



Legislative Council

61st Montana Legislature

SENATE MEMBERS

CAROL WILLIAMS--Vice Chair
JOHN BRUEGGEMAN
JEFF ESSMANN
ROBERT STORY
MITCH TROPILA
DAVID WANZENRIED

HOUSE MEMBERS

DENNIS HIMMELBERGER--Chair
BOB BERGREN
MARGARETT CAMPBELL
TOM MCGILLVRAY
JESSE O'HARA
MIKE PHILLIPS

COMMITTEE STAFF

SUSAN FOX, Executive Director
ROBERT STUTZ, Legal Division Director
DAWN FIELD, Secretary

August 27, 2010

To: Legislative Council

From: Susan Fox

Re: Agenda item on Cooper v. Glaser

Representative Phillips had suggested to the Council that a memo noting the importance of comments offered on the floor of either chamber is important and members should be reminded of that, especially in this day and age of term limits. In an email to the presiding officer he notes these sections of the opinion, the House Rules and also referenced Mason's Manual. Rep. Phillips mentioned the possibility of a memo to all members of the 62nd Legislature. Another possibility is to include an article in the Interim Newsletter or including it in Legislator and Leadership Orientation.

Cooper v. Glaser Opinion

Background

¶4 Robert Cooper filed a defamation action against House Representative William Glaser in July 2009, claiming Glaser defamed him in March 2009 when he was speaking to the House of Representatives during a legislative session about a letter Cooper had sent to the Legislature. Cooper contended that Glaser had lied when he said Cooper had spent time in prison for threatening an officer while in the military, had threatened his neighbors, had spent time in the Montana State Hospital at Warm Springs, and was a “kook” and “not an ordinary member of society.” Glaser made these statements under a “Point of Personal Privilege,” which is a procedure that allows a legislator to make personal comments on any subject while the legislature is in session.

Standard of Review

¶6 We review a district court's ruling upon a motion to dismiss under M. R. Civ. P. 12(b)(6) de novo. The complaint is construed in the light most favorable to the plaintiff, and the Court presumes, for purposes of review, that allegations of fact are true. Meagher v. Butte-Silver Bow City-County, 2007 MT 129, ¶ 13, 337 Mont. 339, 160 P.3d 552.

CONCLUSION

¶18 The District Court did not err when it dismissed the defamation action because Glaser's statements were protected by Article V, Section 8 of the Montana Constitution. An award of attorney fees under M. R. App. P. 19(5) is not appropriate.

Justice W. William Leaphart, concurring.

¶20 I concur in the result but would classify the opinion as a non-cite opinion. The case presents a significant issue of constitutional import; whether Article V, Section 8 of the Montana Constitution protects Glaser's gratuitous and allegedly defamatory remarks on the floor of the House of Representatives. However, the appellant, Cooper, was not represented by an attorney. As a consequence, Cooper's research and briefing on the extent or limits of the constitutional immunity were less than thorough. I am reluctant to establish a precedent on such an important constitutional issue in the absence of adequate briefing on both sides of the issue presented.

¶21 Accordingly, I concur in the result but not in the Court's analysis.

House Rules

H10-20. Speaker's duties. (2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

H20-80. Violation of rules. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the majority or minority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

See also: Mason's Manual of Legislative Procedure. Section 121 through 123.

CI0429 0239sfna.