



Court finds plaintiff waived 5th amendment right in civil case

By: Heather Cobun Daily Record Legal Affairs Writer August 19, 2019

A woman suing her former employer for defamation after he reported her to the police for theft and fraud was not entitled to a stay of the civil suit to preserve her right against self-incrimination in a related criminal case, the Court of Appeals ruled Friday.

Kristi Heffington and her husband sued Ronald F. Moser, his wife and Ronald Moser's dental practice in 2016 for defamation per se, malicious use of process, civil conspiracy and related claims, according to the court's opinion. The plaintiffs alleged the Mosers made false statements by accusing Heffington of stealing money from the dental practice and committing identity fraud.

Before the civil trial, Heffington was indicted for theft scheme, fraud and related crimes for the same events underlying the defamation action. Heffington filed a motion to stay the civil action shortly before trial, arguing her testimony would implicate her Fifth Amendment right against self-incrimination in her criminal case.

Heffington had already sat for a seven-hour deposition as part of the case.

A trial judge in Prince George's County Circuit Court denied the motion and granted judgment at the end of the Heffingtons' case in favor of the Mosers after Kristi Heffington waived opening statement and presented no evidence. The plaintiffs appealed and argued the court abused its discretion by denying their motion to stay.

The Court of Special Appeals agreed with the Heffingtons, reversing the decision, but the Court of Appeals reversed again, unanimously holding that the trial court did not abuse its discretion.

"The decision of the circuit court to deny the stay was not based upon an incorrect standard, was not manifestly unreasonable, and hence was not an abuse of discretion," senior Judge Irma S. Raker, sitting by special assignment, wrote on behalf of the court.

Timothy F. Fizer, attorney for the Heffingtons, declined to comment on the decision Monday.

Kristi Heffington was the office manager at Ronald F. Moser, D.D.S., P.A. and was fired in April 2015 for stealing money from the practice, according to the opinion. She was accused of using the credit card terminal at the practice to process and later refund herself charges on medical credit cards obtained in her name and in the names of family members, according to the opinion.

Moser reported Heffington's theft to the Bowie Police Department and to the practice's insurer, reports that Heffington in her lawsuit claimed were defamatory. She ultimately pleaded guilty to identity fraud last year and was sentenced to 10 years in prison, with all but nine months suspended to be served in home detention, according to electronic court records.

The Mosers asked the Court of Appeals to reinstate the judgment of the trial judge because the court did not abuse its discretion in denying the stay and because Heffington's subsequent guilty plea rendered the civil suit moot. The high court ultimately determined Heffington had waived her Fifth Amendment right when she testified in a deposition about the underlying facts of her defamation claim. The court did not reach the mootness argument.

Though an individual who initiates a civil lawsuit but is also defending herself on related criminal charges must have her rights to access to the courts and Fifth Amendment privilege protected, the court determined that Heffington had waived her privilege when she sat for a seven-hour deposition in the civil case and answered questions about her conduct.

Because the trial judge determined Heffington had waived her right, it was not an abuse of discretion to deny the stay, according to the opinion.

“The court balanced the Heffingtons’ interest in Mrs. Heffington attempting to assert a Fifth Amendment privilege at trial against the Mosers’ discovery and trial preparation expenses as well as the Mosers’ interest in a timely resolution of the civil case,” Raker wrote.

Terrell N. Roberts III, of Roberts & Wood Attorneys at Law in Riverdale, said Wednesday the Mosers are gratified by the decision, which ends what he called a “long battle” for the couple.

“This case has been a disaster from the beginning for the Mosers,” he said. “They should never have been sued in the first place.”

The Mosers were also represented by Anne Kelley Howard of Budow and Noble P.C. in Rockville.

The case is *Ronald F. Moser et al. v. Kristi Heffington et al.*, No. 62, Sept. 2018.

(Editor’s note: This story was updated after going to print to include a quote from counsel for the prevailing party.)

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