

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CITY OF SCOTTSDALE,
Petitioner,

v.

THE HONORABLE JOSEPH P. MIKITISH,
Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA,
in and for the County of MARICOPA,
Respondent Judge,

JEFFREY MASON,
Real Party in Interest.

No. 1 CA-SA 22-0031
FILED 5-31-2022

Petition for Special Action from the Superior Court in Maricopa County
No. CV2018-009579
The Honorable Joseph P. Mikitish, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

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SCOTTSDALE v. HON. MIKITISH/MASON
Opinion of the Court

OPINION

Judge James B. Morse Jr. delivered the opinion of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Randall M. Howe joined.

M O R S E, Judge:

¶1 In this special action, the City of Scottsdale ("the City") petitions to reverse the superior court's denial of summary judgment on Jeffery Mason's ("Mason") defamation claim. For the reasons set forth below, we conclude that absolute immunity protects statements in a police report made by a police officer who is a victim of the reported crime. Accordingly, we accept special-action jurisdiction, and instruct the superior court to enter summary judgment for the City on Mason's defamation claim.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mason sued the City for defamation based on statements made in police reports by the City's officers who responded to reports of a disturbance between Mason and a neighbor. In their reports, the police officers stated that Mason pointed a gun either at the officers or in their direction. Mason claims those statements are false and defamatory, relying on body camera footage showing the gun pointed downwards and not directly at the officers. The State charged Mason with aggravated assault, alleging the officers were victims. Mason later pled guilty to felony disorderly conduct and was placed on probation. Mason's wife, Cynthia Mason, was separately charged with failure to follow police orders and ultimately acquitted of those charges.

¶3 The City moved for summary judgment on Mason's defamation claim, arguing that the officers' statements were protected by absolute immunity as crime victims or by qualified immunity as police officers. The superior court found that absolute immunity does not apply because "the statements included in their reports were not complaints made to the police" but "the officers' documentation of their own work in their official capacity." The court also denied summary judgment on qualified immunity grounds, concluding it was for the jury to determine whether "the evidence is clear and convincing that the officers made statements with

SCOTTSDALE v. HON. MIKITISH/MASON
Opinion of the Court

malice, knowing of their falsity or actually entertaining doubts about their truth." The officers seek special-action review of that denial.

JURISDICTION

¶4 "Special action jurisdiction is appropriate when a party lacks 'an equally plain, speedy, and adequate remedy by appeal,' and 'the case presents an issue of statewide importance and first impression.'" *Gilbert Prosecutor's Office v. Foster*, 245 Ariz. 15, 17, ¶ 5 (App. 2018) (quoting Ariz. R.P. Spec. Act. 1(a) and *Hamblen v. Hatch*, 242 Ariz. 483, 486, ¶ 12 (2017)). "Although we normally disfavor accepting special action jurisdiction to review the denial of a motion for summary judgment, questions concerning immunity are particularly appropriate for special action review." *Tucson Unified Sch. Dist. v. Borek*, 234 Ariz. 364, 367, ¶ 5 (App. 2014); see *Henke v. Superior Court*, 161 Ariz. 96, 99 (App. 1989) (accepting special-action jurisdiction because "we cannot allow a state official to be forced to trial when the process can and should be aborted in its early stages").

¶5 Mason does not dispute that special-action jurisdiction is appropriate in cases involving claims of immunity. Instead, he urges us to decline jurisdiction and find the issue waived under the doctrine of laches. See *Schoenberger v. Bd. of Adjustment of City of Phx.*, 124 Ariz. 528, 530 (1980) (noting laches may be applied to deny special-action relief). "Laches will generally bar a claim when the delay is unreasonable and results in prejudice to the opposing party." *Sotomayor v. Burns*, 199 Ariz. 81, 83, ¶ 6 (2000). Mason asserts that the City could have raised the same issues via special action immediately after the court denied its motion to dismiss. But the superior court found dismissal inappropriate "based upon these allegations *at this stage of the proceedings*." (Emphasis added.) After the close of discovery, the City moved for summary judgment, timely sought reconsideration when the court denied its motion, and promptly filed this special action after reconsideration was denied. Because the City did not unduly delay in seeking special-action relief, we accept jurisdiction.

DISCUSSION

¶6 Absolute privileges "recogni[ze] that certain persons, because of their special position or status, should be as free as possible from fear that their actions in that position might have an adverse effect upon their own personal interest." *Green Acres Tr. v. London*, 141 Ariz. 609, 612 (1984). Whether and to what extent a privilege applies is a matter of law we review de novo. See *id.* at 613.

SCOTTSDALE v. HON. MIKITISH/MASON
Opinion of the Court

¶7 Arizona law does not extend absolute immunity to all statements made by police officers in reports. *See Portonova v. Wilkinson*, 128 Ariz. 501, 503 (1981) (declining to "accord the absolute privilege to all public officers and employees of the state"). But, as Mason acknowledges, our Court has extended an absolute privilege to citizen crime victims' statements to the police. *See Ledvina v. Cerasani*, 213 Ariz. 569, 574, ¶ 14 (App. 2006). This privilege is part of the common-law's "absolute immunity for statements made in furtherance of judicial proceedings," and is guided, in part, by the Victim's Bill of Rights in Article 2, Section 2.1, of the Arizona Constitution. *Ledvina*, 213 Ariz. at 572-73, ¶¶ 7, 14; *see also Green Acres*, 141 Ariz. at 613 (discussing judicial-proceeding privilege).

¶8 Mason does not challenge the crime-victim privilege established in *Ledvina* but argues it does not apply to this case because *Ledvina* only applies to citizens statements to police and its "narrow holding does not extend to false statements made by police officers." Mason further argues that the crime-victim privilege does not apply because the criminal case has concluded, and the protections of the Victim's Bill of Rights are "limited to the duration of the criminal justice process." We reject both arguments.

I. Police-Officer Victims.

¶9 Arizona courts have rejected attempts to treat police-officer victims differently than other crime victims. In *State v. Roscoe*, our supreme court addressed victim-interview legislation that provided "a peace officer shall not be considered a victim if the act that would have made him a victim occurs while the peace officer is acting in the scope of his official duties." 185 Ariz. 68, 70 (1996) (quoting A.R.S. § 13-4433(F) (1992)). The supreme court found that the legislation was in direct conflict with the constitutional definition of a victim in "Ariz. Const. art. II, § 2.1(C), which states, in part, that "[v]ictim" means a person against whom the criminal offense has been committed . . . except if the person is in custody for an offense or is the accused." *Id.* at 71. Because the conflict between the statute and constitution was direct, the court found the legislature's attempt to exclude police officers from the definition of victim was unconstitutional. *Id.* at 74; *see also State v. Matthews*, 245 Ariz. 281, 283 (App. 2019) (finding the arresting police officers were victims entitled to refuse pretrial interviews with the defendant); *State v. Sorkhabi*, 202 Ariz. 450, 453, ¶ 13 (App. 2002) (determining that an officer fell "within the definition of 'a person against whom the criminal offense [of resisting arrest was] committed'" (quoting A.R.S. § 13-4401(19))).

SCOTTSDALE v. HON. MIKITISH/MASON
Opinion of the Court

¶10 Mason relies primarily on *Grimm v. Arizona Board of Pardons & Paroles*, 115 Ariz. 260 (1977), and *Chamberlain v. Mathis*, 151 Ariz. 551 (1986), to argue that police-officer victims should not be afforded the immunity enjoyed by civilian victims. In *Grimm*, our supreme court rejected absolute immunity for public officials "acting in other than true judicial proceedings . . ." 115 Ariz. at 265. In *Chamberlain*, the court rejected absolute immunity for "high level" executive officials. 151 Ariz. at 556-60. But the court in *Chamberlain* recognized the judicial-proceedings immunity set forth in *Green Acres* for acts with a "close, direct relationship to" judicial proceedings, *id.* at 558, and a victim's complaint to police is a first step in a judicial proceeding, *Ledvina*, 213 Ariz. at 572-75, ¶¶ 10-12.

¶11 Mason further argues that officer-victims should be excluded from the protections afforded by *Ledvina* because their statements are "made in the line of duty." But our cases have rejected similar distinctions. Lawyers are required to report ethical violations by colleagues, *see* Ariz. R. Sup. Ct. 42, ER 8.3 (requiring lawyers to report others for violations of the Rules of Professional Conduct), but our courts have long applied absolute immunity for Bar complaints filed by attorneys against other lawyers, *see, e.g., Drummond v. Stahl*, 127 Ariz. 122, 126 (App. 1980) (finding that absolute privilege protected attorney who filed bar complaint against another attorney); *Sobol v. Alarcon*, 212 Ariz. 315, 318, ¶¶ 14-15 (App. 2006) (providing absolute immunity to attorney reporting unauthorized practice of law); *see also Bailey v. Superior Court*, 130 Ariz. 366, 368 (App. 1981) (holding absolute privilege applied to statements in complaint filed with Commission on Judicial Qualifications).

¶12 Mason acknowledges that civilian crime victims have absolute immunity for statements made to police officers. But Mason provides no authority for the proposition that such immunity applies to a civilian crime victim but not for a crime victim who also is a police officer. *See Roscoe*, 185 Ariz. at 70 (agreeing with the proposition that peace-officer victims are "entitled to the same constitutional protections afforded to other victims" (quoting *State v. Roscoe*, 182 Ariz. 332, 335 (App. 1994))).¹

¹ Arizona's federal courts, applying Arizona law in unpublished decisions, have arrived at conflicting conclusions regarding immunity for statements in police reports. *Compare Wilson v. Pima County*, CV-04-502-TUC-JM, 2007 WL 9724098 (D. Ariz. May 1, 2007) (applying absolute immunity for reporting by law enforcement), and *Outley v. Moir*, CV-19-0019-PHX-JAT (JFM), 2021 WL 2228575 (D. Ariz. Feb. 8, 2021) (same), *with*

SCOTTSDALE v. HON. MIKITISH/MASON
Opinion of the Court

¶13 Accordingly, we hold that statements made by law-enforcement officers detailing incidents in which the law-enforcement officer is the victim of the reported crime are subject to the absolute privilege set forth in *Ledvina*.

II. Duration of Absolute Immunity.

¶14 Mason also argues that any immunity only extends for the duration of the criminal case and his discharge from probation terminated the officer's immunity. Mason is correct that the statutory provisions of the Victim's Bill of Rights are generally tethered to the duration of criminal proceedings. For example, a victim's right to refuse interviews under A.R.S. § 13-4433(B) expires after "the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution." A.R.S. § 13-4402(A); *see also* Ariz. R. Crim. P. 39(a)(3) ("A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 . . ."); *State v. Leonardo, ex rel. County of Pima*, 226 Ariz. 593, 596, ¶ 11 (App. 2011) (noting "a victim retain[s] his or her rights during a defendant's term of probation"). However, Mason's argument fails because a statutory victim's rights only attach at the time of an arrest or the filing of criminal charges. *See* A.R.S. § 13-4402(A) (providing that victim's rights "arise on the arrest or formal charging" of the defendant); *State v. Stauffer*, 203 Ariz. 551, 553, 555, ¶¶ 5, 15 (App. 2002) (declining to extend victim's rights to other testifying alleged victims whose cases had not been charged). The immunity provided by *Ledvina* explicitly applies to statements made before arrest and charging. 213 Ariz. at 569, ¶ 2 (noting that Mr. Ledvina was charged after his neighbor reported him to police). If the common-law immunity provided in *Ledvina* were similarly limited to the duration of the criminal justice process, the privilege would be eliminated for nearly all victim statements made during the pre-charging investigation of a crime.

¶15 Absolute immunity in this context is not solely a creation of the Victim's Bill of Rights—it is derived from a common-law privilege for statements made in judicial proceedings as recognized in the other jurisdictions and the Restatement. *Ledvina*, 213 Ariz. at 572-75, ¶¶ 10-15 (collecting cases); *see, e.g.*, Restatement (Second) of Torts § 587 ("A party to

Sweet v. City of Mesa, CV-17-00152-PHX-GMS, 2022 WL 363999 (D. Ariz. Feb. 4, 2022) (concluding officers lacked absolute immunity). However, those cases did not address a situation in which the reporting officer was the victim of the reported crime.

SCOTTSDALE v. HON. MIKITISH/MASON
Opinion of the Court

a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding . . ."). The *Ledvina* court also looked to Arizona cases applying absolute privilege to complaints to the State Bar and the Board of Legal Document Preparers to determine that such a privilege should equally extend to victim's statements to police. *Id.* at 572, ¶¶ 8-9. Accordingly, while "the Victim's Bill of Rights significantly aids in guiding [the court's] judgment," the privilege was not a statutory creation of the Victim's Bill of Rights. *Id.* at 574, ¶ 14.

¶16 Finally, the privilege provides immunity, not just a temporary reprieve from suit. *See Sobol*, 212 Ariz. at 318, ¶ 12 (noting "absolute immunity immunizes absolutely"). A privilege that only protected victim's statements if those statements resulted in criminal charges, but then expired when the criminal case is over, would not be consistent with the stated purpose of the privilege to encourage the "free and unfettered reporting to law enforcement authorities to assist the detection and prosecution of criminal activity." *Ledvina*, 213 Ariz. at 573, ¶ 12. To the contrary, courts have applied the broader privilege for statements made in judicial proceedings and reports to police after the underlying proceedings have ended. *See Drummond*, 127 Ariz. at 124, 126 (applying absolute privilege to State Bar complaint after complaint dismissed as lacking probable cause); *Simonds v. Ariz. Aerospace Found., Inc.*, 2 CA-CV 18-0007, 2018 WL 4055654 at *2, ¶¶ 10-12 (Ariz. App. Aug. 24, 2018) (mem. decision) (noting that no cases have "made any distinction between police reports that lead to an arrest and those that do not" and applying *Ledvina* even though no charges were filed); *see also Fappani v. Bratton*, 243 Ariz. 306, 310, ¶¶ 12-13 (App. 2017) (discussing *Ledvina* in the context of abuse-of-process claims after the plaintiff was acquitted and no criminal charges remained pending).

¶17 Thus, the *Ledvina* immunity did not expire when the criminal case ended.

III. Other Issues.

¶18 Because we resolve this issue based on absolute immunity, we need not address whether the police officers were entitled to qualified immunity.

¶19 The superior court also granted summary judgment to the City on Cynthia Mason's claims for malicious prosecution. Because that ruling is not before us in this special action, we express no opinion on it.

SCOTTSDALE v. HON. MIKITISH/MASON
Opinion of the Court

CONCLUSION

¶20 We hold that the statements made by the police-officer victims in their reports regarding the reported crimes for which they are the alleged victims are protected by the absolute privilege set forth in *Ledvina*. We reverse the superior court's denial of summary judgment on the defamations claim and instruct the superior court to enter summary judgment for the City on Mason's defamation claim.



AMY M. WOOD • Clerk of the Court
FILED: AA