

>> NEXT CASES DEBRINCAT

VERSUS FISCHER.

>> GOOD MORNING.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

PAUL MORRIS ON BEHALF OF THE
PETITIONERS JASON AND RICHARD
DEBRINCAT.

WE'RE SEEKING REVIEW OF THE
DECISION OF THE FOURTH DISTRICT
COURT OF APPEAL THAT CERTIFIED
CONFLICT WITH THE DECISION OF
THE THIRD DISTRICT IN WOLFF
VERSUS FOREMAN AS TO WHETHER THE
ABSOLUTELY MITIGATION PRIVILEGE
APPLIES TO A MALICIOUS
PROSECUTION CLAIM THAT IS BASED
SOLELY ON UNDERLYING LAWSUIT,
SO-CALLED RETALIATORY MALICIOUS
PROSECUTION LAWSUIT.

>> MR. MORRIS, I'M KIND OF
SIMPLE WHEN WE COME TO THESE
THINGS BUT WHAT ARE THE BASIC
ELEMENTS OF THE MALICIOUS
PROSECUTION CAUSE OF ACTION TO
BE A VALID ACTION?

>> THERE ARE SIX ELEMENTS AS I
RECALL, YOUR HONOR, INCLUDING
THE COMMENCEMENT OR CONTINUATION
OF AN ACTION CAUSED BY THE
FORMER PARTY OR DEFENDANT WITH
MALICE, WITHOUT PROBABLE CAUSE,
WITH BONA FIDE TERMINATION.

>> MY CONCERN IS THE FIRST ONE.
YOU DO HAVE TO HAVE SOME KIND OF
ACTION?

>> YES.

>> WELL, IF THE LITIGATION
PRIVILEGE BARS MALICIOUS
PROSECUTION ACTION HOW COULD YOU
EVER HAVE MALICIOUS PROSECUTION
ACTION IF IT IS AN ESSENTIAL
ELEMENT.

>> THE THIRD DISTRICT ADDRESSED
THAT VERY QUESTION.

>> I UNDERSTAND.

I WANT YOU TO EXPLAIN IT TO ME.

>> SURE.

>> SO THAT I CAN FOLLOW IT
BECAUSE THAT JUST SEEMS--

>> SURE.

BUT ITS VERY DEFINITION THE
ABSOLUTELY MITIGATION PRIVILEGE
ONLY APPLIES TO ACTS DURING AND

RELATED TO A JUDICIAL
PROCEEDING.
IF THOSE ELEMENTS ARE NOT MET,
THEN THE ABSOLUTE PRIVILEGE DOES
NOT APPLY.
AND THE THIRD DISTRICT, AS
EXAMPLES OF HOW MALICIOUS
PROSECUTION WOULD SURVIVE, HOW
CONTRARY TO THE RESPONDENT'S
CONTENTION THAT THE TORT IS
COMPLETELY EVISCERATED, GAVE TWO
EXAMPLES, OLSEN VERSUS JOHNSON
CASE AND AMERICAN FEDERATED
TITLE CASE WHERE THE ACTS IN
THAT CASE WERE OUTSIDE THE
JUDICIAL PROCEEDING.
IN THOSE, IN THOSE CASES, BASED
UPON THIS COURT'S DECISION IN
DELL MONACO WILL REALLY OUTLINED
CONTOURS OF THE QUALIFIED
PRIVILEGE VERSUS ABSOLUTE
PRIVILEGE, QUALIFIED PRIVILEGE
MAY APPLY OR NOT APPLY AT ALL
BUT ABSOLUTELY MITIGATION
PRIVILEGE WOULD NOT APPLY IN
THOSE SITUATIONS.
IN OUR CASE.
>> DELMONICO WAS NOT IN THAT
CASE, IT WAS AN INVESTIGATION.
>> THAT'S CORRECT.
THE MALPRACTICE OR I'M SORRY THE
MALICIOUS PROSECUTION CLAIM
WOULD SURVIVE IN A CASE LIKE
DELL MON ECHO.
WE COULD TAKE THE POSITION EVEN,
WERE WHAT THE FOURTH DISTRICT
SAID WAS EVISCERATION OF THE
TORT, THE TORT, THAT TORT HAS TO
REELED TO THE RATIONALE
UNDERLYING THE LITIGATION
PRIVILEGE.
AND THAT RATIONALE IS NOT TO
DETER GOOD FAITH PARTICIPATION
IN LITIGATION.
THAT RATIONALE IS NOT IS TO
AVOID, THE PRIVILEGE IS TO AVOID
ANY CHILLING OF FREE ACCESS TO
THE LITIGATION PROCESS AND THE
RETALIATORY LAWSUIT IS THAT TYPE
OF PROCEEDINGS THAT WOULD HAVE
THAT TYPE OF CHILLING EFFECT.
THIS COURT SAID IN LEVIN--
>> BUT THE POSITION YOU'RE
ADVOCATING WOULD SHOW ACCESS FOR

PEOPLE THAT HAVE BEEN
MALICIOUSLY PROSECUTED, WOULD IT
NOT?

>> WOULD CHILL ACCESS, I'M
SORRY, YOUR HONOR--

>> WOULD CHILL OR CUT OFF ACCESS
FOR PEOPLE WHO HAVE BEEN A
VICTIM OF MALICIOUS PROSECUTION?

>> WELL THE REMEDY, OUR POSITION
IS THE REMEDY FOR SUCH
LITIGATION MISCONDUCT,
ALLEGATIONS OF THAT, LIES IN THE
ORIGINAL UNDERLYING PROCEEDING.
BECAUSE THIS IS AN ACT, BOTH
THIRD DISTRICT AND FOURTH
DISTRICT ARE IN AGREEMENT, THAT
THIS UNDERLYING LAWSUIT IS AN
ACT DURING AND RELATED TO A
JUDICIAL PROCEEDING, BOTH COURTS
ARE IN AGREEMENT AS TO THAT,
THEREFORE--

>> BUT YOU DON'T HAVE THE SAME
REMEDIES THOUGH.

