

1 IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE NO. 502009CA040800XXXXMBAG

4 JEFFREY EPSTEIN,
5 Plaintiff,

6 -vs-

7 SCOTT ROTHSTEIN, individually, and
8 BRADLEY J. EDWARDS, individually,
9 Defendants.

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13 TRANSCRIPT OF HEARING
14 PROCEEDINGS

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16 DATE TAKEN: Monday, January 27, 2014
17 TIME: 3:00 p.m. - 4:23 p.m.
18 PLACE: Palm Beach County Courthouse
19 205 N. Dixie Highway
20 Courtroom 9C
21 West Palm Beach, FL 33401
22 BEFORE: Donald Hafele, Circuit Judge

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27 This cause came on to be heard at the time and place
28 aforesaid, when and where the following proceedings were
29 stenographically reported by:

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32 Robyn Maxwell, RPR, FPR, CLR
33 Realtime Systems Administrator

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APPEARANCES:

On behalf of the Plaintiff:
W. CHESTER BREWER, JR., P.A.
250 South Australian Avenue
Suite 1400
West Palm Beach, FL 33401
[REDACTED]
BY: W. CHESTER BREWER, JR., ESQUIRE
[REDACTED]

ATTEBURY, GOLDBERGER & WEISS, PA
250 South Australian Avenue
Suite 1400
West Palm Beach, FL 33401
[REDACTED]
BY: JACK A. GOLDBERGER, ESQUIRE
[REDACTED]

TONJA HADDAD, PA
315 SE 7th Street
Suite 301
Fort Lauderdale, FL 33301
[REDACTED]
BY: TONJA HADDAD COLEMAN, ESQUIRE
tonja@tonjahaddad.com
[REDACTED]

On behalf of Bradley J. Edwards:
SEARCY, DENNEY, SCAROLA, BARNHART & SHIPLEY, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409
[REDACTED]
BY: JACK SCAROLA, ESQUIRE
JSX@searcylaw.com
BY: WILLIAM B. KING, ESQUIRE
Wbk@searcylaw.com

1 Thereupon,
2 the following proceedings began at 3:00 p.m.:

3 THE COURT: Good afternoon, everybody.
4 Thank you so much. Have a seat. Welcome.

5 MR. BREWER: Good afternoon, Your Honor.

6 THE COURT: I had the opportunity to read
7 the binder and the materials sent to me by
8 respective counsel. I don't think the case should
9 take two hours.

10 MR. BREWER: No.

11 THE COURT: So what I'm going to ask you to
12 do is kindly tailor your arguments to one-half
13 hour apiece. And the movant may split up the time
14 to save some moments for rebuttal. And I think
15 that should more than adequately deal with the
16 matter.

17 I think the United States Supreme Court
18 heard the Brown vs. Board Of Education and gave
19 20 minutes a side. So if that can be done in that
20 amount of time, I think we can take care of this.

21 And, of course, you all realize -- and I
22 don't think this has anything whatsoever to do
23 with the matter, but I should let you know that I
24 handled the state claims that involved Mr. Epstein
25 when I was in Division B. So I have a significant

1 amount of familiarity with the claims that were
2 made. However, until I met with Judge Crow
3 involving this case, I had no knowledge whatsoever
4 that a separate and independent action had been
5 brought by Mr. Epstein against the Rothstein
6 entities and Mr. Edwards. So to that extent, I
7 just to want let you know, as you probably already
8 did already know, that I handled those cases I
9 believe to their conclusion, at or near the time
10 that I left that division two years ago or so.

11 Okay. So are you Ms. Haddad?

12 MS. HADDAD: I am.

13 THE COURT: Will you be arguing on behalf
14 Mr. Epstein?

15 MS. HADDAD: No, Judge. I don't have --
16 Mr. Brewer will be arguing on our behalf because,
17 as you can hear, I have a cold.

18 THE COURT: All right.

19 Mr. Scarola, did you want to say something?

20 MR. SCAROLA: I did, Your Honor. I just
21 wanted to clarify one matter which I believe to be
22 of some significance.

23 THE COURT: Sure. Of course.

24 MR. SCAROLA: And that is Your Honor
25 referenced a claim against the Rothstein entities

1 and that is not the case.

2 THE COURT: It was just Rothstein
3 individually?

4 MR. SCAROLA: It was just against
5 Mr. Rothstein individually. That claim has never
6 really been defended and -- against Mr. Edwards.
7 And the focus of these motions is only on
8 Mr. Edwards' claims for abuse of process and
9 malicious prosecution.

10 THE COURT: The later I knew. My apologies
11 for misstating the number of defendants involved.

12 MR. SCAROLA: No apology necessary, sir.

13 THE COURT: The only defendants involved --
14 and they may have been voluntarily dismissed
15 without prejudice; is that accurate?

16 MR. SCAROLA: There was a voluntary
17 dismissal of the initial claims brought against
18 Mr. Edwards, that's correct, sir, on the eve of
19 summary judgment hearing.

20 THE COURT: I remember that being written
21 in your papers.

22 MR. SCAROLA: Yes, sir.

23 THE COURT: So is Epstein's claim against
24 Rothstein still viable at this juncture?

25 MS. HADDAD: Yes, Your Honor, it is.

1 THE COURT: So the dismissed case without
2 prejudice was to -- was as to Mr. Edwards only.

3 MR. SCAROLA: The claims against LM, one of
4 victims of Mr. Epstein's conduct, those claims are
5 also dismissed.

6 THE COURT: Okay. Thank you for that
7 clarification. I much appreciate it.

8 Mr. Brewer.

9 MR. BREWER: Yes, sir. Well, first of all,
10 Your Honor, I'm Chester Brewer appearing on behalf
11 of Jeffrey Epstein.

12 We have before you today a motion for
13 summary judgment filed on behalf Mr. Epstein with
14 regard to a counterclaim that was filed by
15 Mr. Edwards. The case is currently set before
16 Your Honor, specially set I might say, for a
17 three-week or proposed three-week trial, and it is
18 currently set for May the 6th of this year.

19 One thing that I did want to talk to the
20 Court about before going into the procedural
21 history is in the package that was provided to you
22 by counsel for Mr. Edwards there is a statement or
23 interview that is with a young lady by the name of
24 [REDACTED]. Now, I don't know whether you
25 have had an opportunity to read it or not.

1 THE COURT: I didn't. I saw the reference
2 to Ms. Roberts. Who is she?

3 MR. BREWER: Ms. Roberts was an alleged
4 victim of Mr. Epstein. There was an interview
5 taken of her by Mr. Scarola and I believe
6 Mr. Edwards. There's a transcript of that
7 interview which is neither sworn to nor even
8 signed. It's something that could not be used for
9 any purpose in the trial of this matter, even for
10 impeachment. So if Your Honor has not read it, I
11 won't go into it.

12 THE COURT: No, I have not read it. I just
13 saw the name [REDACTED] bandied about on
14 several different occasions, so that's all I know.
15 And as you can tell, I didn't know her
16 relationship to the case.

17 MR. BREWER: Okay. Your Honor, the
18 procedural history here is there were a number of
19 claims brought by alleged victims of Mr. Epstein.
20 There were a number of different attorneys that
21 were involved. And a number of different cases
22 were filed both in federal court and in state
23 court on behalf of these alleged victims. The
24 cases proceeded, as you've said, some of them were
25 before you. They have all now -- per my

1 information, they have now all concluded although
2 there may still be some investigations.

3 THE COURT: Mr. Edwards at his latest
4 deposition indicated that there's still the
5 victim's case that's going on in the federal
6 court.

7 MR. BREWER: Nothing has happened on that
8 for a quite some period of time now.

9 The --

10 MR. KING: Judge, if I may, in response to
11 your question. I'm not sure what victim's case
12 that's referencing. All -- all of the cases --

13 THE COURT: This was a federal statutory --

14 MR. KING: I --

15 THE COURT: -- that Mr. Edwards indicates
16 he's doing pro bono on behalf of two of the
17 alleged victims.

18 MR. KING: You're correct.

19 THE COURT: In the Epstein matters.

20 MR. KING: That's correct. Sorry for the
21 interruption.

22 THE COURT: That's okay.

23 MR. BREWER: During the course of those
24 cases, there was some rather unusual discovery
25 that was taking place. And it was learned, and I

1 I'll get into this towards the end of my
2 presentation, but there were a number of things
3 that were learned by Mr. Epstein in and around
4 November of 2009 -- November/December 2009. He
5 filed a lawsuit against Mr. Rothstein,
6 Mr. Edwards, and LM who is one of the alleged
7 victims. One of the counts in that was for
8 malicious -- I believe it's -- he only had abuse
9 of process along with some other counts.

10 In response to that complaint, Mr. Scarola
11 on behalf of Mr. Edwards filed a counterclaim.
12 That counterclaim went through several amendments,
13 but the fourth amended counterclaim speaks to two
14 causes of action; that is abuse of process and
15 malicious prosecution. So those are what we're
16 here to talk about today, is abuse of process and
17 malicious prosecution as it relates to
18 Mr. Epstein's original claim against Mr. Edwards.

19 In response to Mr. Edwards' counterclaim,
20 there were a number of affirmative defenses
21 raised, but one of them that was raised was the
22 litigation privilege. And we are here today to
23 talk with you about the litigation privilege and
24 its current state as espoused by the Florida
25 Supreme Court and the Third District Court Of

1 Appeals and, in fact, the Fourth District Court Of
2 Appeals.

3 THE COURT: One thing I wanted to interrupt
4 you on is this Wolfe case and its current status
5 and the -- I'll call the -- I'll call it the
6 Edwards side to make things be easier. But the
7 Edwards side has raised the issue that apparently
8 this Wolfe case is still in rehearing and
9 therefore of no precedential value to the court.

10 Mr. King, did you want to speak briefly to
11 that?

12 MR. KING: Yeah. We submitted a notice of
13 correction to Judge Sasser the other day who stood
14 in for you on the page extension.

15 THE COURT: Right.

16 MR. KING: We gave her that and asked her
17 to turn that over to you.

18 THE COURT: I didn't get it.

19 MR. KING: Okay. What's actually happened
20 is -- and it's confusing because Westlaw's whole
21 history on this, and Mr. Brewer also understands
22 this because he ran into the same problem.

23 My reading of the history that Westlaw
24 contains indicates that the mandate has issued but
25 they still use the caveat "this is a Westlaw

1 citation only, it's not in the final published
2 format, and therefore it can be changed at any
3 time." But with the issuance of the mandate, that
4 signifies that it is -- the rehearing is denied
5 and it is now final.

6 THE COURT: Okay. Thank you for that. I
7 did not know that until right now.

8 MR. BREWER: So let's get into the Wolfe
9 case. That's where we're headed next. And really
10 there's a trilogy of cases. There's the Levin
11 case, the Echevarria case, if I'm somewhere close
12 to pronouncing that correctly, and the Wolfe case.
13 All of them deal with litigation privilege which
14 dates back to 1917. And I think that we are all
15 most familiar with the standard that defamation
16 cases, if the, quote, alleged defamation occurred
17 during the course of a judicial proceeding would
18 be protected by the litigation privilege and no
19 action could be taken on them.

20 Over the years different courts looked at
21 it. There was an attempt -- there were attempts
22 made to determine how far and to which causes of
23 action the litigation privilege would apply.

24 The seminal case now for us, I guess, now
25 is Levin. This was Levin, Mabie suing. It was

1 actually a tortious interference case. But the
2 case went up to the Florida Supreme Court. And
3 the issue before them was how far is this
4 privilege or to what causes of action should this
5 privilege apply?

6 And the Levin court came out and said that
7 it would apply to all torts, including the one
8 that was before them which was tortious
9 interference. And that the standard for
10 determining whether the action complained of would
11 be whether that action had some relation to the
12 proceeding, the judicial preceding.

13 Later on the question came up, Well, should
14 that -- it's the -- we've already determined that
15 it applies to all torts. And so, does it also
16 apply to statutory violations or cases involving
17 statutory violations? And that's the Echevarria
18 case, also in front of the Florida Supreme Court,
19 some 13 or 14 years after Levin, and they found,
20 yes, that it does apply to, essentially, all civil
21 judicial proceedings.

22 Now, the issues before us are the
23 litigation privilege as it applies to abuse of
24 process and malicious prosecution. That was all
25 brought to a head in the Wolfe case. In the Wolfe

1 case, the Third District Court Of Appeal was faced
2 with the issue of do the -- does the litigation
3 privilege apply in those two causes of action.

4 The answer was yes. The Wolfe case or the
5 Wolfe court went back and essentially referred
6 back to and analyzed the Levin and Echevarria
7 cases. And that's why I say it's kind of a
8 trilogy.

9 And in the Wolfe case it was determined
10 that this was not -- not only was it privileged
11 for any actions that were related to the judicial
12 process, it was an absolute privilege.

13 Now, in our case, we have exactly the same
14 issue. We've got a complaint that was filed that
15 is alleged in the counterclaim to be malicious
16 prosecution. We also have the pleadings,
17 everything that was filed after the initiation of
18 the judicial pleading -- judicial process. It's
19 claimed to be an abuse of process.

20 In fact, in answers to interrogatories and
21 all of the discovery that has been had from the
22 Edwards side, they have said that the filing of
23 the complaint was in itself it was untrue, the
24 information that was there was untrue; Epstein
25 should have known it was untrue, and that he had a

1 bad purpose in filing which was to intimidate or
2 extort Mr. Edwards and his client.

3 That's been put to bed in the Wolfe case
4 because the litigation privilege absolutely
5 applies and is absolute. The Wolfe case states
6 that they could think -- or the Wolfe court stated
7 they could think of no action that would be more
8 related to the judicial process than the filing of
9 a complaint. So a complaint, the filing of the
10 complaint is privileged.

11 Then going back, and then as they related
12 to the Levin case and the Echevarria case, they
13 said anything that was related to the judicial
14 process -- discovery, depositions,
15 interrogatories -- as long as they were related,
16 they were protected by -- the participants were
17 protected by the litigation privilege.

18 They -- in the trilogy, and I forget which
19 one of the cases it was, but they go even further
20 and clarify that the claim "a bad motive" is
21 really irrelevant to these causes of action when
22 you were talking about the litigation privilege.
23 The -- let me see, where am I here?

24 In the Wolfe case it was a motion for
25 judgment on the pleadings. In some of these other

1 cases it was motion for summary judgment. And in
2 all of these cases they found that the litigation
3 privilege barred the causes of action that were
4 being claimed.

5 The argument has been made by the other
6 sides that because Mr. Edwards -- or, excuse me,
7 because Mr. Epstein had no reason to file the
8 original complaint that he filed, that somehow or
9 another the litigation privilege should not apply.
10 And that because he shouldn't have filed the
11 original complaint, everything that he did
12 thereafter was an abuse of process.

13 We would put it to Your Honor that's not
14 the standard as espoused by the Third District
15 Court Of Appeal, the Fourth District Court Of
16 Appeal, or the Florida Supreme Court. The
17 standard is: Did the action have some relation to
18 the judicial proceeding?

