Circuit Court for Anne Arundel County
Case No. C-02-CV-19-002914

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1016

September Term, 2020

DAVID E. WELCH, ET AL.

v.

HASSAN NAZZEL

Fader, C.J.,
Friedman,
Murphy, Joseph, F., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Murphy, J.

Filed: December 21, 2021

The parties to this appeal from the Circuit Court for Anne Arundel County have requested that this Court answer the question of whether that court correctly concluded that the (qualified) "common interest" privilege conferred immunity from liability upon and required the entry of summary judgment in favor of the father/appellee in the defamation action asserted against him by the maternal grandparents of his child. Based upon our review of the record on appeal, however, if we were to answer that question, we would be violating a most important rule of appellate procedure: Appellate courts do not issue advisory opinions. For the reasons that follow, we shall affirm the judgment of the circuit court.

I.

Appellants asserted in their complaint that appellee made several defamatory statements about them in a series of text messages he sent to their daughter during the time that she and the appellee were married and were adverse parties in a child access case being litigated in a circuit court proceeding. Precisely what appellee stated to his (now ex) wife about her parents is not in dispute. There is no need, however, to repeat in this opinion appellee's various "rants" about appellants, most – if not all – of which he would have been able to testify about (in polite language, of course) while on the witness stand explaining why he believed that appellants should not be permitted to have unsupervised temporary

custody of the child.[1] The record on appeal clearly shows that the only person to whom appellee made these statements was appellants' daughter in presumptively confidential and privileged text messages sent to no one else.[2] Under these circumstances, if this case were remanded for a trial on the merits, appellants would not be able to produce any legally sufficient admissible evidence that (1) appellee "republished" any of the statements at issue to anyone else, or that (2) any "republication" by appellants' daughter – to anyone other than to her parents – would be "foreseeable to [appellee]." Maryland Pattern Jury Instructions – Civil 12:9.

II.

We have reviewed the circuit court's grant of summary judgment as a matter of law to determine whether the trial court was legally correct. *Windesheim v. Larocca*, 443 Md. 312, 326 (2015) (citing *Goodwich v. Sinai Hosp. of Balt., Inc.*, 343 Md. 185, 204 (1996)). We have also reviewed the record '"in the light most favorable to the nonmoving party and [have] construe[d] any reasonable inferences that may be drawn from the facts against the moving party."' *Id.* (quoting *Myers v. Kayhoe*, 391 Md. 188, 203 (2006)). As this court stated in *Est. of Adams v. Cont'l Ins. Co.*, 233 Md. App. 1, 24 (2017):

[1] Only one of appellee's statements – an insinuation that Mr. Welch had committed the crime of "compounding a felony" – is a statement that would be likely to expose a person to public scorn, contempt, or ridicule.

[2] The spousal "confidential communication" privilege "is available in both civil and criminal trials and may be invoked by either spouse." *State v. Sewell*, 463 Md. 291, 304 (2019). Testimony – by appellants or by any other witness – that appellants' daughter "republished" appellee's text messages would be inadmissible under the rule against hearsay evidence.

> "We generally limit our review to the grounds relied upon by the trial court." *Benway v. Md. Port Admin.*, 191 Md. App. 22, 46, 989 A.2d 1239 (2010). *Accord PaineWebber Inc. v. East*, 363 Md. 408, 422, 768 A.2d 1029 (2001) (stating that, "In appeals from grants of summary judgment, Maryland appellate courts, as a general rule, will consider only the grounds upon which the lower court relied in granting summary judgment."). "We may, however, affirm the grant of summary judgment on a ground not relied upon by the circuit court if the alternative ground is one upon which the circuit court would have no discretion to deny summary judgment." *Rogers v. Home Equity USA, Inc.*, 228 Md. App. 620, 635, 142 A.3d 616 (2016) (internal quotation marks and citations omitted) (quoting *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 635, 985 A.2d 156 (2009)).

From our review of the record, we are persuaded that this case is not one in which we should limit our review to the grounds upon which the circuit court relied for reasons announced by the circuit court when granting summary judgment. "Court time" is a valuable public commodity. Because we are persuaded by the record on appeal that, if this case were to be remanded, appellants/plaintiffs will be unable to establish a *prima facie* case against appellee/defendant, we hold that it is of no consequence that the circuit court entered summary judgment on a different ground, and therefore affirm the summary judgment entered in favor of appellee.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.