

15 Libel and Slander 237 ↪54

237 Libel and Slander

237III Justification and Mitigation

237k54 k. Truth as Justification in General.

Most Cited Cases

Premature trial of such thorny issues as defamation claims arising out of statements made during judicial proceedings should be avoided; it may develop that trial is never necessary, since the truth of defamatory statements is a statutory defense. LSA-R.S. 13:3602.

16 Libel and Slander 237 ↪41

237 Libel and Slander

237II Privileged Communications, and Malice Therein

237k40 Qualified Privilege

237k41 k. In General. Most Cited Cases

The question of whether the qualified privilege from defamation liability will apply to an individual's statements made during litigation hinges on whether the alleged defamatory statements are material to the ongoing litigation so that it is necessary for the suit to be finalized before the cause of action can arise; in other words, as long as the offending comments arise during litigation and out of the same set of operational facts as those set forth in the underlying claim, any defamation action is barred pending resolution of the pending litigation.

*691 Michael John O'Shee, Edward E. Rundell, Gold, Weems, Bruser, Sues & Rundell, Alexandria, LA, for Defendants/Appellees-Keiser & Auzenne, L.L.C. and Anna Ferguson.
Paul A. Lemke, III, Harrisonburg, LA., pro se.

Court composed of ULYSSES GENE THIBODEAUX, Chief Judge, JOHN D. SAUNDERS, and OSWALD A. DECUIR, Judges.
THIBODEAUX, Chief Judge.

**I Plaintiff-appellant, Paul A. Lemke, III (Lemke), appeals the grant of an exception of prematurity that resulted in the dismissal of his defamation action. Lemke, an attorney, sued the defendants-appellees, the law firm of Keiser & Auzenne, L.L.C. and attorney, Anne Ferguson (appellees), for damages he allegedly suffered because of statements made about him in legal pleadings. The pleading at issue was filed by the appellees in a separate lawsuit in which Lemke and the appellees represented opposing parties. The trial court granted the exception of prematurity, finding that the defamation action could

not be filed until the final determination of the lawsuit in which the alleged defamatory statements were made.

We find no error in the judgment of the trial court. The judgment is affirmed.

ISSUE

We must decide whether an attorney can bring a separate action for defamation against his or her opposing counsel for filing allegedly libelous pleadings before the lawsuit, out of which the offending statements arose, is finalized.

FACTUAL BACKGROUND

In the matter titled and numbered *Succession of Carol Finnegan*, docket number 39,558, 7th Judicial District Court, Parish of Concordia, appellees filed a motion challenging, among other things, the appointment of the executor to that estate on behalf of their clients, the heirs of Carol Finnegan. A pleading titled "First Supplemental and Amending Motion and Order Contesting Appointment of Independent Executor, Opposition to Probate of Testament" was later filed. According to Lemke, the attorney for the executor, the pleading contained defamatory remarks regarding Lemke and his client. Lemke withdrew as counsel in that action **2 and subsequently filed a petition for damages in the parish of his domicile, Rapides. In that suit, Lemke made the following pertinent allegation regarding defamation: ^{FN1}

^{FN1}. The record does not contain a copy of any of the pleadings filed in the Concordia Parish succession proceeding.

Petitioner avers that in the defendant's [sic] pleading the defendants have alleged Paul A.[.] Lemke[.] III[.] engaged in fraud and misrepresentation during the course of his representation of the Estate of Carol Finnegan, specifically that Paul A.[.] Lemke[.] III[.] misled the heirs of the decedent. Further [.] the defendants specifically stated in their pleading that Paul A.[.] Lemke [.] III[.] made fraudulent misrepresentations to the heirs of the decedent.

Appellees filed an exception of prematurity. After a contradictory hearing was held on the issue, the trial judge issued the following reasons for his judgment: