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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

April 8, 2026

To:

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Circuit Court Judge
Electronic Notice

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Waukesha County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2025AP1005

Michael Lee Gorectke v. David Polachek (L.C. #2024CV1911)

Before Neubauer, P.J., Gundrum, and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Michael Lee Gorectke appeals from a circuit court order dismissing his negligence complaint against David Polachek and his employer, Vozar Appraisal Service, Inc. Gorectke argues that Polachek's testimony regarding Polachek's valuation of marital property in Gorectke's earlier divorce proceeding¹ caused him financial damage. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).² Because Polachek's testimony is

¹ *Gorectke v. Gorectke*, Waukesha County Circuit Case No. 2022FA1200.

² All references to the Wisconsin Statutes are to the 2023-24 version.

protected by the absolute testimonial privilege afforded to statements made in judicial proceedings, Gorectke's negligence claim is barred. We affirm the court's order dismissing Gorectke's complaint.

Gorectke and his wife filed for divorce in December 2022. On January 10, 2023, the parties submitted a stipulation for a court order whereby they agreed to retain Vozar Appraisal to appraise their marital residence. On February 15, 2023, Polachek submitted his completed appraisal assigning a value of \$540,000 to the property.

On August 28, 2023, the divorce court entered an order appointing unnamed appraisers, which it later clarified at the pre-trial (in response to Gorectke's contention that Polachek and Vozar Appraisal were not court-appointed experts), explaining that the August 2023 order implicitly identified Polachek and Vozar Appraisal, who the parties had agreed upon in the earlier entered January 2023 stipulated order.

At the divorce trial, on December 20, 2023, Polachek testified regarding the value of the marital residence. He explained that, as part of his trial preparation, he conducted a market analysis the week before, on or about December 14, 2023. He testified that based on his appraisal ten months prior and his recent market analysis, "there was nothing that [he] found that supported that [the property's] value has gone up in value since the time [he] appraised it [for \$540,000 in February 2023] to now." Over Gorectke's objection, the divorce court admitted the market analysis and Polachek's testimony, noting "it's actually a matter of professional responsibility for him coming knowing what the issues are for him to do that added research." Gorectke did not appeal the divorce court's final judgment and order.

On November 14, 2024, Gorectke filed the complaint in this action against Polachek and Vozar Appraisal for “negligent and improper conduct in performing a re-appraisal and providing testimony regarding the value of Plaintiff’s property ... resulting in a financial loss to the Plaintiff.” The complaint set forth multiple paragraphs as the basis for the single negligence claim, each based on Gorectke’s testimony at the divorce trial. In response, Polachek and Vozar Appraisal filed a motion to dismiss, which the circuit court granted after a motion hearing. The court reasoned that the divorce court had determined that Polachek and Vozar Appraisal were in fact court-appointed, and because that issue had been previously decided without appeal, issue preclusion and quasi-judicial immunity applied to the court-appointed expert to preclude a negligence claim against Polachek and Vozar Appraisal.

Gorectke appeals.

The parties present this appeal as involving a motion to dismiss. However, because the parties submitted and the circuit court considered material outside the pleadings, we review the court’s decision as one granting summary judgment. *See* WIS. STAT. § 802.06(2)(b) (if on a motion to dismiss “matters outside of the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [WIS. STAT. §] 802.08”). Our review of a circuit court’s decision on summary judgment is *de novo*. *See Secura Ins. v. Super Prods. LLC*, 2019 WI App 47, ¶11, 388 Wis. 2d 445, 933 N.W.2d 161. Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Sec. 802.08(2).

On appeal, Polachek and Vozar Appraisal contend that we should decide this case based on the absolute testimonial privilege, a ground presented to but not reached by the circuit court.

We agree. This court may affirm the circuit court on grounds other than those relied upon by the court. *State v. Earl*, 2009 WI App 99, ¶18 n.8, 320 Wis. 2d 639, 770 N.W.2d 755. Whether the absolute testimonial privilege applies is a question of law to be decided de novo. *Vultaggio v. Yasko*, 215 Wis. 2d 326, 330, 572 N.W.2d 450 (1998).

Wisconsin has long recognized an absolute testimonial privilege protecting statements made by witnesses in the course of judicial proceedings when those statements bear a proper relationship to the issues before the court. An absolute privilege gives “complete protection[.]” *Id.* at 331 (citation omitted). The absolute privilege for statements made in judicial proceedings applies equally to criminal and civil proceedings. See *Ladd v. Uecker*, 2010 WI App 28, ¶15, 323 Wis. 2d 798, 780 N.W.2d 216. “We take the rule to be well settled by the authorities, that words spoken in the course of judicial proceedings, though they impute crime to another, and therefore, if spoken elsewhere, would import malice and be actionable in themselves, are not actionable, if they are applicable and pertinent to the subject of inquiry.” *Jennings v. Paine*, 4 Wis. 372 [*358], 375 [*361] (1855) (citation omitted); see also *Bergman v. Hupy*, 64 Wis. 2d 747, 750, 221 N.W.2d 898 (1974); *Bromund v. Holt*, 24 Wis. 2d 336, 341-42, 129 N.W.2d 149 (1964). This privilege extends to statements made in those proceedings as long as the statements are “relevant.” *Bergman*, 64 Wis. 2d at 750; *Vultaggio*, 215 Wis. 2d at 339.

The relevancy standard for testimonial privilege is “liberally construed” where “all doubts must be resolved in favor of relevancy.” *Id.* “Witnesses in judicial proceedings are ‘immune from civil liability for damages caused by ... testimony, if relevant to the issues in the matter where the testimony is given.’” *Bergman*, 64 Wis. 2d at 750 (citation omitted); see also *Bussewitz v. Wisconsin Tchrs.’ Ass’n*, 188 Wis. 121, 128, 205 N.W. 808 (1925) (citation omitted) (“The question, therefore, in such cases is not whether the words spoken are true, not

whether they are actionable in themselves, but whether they were spoken in the course of judicial proceedings, and whether they were relevant and pertinent to the cause or subject of inquiry.”).

The purpose of absolute testimonial privilege is clear: without such protection, participants in judicial proceedings could reasonably fear that mistakes, factual misunderstandings, or overzealous advocacy might expose them to subsequent litigation. *See id.* at 127. Faced with that risk, individuals may conclude that participation in the judicial process carries too great a personal cost, to the detriment of the administration of justice. *Id.* The question of relevancy in these inquiries is for the determination of the court. *Id.* at 125.

The absolute testimonial privilege serves to prevent precisely the type of claim presented here. Polachek’s testimony concerned the valuation of the marital residence, which was an issue squarely before the divorce court and therefore, “relevant and pertinent to the cause or subject of inquiry.” *See id.* at 128 (citation omitted). Polachek’s testimony is plainly within the scope of the absolute testimonial privilege afforded to statements made in judicial proceedings. Gorectke’s negligence claim is barred.³

Accordingly,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

³ In light of our conclusion that testimonial privilege bars Gorectke’s negligence claim, we need not reach the circuit court’s alternative determinations of issue preclusion and quasi-judicial immunity. *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (“As one sufficient ground for support of the judgment has been declared, there is no need to discuss the others urged.”); *see also State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (“[a]n appellate court should decide cases on the narrowest possible grounds”).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals