STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1282
A24-1331

Tyler Timberlake,
Respondent,

vs.

Brian O'Hara,
Defendant (A24-1282),
Appellant (A24-1331),

City of Minneapolis,
Appellant (A24-1282),
Defendant (A24-1331).

Filed June 30, 2025
Affirmed in part, reversed in part, and remanded
Slieter, Judge

Hennepin County District Court
File No. 27-CV-23-19251

Joseph P. Tamburino, Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota; and

M. Gregory Simpson, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for respondent)

Vicki A. Hruby, Jardine, Logan & O'Brien P.L.L.P., Lake Elmo, Minnesota; and

Douglas A. Kelley, Steven E. Wolter, Brett D. Kelley, Garrett S. Stadler, Kelley Wolter & Scott, P.A., Minnetonka, Minnesota (for appellant Brian O'Hara)

Kristyn Anderson, Minneapolis City Attorney, Adam E. Szymanski, Munazza Humayun, Sarah Riskin, Assistant City Attorneys, Minneapolis, Minnesota (for appellant City of Minneapolis)

Considered and decided by Slieter, Presiding Judge; Frisch, Chief Judge; and Chutich, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

In these consolidated interlocutory appeals, appellants City of Minneapolis and Police Chief Brian O'Hara challenge the district court's denial of their motions to dismiss respondent Tyler Timberlake's defamation claims on grounds of absolute privilege and statutory immunity under Minn. Stat. § 181.933, subd. 2 (2024). Appellants have not established that appellant-police chief's statements were protected by absolute privilege, and we affirm the district court's denial of their motions on that ground. But appellant-city's statements in its termination letter are protected by statutory immunity under Minn. Stat. § 181.933, subd. 2, and we reverse the district court's denial of its motion to dismiss respondent's defamation claim on that ground. We therefore affirm in part, reverse in part, and remand for further proceedings.

FACTS

Because this appeal follows a denial of appellants' motions to dismiss, we presume the following facts as alleged in respondent's complaint as true. On June 5, 2020, respondent Tyler Timberlake was involved in an incident while working as an officer for the Fairfax County Police Department (FCPD) in the State of Virginia. The incident

* Retired justice of the Minnesota Supreme Court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10, and Minn. Stat. § 2.724, subd. 3 (2024).

involved Timberlake's use of a taser to restrain an individual whom he mistakenly thought was a different individual with an outstanding felony warrant. The incident, which occurred 11 days after the killing of George Floyd, was captured on video and posted on social media the same day. On June 6, FCPD placed Timberlake on administrative leave and began an internal investigation. Timberlake was also criminally charged with three counts of misdemeanor assault and battery.

On March 25, 2022, a jury acquitted Timberlake of the misdemeanor charges arising from the June 5 incident. Following his acquittal, FCPD's internal investigation closed, and Timberlake was reinstated to his position with a written reprimand. Timberlake appealed, and the written reprimand was reduced to an oral reprimand. Neither type of reprimand was considered a disciplinary action for the FCPD.

Later that year, Timberlake applied for a position with the Minneapolis Police Department (MPD). On November 8, Timberlake had a final interview with appellant Police Chief Brian O'Hara and other hiring personnel. Timberlake received and accepted a formal offer of employment the following month. He was sworn in as a Minneapolis police officer on March 15, 2023.

By mid-April members of the press, representing several different news outlets, inquired about Timberlake's background, including the 2020 incident and MPD's hiring process. Chief O'Hara issued a statement on April 18. Timberlake asserts this statement was defamatory. On May 5, Chief O'Hara released another statement in response to further media requests regarding MPD's hiring of Timberlake. Timberlake alleges this statement

was also defamatory. On May 25, Chief O'Hara gave an interview during which he responded to similar questions. Timberlake further alleges this statement was defamatory.

On July 5, Timberlake was informed during a meeting, at which O'Hara did not attend, that his employment with MPD was terminated. Though he was not told of the reason for his termination, he was informed that there were no complaints of misconduct and that he properly disclosed all required past information to the MPD. On September 22, and in response to a request from Timberlake, appellant City of Minneapolis sent Timberlake a letter outlining the reasons for his termination. Timberlake alleges that the reasons stated in the letter—that his conduct did not meet MPD's standards and that he had recently used unreasonable force—were untrue.

Timberlake sued O'Hara and the city alleging, as relevant to this appeal, defamation and defamation *per se*. O'Hara and the city moved to dismiss the defamation claims and argued that Chief O'Hara's statements were protected by absolute privilege and that the statements in Timberlake's termination letter were protected by statutory immunity. The district court denied their motions.

O'Hara and the city appeal the district court's denial of their motions to dismiss the defamation claims.

DECISION

O'Hara and the city challenge the district court's denial of their motions to dismiss Timberlake's defamation claims, arguing that Chief O'Hara's statements to the media were absolutely privileged and therefore could not be the basis for defamation claims. Alternatively, O'Hara argues that the district court abused its discretion in failing to take

judicial notice of certain documents before issuing its decision. The city argues that the district court erred by failing to dismiss Timberlake's claim based upon statutory immunity pursuant to Minn. Stat. § 181.933, subd. 2. We address each claim in turn.

I. Chief O'Hara's statements are not protected by absolute privilege, and the district court acted within its discretion to deny judicial notice.

Absolute Privilege

In Minnesota, "a plaintiff pursuing a defamation claim must prove that the defendant made: (a) a false and defamatory statement about the plaintiff; (b) in [an] unprivileged publication to a third party; (c) that harmed the plaintiff's reputation in the community." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 873 (Minn. 2019) (alteration in original) (quotation omitted). Appellate courts "review de novo whether the doctrine of absolute privilege applies in a given situation." *Harlow v. State Dep't of Hum. Servs.*, 883 N.W.2d 561, 569 (Minn. 2016).

"Absolute privilege bars liability for even 'intentionally false statements, coupled with malice,' while qualified privilege bars liability only if the 'defamatory statements are publicized in good faith and without malice.'" *Minke v. City of Minneapolis*, 845 N.W.2d 179, 182 (Minn. 2014) (quoting *Matthis v. Kennedy*, 67 N.W.2d 413, 416 (Minn. 1954)).

We first consider the supreme court caselaw applying absolute privilege. In the executive context when considering whether to confer absolute privilege, the supreme court "distinguish[es] between top-level and lower-level officers. Top-level officers typically enjoy absolute privilege for statements made in the course of their duties." *Minke*, 845 N.W.2d at 182. Commissioners and deputy commissioners of state agencies, for

example, enjoy absolute immunity for statements made in the course of their duties. *See Johnson v. Dirkswager*, 315 N.W.2d 215, 219 (Minn. 1982); *see also Harlow*, 883 N.W.2d at 572-73 (determining that a deputy commissioner is "a top-level cabinet-equivalent official" and concluding that "a deputy commissioner of DHS, whose position and duties are defined by Minn. Stat. § 15.06, subd. 7, is entitled to the protection of absolute immunity when making statements within the scope of his or her statutory authority").

In the legislative context, the Minnesota Constitution provides for absolute privilege to statements made by members of the State Senate and House of Representatives in the discharge of their official duties. Minn. Const. art. IV, § 10. But the supreme court "ha[s] consistently declined to extend absolute privilege to all legislative officers, such as those in subordinate government bodies." *Minke*, 845 N.W.2d at 182; *see Zutz v. Nelson*, 788 N.W.2d 58, 63 (Minn. 2010) (refusing to extend absolute privilege to statements made by members of an unelected watershed district); *see also Jones v. Monico*, 150 N.W.2d 213, 216 (Minn. 1967) (concluding that subordinate bodies are not protected by absolute privilege "since the members of such bodies are sufficiently protected by exemption from liability in the exercise of good faith").

In sum, because of its robust protection, "[a]bsolute privilege is not lightly granted and applies only in limited circumstances." *Zutz*, 788 N.W.2d at 62. Though speech by certain government officials from each branch of government is protected by absolute privilege, it does not extend "to all speech by government employees related to their work." *Minke*, 845 N.W.2d at 182.

Moreover, only once has the supreme court extended absolute privilege to lower-level executive officers. In *Carradine v. State*, the supreme court extended absolute immunity to statements made by police officers in arrest reports by considering "the nature of the function assigned to the officer and the relationship of the statements to the performance of that function." 511 N.W.2d 733, 736 (Minn. 1994). The court explained that "[a]n arresting officer's freedom of expression in making an arrest report is essential to the performance of his function as an officer." *Id.* at 737. Thus, "unless the officer in question is absolutely immune from suit, the officer will timorously, instead of fearlessly, perform the function in question and, as a result, government—that is, the public—will be the ultimate loser." *Id.* at 735.

Further, the supreme court has repeatedly reiterated that *Carradine*'s exception for lower-level executive officers is narrow. *See Harlow*, 883 N.W.2d at 572 ("We have only extended absolute privilege to a lower-level official in the narrow situation of a police officer who prepares an arrest report, and there only because of the unique and essential role an arrest report plays in charging decisions and criminal trials."); *Minke*, 845 N.W.2d at 182 ("Only once have we carved out an exception for lower-level executive officers, and then only a narrow one.").

With this summary of the supreme court's application of absolute privilege as a backdrop, we address O'Hara's and the city's arguments as to why the district court erred in not applying it here. They emphasize that O'Hara is the police chief in the largest city in the state and that, "since George Floyd's death in 2020, public interest in MPD operations, including the integrity of the MPD, has been of public concern." They argue

that, therefore, because O'Hara holds a "high-level executive position," it was his obligation to respond to all inquiries regarding the hiring processes related to his job as chief of police and that, based upon supreme court precedent, absolute privilege should be extended to him and the city. We are unpersuaded by this argument.

The Minnesota Supreme Court has never applied absolute privilege to statements made by a city's chief of police. Additionally, given the early stage of this litigation—denial of a motion to dismiss—there are insufficient facts regarding "the nature of the function assigned . . . and the relationship of the statements to the performance of that function." *Carradine*, 511 N.W.2d at 736. The application of absolute privilege to a circumstance not previously recognized should not be done in the absence of sound evidence. *See Zutz*, 788 N.W.2d at 65 (concluding that "the judicial extension of the absolute privilege should occur only on the basis of sound evidence that a need exists"). And this extension should only be done "when public policy weighs strongly in favor of such extension." *Id.* at 66. As we noted, the supreme court has never undertaken the weighing of these public policy considerations in extending an absolute privilege to statements made by a city's police chief, which presents a policy question beyond the scope of our review. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.").

We are likewise unpersuaded by appellants' reliance of *Luttman*. This court in *Luttman* applied *Carradine* and concluded that "[s]tatements made by an elected county sheriff responding within the scope of his official duties to constituent questions on a matter

of public interest involving a key part of the sheriff's job are absolutely privileged and immune from a defamation suit." *Redwood County Tel. Co. v. Luttman*, 567 N.W.2d 717, 718 (Minn. App. 1997), *rev. denied* (Minn. Oct. 21, 1997). In concluding that the sheriff's statements were protected by absolute privilege, we observed that "[t]he sheriff is the most prominent elected law enforcement official in the county," and the statements "were made in the performance of his official duties as sheriff." *Id.* at 721.

O'Hara and the city claim that the sheriff in *Luttman* and Chief O'Hara hold the same position within their respective municipal agencies. Unlike a chief of police who is appointed, the sheriff in *Luttman* was an elected official. *Id.* Moreover, in contrast to this case which comes before us following a denial of a rule 12 dismissal motion, which makes it difficult to determine whether Chief O'Hara's statements were made in the performance of his duties as chief of police, *Luttman* came to this court following the denial of a motion for summary judgment. *Id.* at 718. Finally, *Luttman* relied on *Carradine* to support its application of absolute immunity to a county sheriff. However, as we described above, more recent supreme court cases have limited the application of *Carradine* and absolute immunity as a policy matter. Further, the supreme court has never adopted *Luttman* or considered whether a county sheriff could receive absolute immunity. Accordingly, given the state of existing law, the district court did not err in declining to dismiss Timberlake's defamation claim against O'Hara on the basis of absolute immunity.

Judicial Notice

O'Hara claims, alternatively, that the district court erred by declining his request to take judicial notice of several documents that were submitted with the motions to dismiss.

He asserts that these documents would reveal that O'Hara serves as the "chief law enforcement officer for the City" and that he is therefore entitled to an absolute privilege for the statements at issue. These documents, as relevant, include the following:

- Excerpts from city charter;
- City ordinance;
- MPD policies and the department organization chart;
- Police chief job description.

The district court declined to take judicial notice because the documents "are not fully self-determinative of the adjudicative facts for which they are submitted" and would be "subject to verification by witness testimony."

"A district court's decision whether to take judicial notice of proffered facts is an evidentiary ruling that we review only for abuse of discretion." *Fed. Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67, 71 (Minn. App. 2015). Minn. R. Evid. 201 governs judicial notice of adjudicative facts. The rule provides that "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Minn. R. Evid. 201(b). A district court "shall take judicial notice if requested by a party and supplied with the necessary information." Minn. R. Evid. 201(d).

Though the statements contained within the documents include facts that may not be subject to reasonable dispute, the inferences and conclusions the parties draw from the documents regarding the nature and scope of the role of the chief of police are the subject

of reasonable dispute. *See Mitchell*, 862 N.W.2d at 71 ("Although the Mitchells['] proffered records and statements . . . might . . . have qualified as adjudicative facts, the inferences they draw regarding Freddie Mac's standing, legal capacity, and the validity of its interest in the property are arguments, not facts."). None of the excluded documents establish that the police chief is responsible for media communications relating to personnel or MPD's hiring processes such that the statements would be protected by absolute privilege. Rather, that is an inference that could be drawn from the facts established by the foregoing materials. The district court, therefore, acted within its discretion by declining to take judicial notice of the records submitted as part of the motions to dismiss.

Because the district court did not err in declining to extend absolute privilege to Chief O'Hara's statements on the basis of the complaint or abuse its discretion by declining to take judicial notice of the records Timberlake submitted, we affirm the district court's denial of appellants' motion to dismiss the claims based on Chief O'Hara's statements.

II. The city's statements in its termination letter to Timberlake are protected by statutory immunity under Minn. Stat. § 181.933, subd. 2.

The city argues that the district court erred by determining that the statements in Timberlake's termination letter are not protected by statutory immunity under Minn. Stat. § 181.933, subd. 2. "Whether government entities and public officials are protected by statutory immunity and official immunity is a legal question which this court reviews de novo." *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996); *LeBaron v. Minn. Bd. of Pub. Def.*, 499 N.W.2d 39, 41-42 (Minn. App. 1993), *rev. denied* (Minn. June 9, 1993).

The city argues that Timberlake's defamation action is prohibited under Minnesota Statutes section 181.933 (2024), which provides:

> Subdivision 1. Notice required. An employee who has been involuntarily terminated may, within 15 working days following such termination, request in writing that the employer inform the employee of the reason for the termination. Within ten working days following receipt of such request, an employer shall inform the terminated employee in writing of the truthful reason for the termination.
>
> Subd. 2. Defamation action prohibited. No communication of the statement furnished by the employer to the employee under subdivision 1 may be made the subject of any action for libel, slander, or defamation by the employee against the employer.

The district court, in denying the city's dismissal motion, interpreted the statute to mean that, the prohibition of defamation claims in subdivision 2 only applies if the reasons-for-termination letter is timely under subdivision 1.

"The interpretation of a statute is a question of law" that we also review *de novo*. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). "When interpreting a statute, our job is to ascertain and effectuate the intention of the Legislature." *Jepsen as Tr. for Dean v. County of Pope*, 966 N.W.2d 472, 484 (Minn. 2021). "[W]e first look to see whether the statute's language, on its face, is clear or ambiguous." *Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2022). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Schroedl*, 616 N.W.2d at 277 (quotation

omitted). "If the statute is free from ambiguity, we look only at its plain language." *Anker v. Little*, 541 N.W.2d 333, 336 (Minn. App. 1995), *rev. denied* (Minn. Feb. 9, 1996).

The city argues that the statute is unambiguous and that subdivision 2, by its plain language, provides immunity from a defamation claim and without regard to a timeline. Timberlake, who does not claim the statute is ambiguous, argues that the timeline set forth in subdivision 1 also applies to subdivision 2. He claims to interpret it otherwise renders subdivision 2 as absurd. We agree with the city.

As noted, subdivision 1 requires employers to provide employees who have been involuntarily terminated a written explanation outlining the reasons for termination within ten days of an employee's request. Minn. Stat. § 181.933, subd. 1. Subdivision 2 provides employers with immunity for those statements but does not impose a timeline. *Id.*, subd. 2. And imposing a timeline into subdivision 2 would require this court to add words to the statute, which this court cannot do. *See Christiansen v. Bd. of Regents*, 733 N.W.2d 156, 159 (Minn. App. 2007) (noting that "this court cannot add to a statute what the legislature has either purposefully omitted or inadvertently overlooked"), *rev. denied* (Minn. Aug. 21, 2007). Instead, the plain language in subdivision 2 of the statute provides employers with immunity for statements made pursuant to subdivision 1.

Timberlake argues unconvincingly that adopting this interpretation would render the timeline in subdivision 1 meaningless. The statute provides a remedy for untimeliness: "An employer who failed to notify, as required under section 181.933 or 181.934, . . . is subject to a civil penalty of $25 per day per injured employee not to exceed $750 per injured employee." Minn. Stat. § 181.935(b) (2024). We therefore are not persuaded that failing

to incorporate the timeliness requirement of subdivision 1 into subdivision 2 would render subdivision 1 meaningless.

In determining that the termination letter was not protected by Minn. Stat. § 181.933, subd. 2, because it was not timely, the district court relied on this court's decision in *LeBaron*, 499 N.W.2d at 42. In that case, LeBaron received a termination letter from his employer on June 24, 1991. *LeBaron*, 499 N.W.2d at 40. LeBaron and the employer met to discuss the reasons for termination. *Id.* LeBaron then "wrote a letter to the State Public Defender complaining he had been fired summarily and the employer was unfit to manage the district office." *Id.* The state public defender sent LeBaron's letter to the employer and asked for "his side of the story." *Id.* The employer then sent a letter to the state public defender explaining his reasons for terminating LeBaron. *Id.* The employer sent a copy of the letter to LeBaron, which formed the basis of LeBaron's defamation claim. *Id.* This court concluded that, "[b]ecause both parties admit they failed to follow the timing requirements of Minn. Stat. § 181.933, no absolute privilege can flow from that statute to protect the employer from liability for defamation." *Id.* at 42. However, this court concluded that absolute privilege did apply pursuant to provisions found in a separate chapter. *Id.* at 42-43. Therefore, this court in *LeBaron* was not asked for, and did not undertake, a statutory analysis of Minn. Stat. § 181.933, subd. 2, as we have done here.

Because Minn. Stat. § 181.933, subd. 2, does not impose a timeliness requirement, the district court erred by determining that subdivision 2 did not provide the city with immunity for the statements made within Timberlake's termination letter.

Affirmed in part, reversed in part, and remanded.