notice and was in attendance. Rather, he contends, she made the statements in a private telephone call and in an affidavit. The parties have cited caselaw in which the absolute-privilege doctrine has been applied to

statements made in adversarial quasi-judicial proceedings. *See, e.g., Jenson v. Olson*, 141 N.W.2d 488, 489-90 (Minn. 1966) (civil-service hearing reviewing city employee's termination); *Cole v. Star Trib.*, 581 N.W.2d 364, 367, 369 (Minn. App. 1998) (Board of Pardons hearing); *Kellar v. VonHoltum*, 568 N.W.2d 186, 189, 191-92 (Minn. App. 1997) (Department of Commerce bank-charter-application hearing), *rev. denied* (Minn. Oct. 31, 1997); *Freier v. Independent Sch. Dist. No. 197*, 356 N.W.2d 724, 726-27, 729 (Minn. App. 1984) (school-board hearing concerning employment matter). The parties have not cited any precedential opinion in which the absolute-privilege doctrine has been applied to statements made during a government agency's *ex parte*, non-adversarial investigation.

We need not decide whether the absolute-privilege doctrine applies in the circumstances of this case. Rule 13.B. provides a more straightforward means of resolving the appeal. That rule provides, "Any person or entity providing to the Board or its members, employees, agents, or monitors, any information, statements of opinion, or documents regarding an applicant, potential applicant, or conditionally admitted lawyer, is immune from civil liability for such communications." Minn. R. Admission to Bar 13.B. It is undisputed that Cunningham provided, to an employee of the board, information and statements regarding Ristow, who then was an applicant for admission to the bar. Accordingly, rule 13.B. applies. The plain language of the rule provides that Cunningham is immune from civil liability for the information and statements that she provided to the board. *See id.*

Ristow mentions rule 13.B. in his brief in only a limited way, asserting that the rule does not immunize Cunningham from civil liability because the rule is not "law." Ristow

does not develop the argument. We note that rule 13.B. was promulgated by the supreme court. *Order Amending the Rules for Admission to the Bar*, No. C5-84-2139 (Minn. June 12, 2007); *Order Amending the Rules for Admission to the Bar*, No. C5-84-2139 (Minn. Aug. 25, 2004); *Amended Order Promulgating Rules for Admission to the Bar*, No. C5-84-2139 (Minn. Aug. 26, 1998). The supreme court is vested with exclusive authority to determine who may practice law, to make rules and regulations governing lawyers, and to supervise and discipline lawyers. See Minn. Stat. § 480.05 (2020); *In re Daly*, 189 N.W.2d 176, 179 (Minn. 1971); *In re Petition for Integration of Bar of Minn.*, 12 N.W.2d 515, 518 (Minn. 1943); *In re Greathouse*, 248 N.W. 735, 737 (Minn. 1933). The plain language of rule 13.B. makes clear that the supreme court intended to confer civil immunity on persons who provide information to the board concerning applicants for admission to the bar, without any qualifications or preconditions, such as the three requirements of the absolute-privilege doctrine. We are unaware of any reason why rule 13.B. should not be applied in a straightforward manner to the facts and circumstances of this case.

Thus, Cunningham is immune from liability on Ristow's defamation claims that are based on Cunningham's October 2018 statements to the board. Therefore, the district court did not err by granting Cunningham's May 2020 motion for partial summary judgment.

Affirmed.