>> I'M SORRY?

>> YOU DON'T HAVE THE SAME
REMEDIES.

IN THE UNDERLYING ACTION YOU
CAN'T AWARD DAMAGES FOR
REPUTATION AND ALL THOSE KIND OF
THINGS.

YOU MAY SANCTION A LAWYER,
ATTORNEYS FEES OR SOMETHING BUT
YOU DON'T HAVE THE SAME DAMAGES
AS MAYBE PROVEN WITH REGARD TO A
MALICIOUS PROSECUTION ACTION?

>> THAT'S TRUE, YOUR HONOR BUT
THIS COURT HAS CONSISTENTLY HELD
THAT WE DO NOT GRANT REDRESS FOR
LITIGATION MISCONDUCT AT THE
EXPENSE OF ANY ACTS THAT WOULD
CHILL GOOD FAITH PARTICIPATION
IN LITIGATION, SUCH AS THE
THREAT OR FEAR OF PROSPECT OF A
RETALIATORY LAWSUIT.

>> WELL, THAT IS IN CONNECTION
WITH TESTIMONY AND STATEMENTS
AND ARGUMENTS MADE IN THE
COURTROOM.

>> BUT THAT WOULD APPLY TO THE
RIGHT TO FILE A LAWSUIT, AS
WELL.

THE FUNDAMENTAL NATURE OF
INVOKING THE JUDICIAL PROCESS TO
BEGIN WITH.

>> YOU WOULD AGREE THOSE ARE REALLY TWO DIFFERENT THINGS, THE INITIATION OF THE LITIGATION ITSELF, AND WHAT IS SAID WITHIN THE COURTROOM, AREN'T THOSE TWO DIFFERENT THINGS?

>> NO, YOUR HONOR--

>> THOSE ARE NOT TWO DIFFERENT THINGS.

>> WE WOULD NOT DRAW THAT DISTINCTION AND WE DO NOT FIND ANY ADDITIONAL AUTHORITIES THAT DRAW IT BECAUSE THE NATURE OF THE MALICIOUS PROSECUTION TORT REALLY FOCUSES UPON THE MENTAL STATE OF THE ACTOR, THE ALLEGATIONS, THAT ARE WITHIN THE UNDERLYING LAWSUIT, CLAIMING THAT THEY ARE MA LIKE SURE AND FILED WITHOUT PROBABLE CAUSE.

>> WELL IN FLORIDA, OTHER THAN THE THIRD DISTRICT CASE WE DON'T HAVE ANY CASES THAT SAY THAT THE FILING OF THE LAWSUIT CAN NOT BE THE BASIS FOR THE FILING OF A MALICIOUS PROSECUTION ACTION, DOES IT?

>> THE THIRD DISTRICT WAS THE FIRST DECISION THAT CLEARLY PRESENTED IT.

>> WHERE DID THAT COME FROM.

YOU SAY THERE IS NO LAW.

WELL THEY MADE IT UP AS THEY GO ALONG, I DON'T KNOW.

I MEAN THAT IS CONTRARY TO EVERYTHING, I MUST TELL YOU THAT I REMEMBER LEARNING IN LAW SCHOOL AND PRACTICING LAW FOR 45 YEARS THE FILING OF THE LAWSUIT CAN NOT BE A BASIS FOR A MALICIOUS PROSECUTION ACTION.

>> WE SUBMIT THAT THE FILING OF THE LAWSUIT AS THE THIRD AND FOURTH AGREED IS AN ACT DURING AND RELATED TO AND THAT IT SERVES THE PURPOSE OF THE RATIONALE UNDERLYING THE LITIGATION PRIVILEGE, NOT TO, NOT TO HAVE A CHILLING EFFECT GOOD FAITH PARTICIPATION IN THE LITIGATION PROCESS WHO WISH TO FILE A LAWSUIT.

WE DO HAVE JUDICIAL REMEDIES IN PLACE BECAUSE THIS IS AN ACT

THAT IS UNDER THE SUPERVISION OF
A JUDGE, WE DO HAVE ALL THE
JUDICIAL REMEDIES IN PLACE THIS
COURT HAS CONSISTENTLY HELD ARE
ADEQUATE, ARE ADEQUATE TO
MITIGATE AGAINST THE APPLICATION
OF THE ABSOLUTELY MITIGATION
PRIVILEGE INCLUDING OF COURSE,
57.105 WHICH IS AVAILABLE FOR
ATTORNEY'S FEES AND COSTS
AGAINST EITHER OF THE ATTORNEY
OR THE PARTY IN BOTH AS WELL
AS--

>> NOT DAMAGES?

>> ABSOLUTELY, NOT DAMAGES BUT
THE AMOUNT OF DAMAGES HAS
NEVER BEEN A FACTOR IN
DETERMINING WHETHER THE
PRIVILEGE APPLIES.

IF IT DID THE COURT WOULD NOT
MAKE THE DECISION IN DELMONICO
GRANTING MILLIONS OF DOLLARS.

>> IT WAS NOT INVOLVED IN THE
LITIGATION.

ITS WATT INVESTIGATION LEADING
UP.

>> CORRECT BUT THERE IS NO
SUGGESTION IN THE COURT'S
ANALYSIS IN DELMONICO THAT THE
AMOUNT OF THE POSSIBLE
CONSEQUENTIAL DAMAGES WAS--

>> YOU'RE FACTORING IT AS A
BASIS TO NOT HAVE A CAUSE OF
ACTION FOR MALICIOUS
PROSECUTION.

YOU'RE MADE WHOLE THROUGH THE,
THROUGH THE, THROUGH REMEDIES
THAT ARE AVAILABLE FOR ABUSIVE
LITIGATION.

SO--

>> IT IS--

>> I DON'T WANT TO TAKE UP ALL
OF YOUR TIME.

>> I'M SORRY, IT IS JUST OUR
POSITION.

IT IS NOT A QUESTION OF WHETHER
THE COMPLAINING PARTY CAN BE
MADE WHOLE.

THAT HAS NEVER BEEN THE TEST FOR
APPLYING THE ABSOLUTELY
MITIGATION PRIVILEGE.

THIS COURT MADE CLEAR IN
ECEVERRA AND LEVIN THE ABSOLUTE
PRIVILEGE APPLIES ACROSS THE

BOARD AND TO ALL COURTS.
THE NATURE OF THE UNDERLYING
DISPUTE TO QUOTE ECHEVERIA,
SIMPLY DOES NOT MATTER.
FOURTH DISTRICT STANDARD IS
REALLY IN CONFLICT WITH THAT
PRINCIPLE BECAUSE THE FOURTH
DISTRICT IS LOOKING AT HOW THE
APPLICATION OF THE ABSOLUTELY
MITIGATION PRIVILEGE AFFECTS THE
TORT, RATHER THAN ASKING THE
QUESTION, HOW IS IT THAT
APPLICATION OF THE ABSOLUTELY
MITIGATION PRIVILEGE WOULD
FURTHER THE POLICY UNDERLYING
THE PRIVILEGE AND IT WOULD IN
THIS CASE.

IF, OUR FEELING IS THAT IF ANY
ACT SHOULD NOT BE CHILLED IN THE
JUDICIAL PROCESS, IT IS THE ACT
OF THE GOOD FAITH INVOCATION OF
THE JUDICIAL PROCESS ITSELF.
BY THE FILING OF A LAWSUIT.

>> LET ME ASK YOU THIS.
MAYBE YOU ANSWERED IT BEFORE YOU
BUT, UNDER YOUR THEORY YOU WOULD
NEVER HAVE, NO MATTER HOW
VICIOUS, HOW UNFOUNDED, A
LAWSUIT IS, YOU COULD NEVER
PROCEED UNDER A MALICIOUS
PROSECUTION THEORY?

>> WELL, YOU WOULD BE SUBJECT TO
THE ABSOLUTE IMMUNITY IF THE ACT
COMPLAINED OF WAS DURING A
RELATIVE--

>> MERE FILING OF THE LAWSUIT
IS, AS AN ACT, IN THE LITIGATION
PROCESS, SO THAT THE PRIVILEGE
WOULD APPLY.

>> CORRECT.
>> MY QUESTION TO YOU, YOU COULD
NEVER FILE A LAWSUIT, A
MALICIOUS PROSECUTION LAWSUIT NO
MATTER WHAT, OR HOW EGREGIOUS
THE FILING OF THE ORIGINAL
LAWSUIT WAS?

>> THAT IS CORRECT FOR A CASE UP
SUCH AS THIS THAT IS TRUE IN
CASE OF APPLYING ABSOLUTELY
MITIGATION TO DEFAMATORY
TESTIMONY BY A WITNESS IN --

>MY QUESTION IS YOU SHOULD NEVER
FILE A MALICIOUS PROSECUTION
LAWSUIT NO MATTER HOW EGREGIOUS

FILING OF THE ORIGINAL LAWSUIT.
>> ABSOLUTELY IN APPLYING
ABSOLUTE MITIGATION PRIVILEGE TO
DEFAMATORY TESTIMONY, THIS COURT
THAT IT DIDN'T MATTER HOW
MALICIOUS THAT DEFAMATION IS OR
WHAT DAMAGES RESULT FROM IT.
WE HAVE GREATER GOOD THAN THE
CONSEQUENTIAL DAMAGES ALLEGED IN
SUCH A SITUATION NO MATTER HOW
MALICIOUS THE COMPLAINT IS AND
THE GREATER GOOD IS THE FREE
UNHINDERED ACCESS --

>> UNDER WHAT, CAN YOU THINK OF
A CIRCUMSTANCE WHERE MALICIOUS
PROSECUTION ACTION MIGHT APPLY?
>> IN THE OLSON CASE OR AMERICAN
TITLE CASE, THEY COMPLAINED NOT
DURING THE JUDICIAL PROCEEDING
BUT OUTSIDE THE PROCEEDINGS AND
THAT CASE AT BEST A QUALIFIED
PRIVILEGE WOULD APPLY SO THE
ACTION IS NOT BARRED.
ONLY IF THE ABSOLUTE PRIVILEGE
--

>> WHAT ABOUT CIRCUMSTANCE WHERE
THE LAWSUIT IS BROUGHT AGAINST
PROPERTY ON THE DEFENDANT SO
THAT THE ISSUE FOR THE TITLE IS
ABSOLUTELY BOGUS, HAS NO BASIS
IN FACT OR REALITY WHATSOEVER
BUT IT -- THE DEFENDANT'S
PROPERTY.

ARE THEY PROTECTED BY THE
LITIGATION PRIVILEGE?

>> IF IT IS THE FILING OF THE
LIST IN THAT SITUATION THERE IS
PROTECTION AGAINST A SUBSEQUENT
LAWSUIT BUT THE APPROPRIATE TIME
FOR ADDRESSING THAT PROBLEM IS
IN THE UNDERLYING LITIGATION
ITSELF.

>> THERE IS NO CLAIM IN YOUR
VIEW FOR MALICIOUS PROSECUTION
OR SLANDER OF TITLE?

>> THAT IS CORRECT WITH ABSOLUTE
LITIGATION PRIVILEGE APPLIES TO
THE SURRENDER OF THAILAND WHAT
APPLIED TO THE TORT'S CONDUCT
COMMITTED RELATIVE RELATED TO
THE JUDICIAL PROCEEDING.
ABSOLUTE PRIVILEGE WOULD APPLY
IN THOSE CIRCUMSTANCES BUT THAT
DOESN'T MEAN THE COMPLAINING

PARTY IS NOT WITHOUT OPPORTUNITIES TO ADDRESS THAT WITH OTHER THAN RETALIATORY LAWSUIT.

>> THEY MAY NOT BE -- WHAT YOU SAY WOULD BE THE REMEDY MAY NOT GIVE THEM A REMEDY FOR THE ACTUAL LOSSES THEY SUFFERED AS A CONSEQUENCE OF THAT FILING OF THE LAWSUIT THAT WAS WRONGFUL.

>> IT IS TRUE AND THIS COURT HAS STATED THE ABSOLUTE LITIGATION PRIVILEGE IMMUNITY WHERE APPLIES MAY RESULT IN SOME SITUATIONS WHERE BONA FIDE INJURIES GO ON REDRESSED AND --

>> WE HAVE NEVER SAID THAT ABOUT A MALICIOUS PROSECUTION ACTION.

>> THAT IS CORRECT, YOUR HONOR.

>> WE HAVE TO DECIDE THAT.

>> WE ARE ADVOCATING THE REASONING OF THE DISTRICT FOR THE COURT'S RATIONALE AND FRAMEWORK.

THE THIRD DISTRICT, THE FOURTH DISTRICT DID NOT, THE FOURTH DISTRICT SIMPLY LOOKED TOWARD WHAT EFFECT APPLICATION OF THE IMMUNITY PRIVILEGE WOULD HAVE ON MALICIOUS PROSECUTION IN THE CONTEXT OF RETALIATION.

>> BECAUSE THE DISTRICT COURT OF APPEAL, YOU HAVE BEEN DOING THIS AS LONG AS I HAVE.

A DISTRICT COURT OF APPEAL MAY REFER TO A CASE DOESN'T MEAN THE REAL HOLDING OF THOSE CASES.

>> WE NEED TO TALK ABOUT REAL SUBSTANTIVE COMMON-LAW THEORY.

>> AND WE BELIEVE WITHIN THE COURT'S EVOLUTION AND BROADENING OF ABSOLUTE LITIGATION PRIVILEGE IT SHOULD APPLY TO RETALIATORY LAWSUITS BECAUSE OF THEIR CHILLING EFFECT ON THE JUDICIAL PROCESS.

THERE IS ANOTHER ASPECT OF THE FOURTH DISTRICT COURT OF APPEAL DECISION I WOULD LIKE TO ADDRESS AND THAT IS THE FOURTH DISTRICT ALSO RULED LITIGATION PRIVILEGE SHOULD NOT BE APPLIED TO BY THE FILING OF THE CLAIM FOR MALICIOUS PROSECUTION WHERE THE

ELEMENTS OF THAT ARE SATISFIED.
WE SUBMIT THAT REASONING CANNOT
BE SQUARED WITH THE LAW
GOVERNING AFFIRMATIVE DEFENSES
WHERE ONE OR MORE ELEMENTS OF
MALICIOUS PROSECUTION LAWSUIT
ARE NOT SATISFIED, JUDGMENT
SHOULD BE ENTERED AGAINST THE
PLAINTIFF BRINGING THAT CLAIM
BUT FOR THE PURPOSES OF LOOKING
AT LITIGATION PRIVILEGE INJECTED
INTO THE CASE AS AN AFFIRMATIVE
DEFENSE THAT ASSUMES ALL THE
ELEMENTS ARE SATISFIED AND IT IS
APPROPRIATE THE DEFENSE IS
PRESENTED AS A POINT DEPENDING
ON WHETHER AN ELEMENT IS
SATISFIED OR NOT.

THE FOURTH DISTRICT TOUTED THE
JURISDICTION OF CALIFORNIA, SO
DOES THE RESPONDENT AND THERE
ARE LESSONS TO BE LEARNED BY
WHAT HAPPENED IN CALIFORNIA
AFTER THE STATE'S SUPREME COURT
WAS PRESENTED WITH THIS ISSUE
AND DECIDED TO EXEMPT
RETALIATORY LAWSUITS WITH
MALICIOUS PROSECUTION CLAIM FROM
ABSOLUTE PRIVILEGE.

IT IS A BOILING POINT FIRST
REACHED IN THE CALIFORNIA
JUDICIAL SYSTEM WHERE MALICIOUS
PROSECUTION ACTIONS WERE BEING
BROUGHT IN FAMILY LAW CASES.
ONE OF THE INTERMEDIATE
APPELLATE COURTS SAID WE CAN'T
TOLERATE THIS ANYMORE.
THAT APPELLATE COURT DREW A LINE
FOR FOUR REASONS HOLDING THAT WE
ARE NOW GOING TO PROHIBIT
RETALIATORY LAWSUIT ACTIONS FROM
COMING INTO FAMILY COURT.

IT WAS APPLIED TO FAMILY COURT
BY THE INTERMEDIATE CALIFORNIA
COURT ALL OF APPLY ACROSS WITH
ALL THOSE ACTIONS AND THOSE
REASONS, THERE IS MUCH
BITTERNESS AND LITIGATION AND IT
IS DIFFICULT FOR PARTIES AND
COURTS TO DISTINGUISH MALICIOUS
ACTIONS FROM ORDINARY ONES.
FAMILY COURTS IN CALIFORNIA CAN
ADDRESS LITIGATION, MISCONDUCT
BY COMPOSING ATTORNEYS FEES

WHICH WE HAVE IN 57105.
AND ALLOWING MALICIOUS
PROSECUTION ACTIONS MIGHT
IMPROPERLY DETER A PARTY AND A
FAMILY LAW CASE FROM FILING
SOMETHING MERITORIOUS AND IF
WE'LL FILE THESE RETALIATORY
LAWSUITS ACROSS THE BOARD WE
MIGHT DETER A PARTY FROM FILING
A MERITORIOUS ACTION FOR FEAR OF
HAVING TO DEFEND A POSSIBLE LOSS
OR DECISION TO VOLUNTARILY
DISMISS AN ACTION IN A
SUBSEQUENT EXPENSIVE
TIME-CONSUMING LAWSUIT AND
FINALLY --

>> IS THIS AN ANALOGY TO FAMILY
LAW?

THE CURRENT CASE WE ARE DEALING
WITH, DOES IT HAVE ANY ASPECTS
OF FAMILY LAW?

>> IT HAS REPERCUSSIONS IN
FAMILY LAW.

IF THE RETALIATORY LAWSUITS --

>> IS THIS A FAMILY LAW CASE?

>> NO BUT I AM TALKING ABOUT
REPERCUSSIONS THAT WERE OBSERVED
BY THE COMPANY INTERMEDIATE
APPELLATE COURT THAT WOULD BE OF
CONCERN THROUGHOUT THE STATE OF
FLORIDA IN TERMS OF THE EFFECT
RETALIATORY LAWSUITS COULD HAVE
AND NOT JUST IN FAMILY COURT
THROUGHOUT THE COURT SYSTEM.
THE MALICIOUS COURT SYSTEM
ACTIONS WERE BARRED IN
CALIFORNIA, APPARENTLY THE
SITUATION DID NOT GET BETTER.
THERE WAS A PROLIFERATION OF
RETALIATORY LAWSUITS AND THE
LEGISLATURE PASSED A STATUTE
WITH SPECIAL PROCEDURE TO
ADDRESS THE INAPPROPRIATENESS OF
MALPRACTICE, MALICIOUS
PROSECUTION.

>> YOU ARE WELL INTO YOUR
REBUTTAL.

>> TO CONCLUDE PETITIONERS
REQUEST THIS COURT APPROVED THE
DIVISION IN WOLF VERSUS FOREMAN
AND THE DECISION OF THE FOURTH
DISTRICT AND APPLY THE ABSOLUTE
PRIVILEGE TO RETALIATORY
LAWSUITS.

>> MAY IT PLEASE THE COURT FOR
RESPONDENT STEPHEN FISHER.
THE ISSUE IS FRAMED BY THE
FOURTH DISTRICT WHETHER THE IN
THE UNITY OF THE LITIGATION
PRIVILEGE SHOULD BE APPLIED IN
THE SITUATION OF MALICIOUS
PROSECUTION CLAIM WHEN ONE OF
THE ELEMENTS OF THAT CLAIM IS
FILING A CIVIL LAWSUIT.

WE HAVE TO BE CAREFUL WHEN WE
DEFINE THE TERMS OF WHAT
CONSTITUTES MALICIOUS
PROSECUTION.

IN PARTICULAR THE FIRST TWO.
THE FIRST REQUIREMENT IS
COMMENCEMENT OF A CRIMINAL OR
CIVIL PROCEEDING OR THE
CONTINUATION OF ONE OF THOSE
PROCEEDINGS AND THE SECOND ONE
IS IT CAUSED BY THE ORIGINAL
PLAINTIFF.

UNDER THE WOLF CASE, THE ONLY
WAY A MALICIOUS PROSECUTION
ACTION COULD BE BROUGHT WOULD BE
IF A CITIZEN FILES A VOLUNTARY
FALSE POLICE REPORT WITH MALICE
WHICH LEADS TO CHARGES BEING
BROUGHT, THE STATE ATTORNEY FILE
THE CASE AND FOR WHATEVER REASON
THE DEFENDANT IS ACQUITTED AND
IF IT IS DETERMINED THERE IS NO
PROBABLE CAUSE AND THE POLICE
REPORT WAS BROUGHT WITH MALICE
THERE COULD BE POTENTIAL
MALICIOUS PROSECUTION CLAIM.
DELMONICO WAS NOT A MALICIOUS
PROSECUTION CASE, IT WAS A
DEFAMATION CASE SO THAT WAS
DEALING WITH QUALIFIED PRIVILEGE
SO IF YOU LOOK AT IT IN THAT
LIGHT, WOLF WOULD ALLOW SOMEONE
TO CAUSE A CRIMINAL PROCEEDING
TO BE COMMENCED BUT WOLF WOULD
NOT ALLOW A PRIVATE LITIGANT TO
FILE A CIVIL LAWSUIT FOR THAT TO
BE AN ELEMENT OF MALICIOUS
PROSECUTION IN THE CIVIL
LITIGATION ARENA.

>> EVEN IN THAT CONTEXT THERE IS
CASE LAW THAT SAYS THE
CONTINUATION OF COLLECTION
RESPONSIBILITY OF THE POLICE,
NOT THE INDIVIDUAL SHOULD REPORT

IT LIKE THE RENTAL CAR CASE SO I AM NOT SURE THERE IS EVEN AN ESCAPE VALVE YOU ARE TRYING TO GIVE IT.

>> THERE MIGHT BE.

THE DISTINCTION I WANT TO MAKE IS IF YOU FOLLOWED WOLF, A PRIVATE CITIZEN CANNOT BRING A CRIMINAL COMPLAINT.

ALL A PRIVATE CITIZEN CAN DO IF HE HAS MALICE IN HIS HEART IS FILE THAT FALSE COMPLAINT WITH POLICE BUT HE CAN'T BRING THE INDICTMENT, THE INFORMATION BUT ON THE CIVIL SIDE A LITIGANT, A PRIVATE LITIGANT THEY HAVE TO FILE THE COMPLAINT.

TO ME IF YOU FOLLOWED WOLF TO ITS EXTREME YOU ARE MAKING A DISTINCTION WITHOUT ANY MEANING, ALLOWING SOMEONE TO CAUSE CRIMINAL ACTION TO BE FILED ON THE ONE HAND BUT ON THE OTHER HAND HAVING A PRIVATE LITIGANT FILING A PRIVATE CAUSE OF ACTION IN THE CIVIL ARENA.

>> THERE MIGHT BE SOME PARTS, THE COMPLAINT WAS FILED THIS DEFENDANT OR YOUR CLIENT WAS ADDED OR DROPPED.

THE ISSUE COULD BE THE ATTORNEY IN ONE OF THE HEARINGS BEFORE THE JUDGE MAKES A STATEMENT, AND THE STATEMENT ALLOWED IN MALICIOUS PROSECUTION CASE, BEING ABLE TO BRING THE ACTION AND THINGS THAT HAPPENED DURING THE LITIGATION MAY END OF BEING PRIVILEGED.

WHAT AM I MISSING?

IT IS A HALF FRIENDLY QUESTION, NOT AN ALL OR NOTHING SITUATION.

>> I DON'T KNOW THAT THE TESTIMONY WHY THERE COULDN'T BE TESTIMONY, WHATEVER THE ATTORNEY MIGHT HAVE SAID.

>> IT MAY BE PROTECTED, ARE WE TALKING ABOUT WHETHER YOU CAN BRING IT TO BEGIN WITH?

YOU GOT TO GET THROUGH THE DOOR.

>> APPROVED THE ELEMENT OF MALICIOUS PROSECUTION.

>> WHAT WAS ALLEGED IN THIS COMPLAINT, WHAT WAS ALLEGED THE

DEFENDANT DID WRONG.
>> STEPHEN FISHER AND THE
ALLEGATIONS AGAINST MY CLIENT
WERE DEFAMATION, CONSPIRACY FOR
DEFAMATION AND INTERFERENCE.
>> IN THE COURSE OF THE
LITIGATION.
>> AGAINST MY CLIENT.
SUED THE CLIENT FOR DEFAMATION.
>> THEN DISMISSED YOUR CLIENT
OUT.
>> DISMISSED MY CLIENT OUT WHEN
HE WAS ON THE VERGE OF BEING
INVOLVED AND THE COURT
DETERMINED THAT TO BE A BONA
FIDE DETERMINATION.
>> WE ARE NOT EVEN -- THEN WHAT
HAPPENS?
WHAT DO YOU ALLEGE IN THE
COMPLAINT?
>> I ALLEGEDLY BROUGHT A CAUSE
OF ACTION WITHOUT PROBABLE
CAUSE, MY CLIENT HAS REPUTATION
WAS DAMAGED.
>> THEY HAVEN'T GIVEN ME TO THE
BONES OF THE COMPLAINT YET.
>> DIDN'T GET VERY FAR.
>> THE QUESTION GOING BACK TO
THIS, IF IT GETS INTO THE DOOR
THIS TIME, PROVING YOUR CASE YOU
WANT TO RELY ON SOMETHING THAT
HAPPENED IN THE COURT
PROCEEDING, IS THE FOURTH
DISTRICT SAYING, YOU CAN DO THAT
IN THIS SITUATION, IS THERE
GOING TO BE AN EVIDENTIARY
DETERMINATION, THINGS THAT
HAPPEN IN COURT.
OR GOING TO NOT BE ALLOWED TO BE
USED AS PROOF.
>> YOU DON'T PROVE A MALICIOUS
PROSECUTION CLAIM BY WHAT
HAPPENS IN COURT.
>> TO SEE WHY THEY ARE IN SUCH
TENSION, THEY MALICIOUSLY
BROUGHT THE LAWSUIT, RELY ON
OTHER PROOF OTHER THAN THE FACTS
OF WHAT HAPPENED IN THE COURT
ROOM I DON'T SEE ATTENTION, WHAT
AM I MISSING?
I FEEL LIKE IT IS GOING OVER
YOUR HEAD OR MY HEAD.
>> IT IS REALLY A FRIENDLY
QUESTION.

>> IN ORDER TO PROVE A CLAIM FOR MALICIOUS PROSECUTION AT THE TIME YOU ARE FILING THE COMPLAINT IT HAS TO BE PROVEN THE ORIGINAL PLAINTIFF KNEW THERE WAS NO PROBABLE CAUSE FOR FILING THAT COMPLAINT.

>> IT HAPPENS BEFORE THE COMPLAINT IS FILED.

>> YOU HAVE TO PROVE THAT BEFORE THE COMPLAINT WAS FILED HE WAS DOING SO WITH MALICE.

ONCE YOU FILED IN ORDER TO GET TO THE NEXT ELEMENT, YOU HAVE TO FILE THE COMPLAINT.

AND THAT IS ONE OF THE ESSENTIAL ELEMENTS.

>> THEY DID THAT BUT WE DON'T KNOW YET WHAT PROOF IS RELIED UPON YOUR CLIENT, AND WHAT OTHER DEFENSE WHICH IS HIS GOOD FAITH, WHY HE HAD GOOD FAITH.

IN THE COURSE OF THE DISCOVERY THERE IS AN ATTEMPT TO BRING IN STATEMENTS IN COURT TO THE BENEFIT OF THE DEFENDANT AND THE BENEFIT OF THE PLAINTIFF, WOULD BE AN EVIDENTIARY DETERMINATION THAT BARS USE OF WHAT HAPPENED IN COURT?

>> IT MIGHT.

>> ATTENTION.

>> YOU ARE SAYING --

>> THERE IS NOT A TENSION BETWEEN LITIGATION PRIVILEGE AND MALICIOUS PROSECUTION.

>> IS APPLIED BY WOLF.

>> WE WENT TO GET TO IT IN THE RIGHT WAY, ALL SORTS OF HORRIBLE THINGS HAPPEN, FOR THIS TO OCCUR, AND THE BALANCE BETWEEN THE IMPORTANCE OF THE MALICIOUS PROSECUTION BUT VALUES AT STAKE WITH LITIGATION PRIVILEGE.

>> I AGREE WITH JUSTICE PARRY AND A.

>> IT IS NOT A BAR TO THE CAUSE OF ACTION BUT MAY PROHIBIT CERTAIN ACTIONS, WHATEVER IS APPLICABLE.

>> THAT IS DOWN THE ROAD, WE HAVE NOT GOTTEN FAR IN THIS CASE AND LITIGATION PRIVILEGE MAY OR MAY NOT APPLY BASED ON WHAT

HAPPENS OR DOESN'T HAPPEN.
THE OTHER THING, LOOKING AT THIS
CASE, TALKING ABOUT TENSION WITH
LITIGATION PRIVILEGE AND
MALICIOUS PROSECUTION, IT WAS
STATED BY THIS COURT, THERE
WOULD BE FREE AND WILL
DISCLOSURE OF ALL FACTS AND THE
SYSTEM BE PROTECTED SUCH THAT
PARTIES AND LAWYERS AND JUDGES
CONNECT FREELY IN THIS
ADVERSARIAL SYSTEM WITHOUT FEAR
OF BEING LATER SUED.

THE COURT BALANCED THAT WITH THE
INDIVIDUAL NOT TO BE DEFAMED IN
A JUDICIAL PROCEEDING AND THE
COURT CAME DOWN ON PUBLIC
INTEREST AND WE NEED TO PROTECT
THE ADVERSARIAL SYSTEM.

THE MALICIOUS FILING OF A
LAWSUIT, IS NOT ENTITLED TO
PROTECTION, IF YOU FILE A
FRIVOLOUS LAWSUIT, I DON'T THINK
THERE IS ANYTHING IN PUBLIC
INTEREST THAT NEEDS TO BE
PROTECTED VERSUS COUNTERVAILING
INDIVIDUAL INTERESTS, AND
MALICIOUS FILE LAWSUIT WITHOUT
PROBABLE CAUSE.

I DRAW THE COURT'S ATTENTION,
TRYING TO DECIDE WHEN SOMEONE
FILED A FALSE POLICE REPORT OR
MAKES FALSE STATEMENTS
VOLUNTARILY MADE TO THE
INSTITUTION OF CRIMINAL
PROCEEDINGS IF SOMEONE MAKES
FALSE STATEMENTS TO THE POLICE
OR STATE ATTORNEY THE COURT IS
TRYING TO DETERMINE WHETHER OR
NOT QUALIFIED PRIVILEGE OR
ABSOLUTE PRIVILEGE.

TO DETERMINE WHETHER IT IS A
QUALIFIED PRIVILEGE TO MAKE THE
STATEMENTS TO THE STATE ATTORNEY
BUT IS ONLY QUALIFIED WITH
EXPRESS MALICE, FOR DEFAMATION
OR THE CLAIMS.

WHAT THE COURT SAID IS WHEN
DECIDING TO USE QUALIFIED
PRIVILEGE VERSUS ABSOLUTE
PRIVILEGE THE COURT SAID THERE
IS NO BENEFIT TO SOCIETY TO
PROTECT SOMEONE WHO IS MAKING
OBVIOUS KNOWN FALSE STATEMENTS

TO THE POLICE OR STATE ATTORNEY HAD NO BENEFIT TO THE JUSTICE SYSTEM TO PROTECT SOMEONE WHO IS DOING THAT OR PROVIDE ABSOLUTE PRIVILEGE OF DONE WITH EXPRESS MALICE.

THE COURT COMPARED THAT TO THE COUNTERVAILING INTEREST OF THE INDIVIDUAL THAT HIS REPUTATION NOT BE HARMED OR OTHER DAMAGE IS BEING DONE IN THAT SITUATION. THE COURT WENT ON TO STATE IN CERTAIN INSTANCES THAT TYPE OF HARM CAN BE IRREPARABLE AND CAME DOWN ON THE SIDE OF QUALIFIED PRIVILEGE.

THIS WAS TOUCHED ON IN PETITIONER'S ARGUMENT THAT WE TALKED ABOUT THE REMEDIES THAT TALKS ABOUT AND THE REMEDIES ARE INSUFFICIENT, FOR THE COURT TO CONTROL THE JUDICIAL PROCEEDINGS, MAYBE PERJURY IS AN OUTSIDE CHANCE, 57105 ATTORNEYS FEES, BAR DISCIPLINES TO THE ATTORNEYS BUT I DON'T THINK THAT SIMPLY DOESN'T ADDRESS THE GRIEVOUS WRONG THAT CAN BE DONE TO SOMEONE IN THE CONTEXT OF MALICIOUSLY FILED LITIGATION. THOSE REMEDIES ARE EFFECTIVE BUT THEY DO NOT ADDRESS THE REAL HARM THAT MAY OCCUR TO A DEFENDANT IN THE ORIGINAL PROCEEDING IF THE CASE OF MALICIOUSLY BOUGHT AND CARRIED OUT UNTIL THROWN OUT OR THEY LOSE ON MERITS, SO YOU HAVE SITUATIONS WHERE IF YOU THINK ABOUT THE SITUATION IF WOLF WERE TO APPLY, SAY THERE IS A BUSINESS PERSON OR COMPANY THAT IS A BAD ACTOR AND WANTS TO HARM A COMPETITOR IF THAT BUSINESS DOES SO OUTSIDE THE JUDICIAL ARENA, THE BUSINESS COMMITS UNFAIR DECEPTIVE TRADE PRACTICES, DEFAMES ITS COMPETITORS, DOES ALL TYPES OF NASTY ACTS TO CAUSE DAMAGE TO THE COMPETITOR, THAT COMPETITOR HAS REDRESS. HE CAN FILE A LAWSUIT AND SAY YOU COMMITTED UNFAIR DECEPTIVE