19 THE COURT: I think at least in trying to
20 distinguish Wolfe, but at the same time taking a
21 more global approach, the Edwards' side is
22 suggesting that timing and the length of time
23 subsequent to the settlement of the pending claims
24 and his continuing to prosecute the suit more so
25 on the malicious prosecution side would distance

1 itself from Wolfe, because in Wolfe I believe the
2 court made clear that it was a brief prosecution
3 of the action and was not protracted. How do you
4 respond to that concern?

5 MR. BREWER: I respond by quoting the
6 Florida Supreme Court, which is: If the action --
7 and whether they're talking one action, 20 actions
8 or 40 actions, if the action is related to the
9 judicial proceeding, then you have a litigation
10 privilege.

11 THE COURT: And that can go on essentially
12 forever in your mind?

13 MR. BREWER: I don't know that it can go on
14 forever because also they were talking,
15 particularly in the Levin case, about protections
16 that would be afforded to litigants. But those
17 protections would not be through a cause of action
18 for malicious prosecution or abuse of process;
19 rather, it would be through the court with
20 contempt proceedings, perhaps. It would be
21 through the Florida Bar for, you know,
22 inappropriate actions taken by an attorney. It
23 could be perjury for a litigant which would be
24 handled by the state.

25 THE COURT: I don't think perjury. Not if

1 it's guised in the litigation privilege, but
2 perhaps you're right that it could be met with
3 57.105 standards.

4 MR. BREWER: 57.105 was the one I was just
5 getting ready to get to, Your Honor. So there are
6 protections against what you're talking about, but
7 again, I have to go back to what did the Supreme
8 Court tell us.

9 I did want to touch also on another point
10 that was raised in our motion, which is that the
11 Complaint, at least insofar as malicious
12 prosecution, has to fail because there is probable
13 cause demonstrated for Mr. Epstein to have filed
14 or at least have reason to believe that he could
15 file -- properly file the claim that he -- that he
16 did file.

17 THE COURT: Is probable cause always a
18 legal -- purely legal determination?

19 MR. BREWER: No. No. If there are
20 questions of fact that are involved with the
21 probable cause, the questions of fact are for the
22 determination of the jury. The jury -- the judge
23 then takes those determinations of the jury to
24 make a finding of probable cause. But it is in
25 the -- at the end of the day the court -- the

1 issue of probable cause is a matter of law for
2 determination by the court.

3 But the threshold for establishing probable
4 cause in a civil action is really rather low.
5 Because it is whether the defendant could have
6 reasonable -- what the -- what the defendant could
7 have reasonably believed at the time of asserting
8 the claim.

9 So I want to go briefly through what
10 Mr. Epstein knew or was available to him at the
11 time November/December of 2009.

12 First, undisputed, Mr. Edwards was a
13 partner at the Rothstein firm. It's also
14 undisputed and it had been admitted by
15 Mr. Rothstein that this firm was the front for one
16 of the largest Ponzi schemes in Florida history.
17 At the time, Mr. Edwards was the lead attorney for
18 three cases that were being brought by the
19 Rothstein firm against Mr. Epstein.

20 During the litigation there were numerous
21 discovery attempts which appeared to be unrelated
22 to those; and that was trying to get flight
23 manifests, take depositions of people who may have
24 been on flights on Mr. Epstein's planes, some
25 very, very prominent names. And these things were

1 escalating during that time period. And it was
2 very, very strange.

3 In late November of 2009 there was an
4 explanation as to why those things were going on.
5 And the Rothstein firm imploded. And there was a
6 complaint that was brought by Bill Scherer I
7 believe down -- I don't know if it was Broward
8 County or Dade County.

