

August 2023

Court Affirms Fee Award Against Arizona Lawmakers Who Filed Groundless, Bad-Faith Defamation Lawsuit Against Political Rival

By Kennison Lay

PUBLISHED IN: [MediaLawLetter August 2023](#)

TOPICS: [Defamation](#)

Three Republican Arizona legislators filed a groundless defamation lawsuit in bad faith against a Democratic legislator for urging federal authorities to investigate the plaintiffs' connections to the January 6, 2021 riot at the U.S. Capitol, the Arizona Court of Appeals held in affirming an attorneys' fees award. [Finchem v. Fernandez](#), No. 1-CA-CV 22-0647 (Ariz. App. Aug. 10, 2023).

The appellate court also ordered appellants Mark Finchem, Anthony Kern, and Paul Gosar to reimburse defendant Charlene Fernandez for her attorneys' fees on appeal, holding that the plaintiffs' pleadings were "riddled with irrelevant allegations" and "irrelevant arguments," and their appeal was "both groundless and brought in bad faith."

Background

Appellants are current (Kern) and former (Finchem) members of the Arizona Legislature and a sitting member of Congress (Rep. Gosar). Their defamation claim was based on a letter sent by Arizona's Democratic state legislators to the Acting Attorney General and the FBI Director, urging law enforcement officials to "fully investigate the extent of [Appellants'] involvement" in the January 6, 2021 attack on the Capitol, specifically whether or not they "incited, encouraged or participated in the lawless behavior that took place on that day" and thus could be "potentially criminally liable." Although the letter was signed by all 42 Democrats in the Arizona Legislature at the time, Appellants sued only Fernandez, who was then a member of the Arizona House of Representatives. Appellants subsequently amended their complaint to add claims for "conspiracy" and "aiding and abetting" defamation.

Plaintiffs' pleadings were "riddled with irrelevant allegations" and "irrelevant arguments," and their appeal was "both groundless and brought in bad faith."

Fernandez, currently the Arizona State Director for Rural Development at the U.S. Department of Agriculture, moved to dismiss the claims, arguing that the letter was absolutely privileged as a complaint to law enforcement concerning violations of criminal law and that Appellants had failed to sufficiently plead actual malice. Fernandez also argued that Appellants failed to provide sufficient factual support for their alleged claims for "conspiracy" and "aiding and abetting" defamation.

The trial court agreed with Fernandez’s arguments and granted the motion to dismiss, recognizing that the letter serving as the basis of Appellants’ complaint “goes to the heart of free speech and the right to petition the government in connection with matters of great public concern.” The trial court subsequently granted Fernandez’s request for attorneys’ fees and costs, on multiple grounds, including that Appellants brought their claims “without substantial justification” and that Fernandez’s First Amendment defenses were “clearly dispositive.” The trial court also noted that Appellants’ complaint included “wholly irrelevant” allegations about Fernandez’s alleged support for “open borders” and unnecessary references to Barack Obama and Hillary Clinton. The court concluded that the lawsuit was “filed against a political opponent primarily for purposes of harassment.”

Appellate Decision

Appellants did not challenge the dismissal but appealed the attorneys’ fees award. They argued that the trial court erred in finding that they brought their defamation claims against Fernandez without substantial justification and in bad faith. Among other arguments, Appellants asserted that the absolute privilege protecting complaints to law enforcement only applied to crime victims and witnesses, and that the privilege also could not protect Fernandez because she allegedly made the statements in “bad faith.”

The Arizona Court of Appeals disagreed and wholly affirmed the trial court ruling, agreeing with the trial court that the defamation claims were “groundless” and pursued in bad faith. The decision specifically pointed to Appellants’ “irrelevant and politically charged” allegations, which “demonstrated that they pursued their defamation claims in bad faith to advance a political agenda.” The Court expounded that Appellants also showed bad faith by highlighting political animus between the parties, which had nothing to do with the defamation claim. Finally, the Court of Appeals granted Fernandez’s attorneys’ fees and costs on appeal because the appeal, in addition to the initial claims, was also groundless and brought in bad faith.

David J. Bodney, Matthew E. Kelley and Kennison Lay of Ballard Spahr LLP represented defendant Charlene Fernandez. Plaintiffs were represented in Yuma County Superior Court by Alexander Kolodin, Christopher Viscovic, George R. Wentz, Jr. and Brant C. Hadaway of The Davillier Law Group, LLC and in the Arizona Court of Appeals by Donald Wilson, Jr. and Kelley M. Jancaitis of Broening Oberg Woods & Wilson, P.C.

[PUBLICATIONS](#)

[COMMITTEES](#)

[EVENTS](#)

[ABOUT](#)

[JOIN](#)

[LOGIN](#)

[Privacy Policy](#). [Terms of Use](#).

© 2024 Media Law Resource Center. All Rights Reserved.