TRADE PRACTICES, YOU HAVE
DEFAMED ME, I AM ENTITLED TO
DAMAGES BUT UNDER WOLF YOU COULD
HAVE A BAD ACTOR, UNSCRUPULOUS
BUSINESSPERSON FIGURE OUT IT IS
A LOT EASIER AND SAFER FOR ME TO
FILE A MALICIOUS NASTY LAWSUIT
AGAINST MY COMPETITOR ESPECIALLY
IN A HIGH PROFILE SITUATION.
THE CASE GETS IN THE HEADLINES,
IT IS ON SOCIAL MEDIA AND I CAN
DO MILLIONS OF DOLLARS WORTH OF
DAMAGES TO MY COMPETITOR.
WHAT IS THE WORST THAT WILL
HAPPEN TO ME UNDER WOLF?
I MIGHT GET TAGGED FOR ATTORNEYS
FEES IF IT IS \$200,000 IN
ATTORNEYS FEES, THE COST OF
DOING BUSINESS WHICH I HAVE DONE
MILLIONS OF DOLLARS OF DAMAGE TO
MY COMPETITOR BUT I DON'T THINK
THE COURT WILL ALLOW
UNSCRUPULOUS BUSINESSES TO
ENGAGE IN SUCH CONDUCT AND HAVE
LIMITED CONSEQUENCES IN DOING
SO.

THE OTHER THING BROUGHT BY A
PETITIONER THIS CRISIS THAT MAY
EXIST IN CALIFORNIA, HE TURNED
RETALIATORY LAWSUITS, HE CALLS
IT RETALIATORY LAWSUITS TO MAKE
THE DEFENDANT IN THAT ACTION
LOOK LIKE THE VICTIM BUT HERE ON
MALICIOUS PROSECUTION, THIS
CRISIS IN THE STATE OF FLORIDA
WHERE THERE ARE TOO MANY CLAIMS
FOR MALICIOUS PROSECUTION BEING
BROUGHT, AND FRIVOLOUS LAWSUITS
BEING BROUGHT, MALICIOUS
PROSECUTION IS SOME BREAK ON THE
NUMBER OF FRIVOLOUS LAWSUITS
THAT MAY BE BROUGHT OR COULD BE
BROUGHT BECAUSE THERE ARE NO
PEACEFUL CONSEQUENCES IF YOU
BRING A LAWSUIT MALICIOUSLY
WITHOUT PROBABLE CAUSE, IT WOULD
ENCOURAGE UNSCRUPULOUS LITIGANTS
TO FILE MORE BASELESS LAWSUITS
FOR FRIVOLOUS LAWSUITS ONCE IT
IS FIGURE OUT THE CONSEQUENCES
ARE FAIRLY LIMITED.

THE ONLY THING YOU MIGHT GET HIT
FOR OUR ATTORNEYS FEES.
ON BALANCE I DON'T THINK THERE'S

A REASON FOR THE COURT TO
EXTREMELY LIMIT THIS ANCIENT
REMEDY OF MALICIOUS PROSECUTION.
IT DOESN'T MAKE SENSE TO MAKE A
DISTINCTION TO MALICIOUS
PROSECUTION CLAIM IN A CRIMINAL
CONTEXT VERSUS SIMILAR --
SIMILAR CONTEXT SO WE ASK THE
COURT QUASHED WOLF AND APPROVE
THE FISCHER CASE.

THANK YOU.

>> BASELESS LAWSUITS ARE
ADDRESSABLE IN THE UNDERLYING
LAWSUITS.

THE ANSWER TO UNNECESSARY
LITIGATION IS NOT MORE
LITIGATION.

THE ANSWER TO UNNECESSARY
LITIGATION IS INVOKING JUDICIAL
REMEDIES AVAILABLE IN THE
UNDERLYING LITIGATION THAT THIS
COURT HAS CONSISTENTLY STATED IS
MORE THAN ADEQUATE TO MEDICATE
THE EFFECTIVE APPLICATION OF THE
ABSOLUTE LITIGATION IMMUNITY
PRIVILEGE.

THE RESPONDENT IS ARGUING
JUDICIAL REMEDIES DO NOT ADDRESS
THE REAL HARM BUT THAT ARGUMENT
COULD HAVE BEEN MADE OVER THE
YEARS, DEFAMATION BY A WITNESS,
CIVIL PERJURY, BY ANY OF THE
TORTS THIS COURT HAS HELD
SUBJECT TO APPLICATION OF THE
ABSOLUTE IMMUNITY, CONSEQUENCE
OF THE RETALIATORY LAWSUIT IS
THE CHILLING EFFECT, THE THREAT
OF THE CHILLING EFFECT, UPON
THOSE WHO WISH TO PARTICIPATE IN
GOOD FAITH IN THE JUDICIAL
PROCESS.

THOSE WILL HAVE TO BE CONCERNED
ABOUT DEFENDING THEIR ACTIONS
SHOULD THEY LOSE OR DECIDE TO
VOLUNTARILY DISMISS THE CASE IN
A SUBSEQUENT LAWSUIT.

THAT IS THE CLASSIC OFFICE OF
APPLYING THE RATIONALE, IF EVER
THERE WERE SHORT THAT WOULD BE
APPROPRIATE TO APPROVE THAT
CHILLING ACTION IT WOULD IS A
TORT THAT IS DIRECTED TO HAVE
THE EFFECT OF CHILLING A
PERSON'S RIGHT TO INITIATE CIVIL

ACTION TO BEGIN WITH.
>> COURT IS IN RECESS FOR TEN
MINUTES.
>> ALL RISE.