9 THE COURT: Yeah, I'm familiar with all
10 that.

11 I remember that day. Do you remember that
12 day, Mr. Edwards?

13 MR. EDWARDS: I remember it like yesterday.

14 MR. BREWER: In any event, he filed a
15 complaint on behalf of a group of investors that
16 we refer to as Razorback. And if I can find it.
17 Here we go. One of allegations in the complaint
18 in Razorback was, additionally, "Rothstein used
19 RRA's representation in the Epstein case to pursue
20 issues and evidence unrelated to the underlying
21 litigation but which was potentially beneficial to
22 lure investors into the Ponzi scheme."

23 THE COURT: You -- five out of the six of
24 you know me very well, and I always am very
25 receptive to argument. You guys know that. The

1 only one is Ms. Haddad. I think -- I'm not sure
2 if we met before. But I just feel like the
3 probable cause aspect just carries with it too
4 many factual issues for me to rule as a matter of
5 law, so I don't think that I can grant relief on
6 the probable cause issue vel non. So if you will,
7 please move on to --

8 MR. BREWER: On that note, because I was --
9 I will close.

10 THE COURT: Okay. Thank you very much,
11 Mr. Brewer.

12 MR. BREWER: No, I will close by --

13 THE COURT: On that issue?

14 MR. BREWER: I will close on that issue.

15 THE COURT: Very well.

16 MR. BREWER: But I would like to close by
17 quoting a very prominent attorney.

18 THE COURT: Sounds like a plan.

19 MR. BREWER: This is something that was
20 before Judge Crow.

21 And it begins out of the attorney saying,
22 "Tab 4, Levin vs. Middle -- Levin vs. Middlebrook
23 is the Tab No. 18?"

24 Judge Crow says, "I read it a thousand
25 times."

1 The attorneys says, "Yes, sir, I'm sure you
2 have."

3 "THE COURT: You have to give it to me
4 again, though."

5 ATTORNEY: "I will be happy to do that."

6 "THE COURT: This deals with the litigation
7 privilege?"

8 The attorney then goes on to say, "Yes,
9 sir, it does deal with litigation privilege.
10 Echevarria also deals with the litigation
11 privilege. Delmonico stands for the proposition
12 that the issues with regard to privilege are some
13 issues of law for the court to determine. And I
14 provided Your Honor with highlighted copies. I'm
15 providing opposing counsel with highlighted copies
16 as well.

17 "THE COURT: Okay."

18 THE ATTORNEY: "Basic point here, Your
19 Honor, is that the litigation privilege is an
20 absolute privilege. Once it is established that
21 the actions occur within the course and scope of
22 the litigation, the privilege applies absolutely
23 as a matter of public policy.

24 "The basis of those decisions, that if
25 there's misconduct in the course of litigation --

1 if you're talking about improper discovery, if
2 you're filing improper motions -- there are
3 remedies that are available to the court through
4 the court's inherent power to control its own
5 litigation; through the contempt powers of the
6 court through Florida Statute 57.105, and through
7 the filing of bar grievances. And it will cripple
8 the system if litigants are obligated to respond
9 to separate litigation just because somebody has
10 alleged you noticed the deposition that shouldn't
11 have been noticed. You filed a motion that
12 shouldn't have been filed."

13 That prominent attorney is Mr. Scarola.

14 THE COURT: In an unrelated case?

15 MR. BREWER: In this case. In this case
16 when they were arguing that Mr. Edwards was
17 entitled to the litigation privilege with regard
18 to Mr. Epstein's complaint.

19 THE COURT: Okay. Who --

20 Off the record for a minute.

21 (Discussion off the record.)

22 THE COURT: Okay. Mr. King, please.

23 MR. KING: Thank, Your Honor. William King
24 and Jack Scarola, Your Honor, for Mr. Edwards who
25 is seated with us at the table.

1 May it please the Court.

2 THE COURT: Please.

3 MR. KING: In light of the Court's ruling
4 on the probable cause issue, I am not going to get
5 into all of the facts with which we did not have
6 an opportunity to identify in detail. I'll simply
7 say to the Court that there still exists the issue
8 of the bona fide determination they have not
9 raised here today. And so, the submission of the
10 facts that we have submitted, that we've prepared
11 for you, would bear on that unless they have --
12 likewise, because of factual disputes, they're
13 basically taking the position that is no longer --
14 that's no longer an issue either for purposes of
15 this summary judgment.

16 Pursuant --

17 THE COURT: Let me stop you, Mr. King, so
18 that you're not confused by my preliminary
19 statements to Mr. Brewer. And that is, that the
20 global issue that's covered by, as Mr. Brewer puts
21 it, the trilogy of cases, the Levin, Echevarria,
22 and now this Wolfe case is not being disposed of
23 or is not being ceded by Mr. Brewer here. They're
24 still claiming that both counts are covered by the
25 Wolfe, Levin, and Echevarria cases.

1 My statement is only if, in fact, those
2 cases are, and now the Wolfe case which is now, in
3 my view, on point relative to both abuse of
4 process and malicious prosecution claims globally,
5 if that case for some reason doesn't cover that,
6 then the elements of the malicious prosecution
7 claim are off the table. In other words, I would
8 not grant the motion because of at least those two
9 reasons; that is that I believe that there are
10 questions of fact related to the probable cause
11 issue, as well as the bona fide determination
12 issue additionally.

13 MR. KING: And I understand the Court's
14 ruling in that regard.

15 THE COURT: Okay.

16 MR. KING: My only point was they raised in
17 their initial brief an issue of whether there was
18 a bona fide termination. That, likewise, is very
19 fact specific.

20 THE COURT: I agree and that's why I want
21 to make clear that that standing alone, the
22 elements of the malicious prosecution claim as
23 opposed to the abuse of process claim, which I
24 will handle separately, will not muster in summary
25 judgment in my view.

1 MR. KING: Thank you.

2 Then let me focus, then, on the litigation
3 privilege, Judge, since that's the key issue that
4 the Court is dealing with today.

5 THE COURT: Thank you.

6 MR. KING: It is our position that a
7 conflict currently exists with regards to the
8 issue whether the litigation privilege bars a
9 malicious prosecution claim. And I have cited to
10 the case Olson vs. Johnson, 961 So2d. 356, the
11 Second DCA's opinion in 2007, after both Levin and
12 Echevarria. And it holds that malicious
13 prosecution claims are not barred by the
14 litigation privilege.

15 Then you have Wolfe that stands in
16 contradistinction to that which holds that it
17 does. Although, as I'll point out in a few
18 moments, one of -- Judge Shepherd in his
19 concurring opinion doesn't -- he doesn't rely on
20 that, on that theory.

21 Our position is that Olson vs. Johnson sets
22 forth the accurate and more persuasive
23 proposition; that is that it does not bar a
24 malicious prosecution claim. Even though Olson
25 vs. Johnson dealt with complaints by a complaining

1 witness in a case that only resulted in a
2 malicious prosecution claim leading to a wrongful
3 arrest, doesn't -- the facts of the case itself do
4 not go so far as to address issues of what happens
5 once a civil complaint is filed. But the
6 proposition that that Olson states is unequivocal;
7 that is the litigation privilege does not apply to
8 malicious prosecution.

9 Now, when we get to Judge Sasser's opinion,
10 which I submit in all of the cases that have been
11 cited by everyone, Judge Sasser's opinion is the
12 most cogent, most well-reasoned, and rejects those
13 very propositions that two judges in the Wolfe
14 case adopt.

15 So let me -- let me just suggest to the
16 Court --

17 THE COURT: Which Judge Sasser? I'm trying
18 to figure out which one you are talking about.

19 MR. KING: That is the decision in -- bear
20 with me, Judge.

21 THE COURT: No problem.

22 MR. KING: That is the decision in Johnson
23 vs. Libow, a 2012 -- Westlaw 4068409 in 2012.

24 THE COURT: Okay.

25 MR. KING: It is concise. It's to the

1 point. And I'll address that in just a few
2 moments.

3 THE COURT: All right. Thanks.

4 MR. KING: Now, what's interesting about
5 Wolfe, and what's almost inexplicable about Wolfe,
6 is that it ignores its own prior precedent by
7 Judge Cope in his concurring decision in Boca
8 Investors Group vs. Potash, 835 So2d. 273.

9 THE COURT: That was a concurring opinion?

10 MR. KING: Yes, that was his concurring
11 opinion.

12 THE COURT: Okay.

13 MR. KING: Of course, as you know,
14 Judge Cope is very well-respected and his opinions
15 are very articulate, but it also ignores a
16 Third DCA's full panel's decision in SCI Funeral
17 Servcies Inc. vs. Henry, 839 So2d. 702 at Note 4,
18 Third DCA opinion in 2000, both of which both
19 Judge Cope and the panel in the SCI case note that
20 the Supreme Court's citation in Levin to Wright
21 vs. Yurko, which I cited in the memorandum, which
22 was a Fifth DCA decision back in 1984, implicitly
23 recognizes -- that is the Supreme Court itself
24 implicitly recognizes that malicious prosecution
25 claims are not subject to the litigation

1 privilege.

2 And if you read Wright vs. Yurko, you read
3 Judge Cope's concurring opinion, and you read the
4 panel's footnote in SCI, one should not come up
5 with any other conclusion other than that's what
6 the Supreme Court did. So you have Wolfe standing
7 in contradistinction to its own -- to its own
8 precedent, which they don't address at all in
9 Wolfe, and it stands importantly in
10 contradistinction to the Supreme Court's own
11 position on that -- on that doctrine.

12 I -- I would dare say that the Third
13 District will always stand alone on that
14 proposition. Any other district court which is
15 going to undertake this issue will not follow that
16 ruling. And the Supreme Court itself, if it ever
17 gets on the cert's jurisdiction, will not either.

18 Other courts have likewise commented that
19 the litigation privilege would not bar a malicious
20 prosecution claim. I have cited you to the
21 decision of Judge Corrigan in North Star Capital
22 Acquisition, LLC vs. Krig, 611 F.Supp.2d 1324
23 (M.D. Fla. 2009), another decision that was
24 decided after Levin and Echevarria. And the court
25 in that case discussed -- let me just for a moment

1 here --

2 Well, the bottom line is Judge Corrigan
3 commented about the litigation privilege and
4 stated that neither malicious prosecution nor
5 abuse of process would be barred by the litigation
6 privilege.

7 I have also cited the Cruz vs. Angelides,
8 the Middle District of -- I'm sorry,
9 574 So2d. 278, Second DCA 1991, which also
10 suggests that malicious prosecution would not be
11 barred by the litigation privilege.

12 But as I've indicated, the most cogent and
13 well articulated opinion on this subject is
14 Judge Sasser's opinion in Johnson vs. Libow. She
15 expressly revoked the arguments that are raised by
16 Wolfe, which arguments, of course, are opposed by
17 the assertion in Olson. The court noted the
18 following -- and these are the very compelling
19 reasons why Wolfe would not apply to a malicious
20 prosecution claim.

21 As she said, "Levin involved actions taken
22 during the course of proceedings" and as you
23 remember what Levin was; that was a situation
24 where there was a motion to disqualify counsel.
25 Then ultimately, when they didn't call counsel,

1 they filed a separate interference claim and the
2 court barred that on the litigation privilege.
3 But the court stated that when you're dealing with
4 the malicious prosecution lawsuit, it's
5 fundamentally different. It involves the filing
6 of a baseless action against a defendant. And the
7 purpose of a malicious prosecution action is to
8 prevent vexatious prosecution or litigation.

9 "The purpose of the litigation privilege,"
10 she stated expressly, "is not to preclude the tort
11 of malicious prosecution. And if the litigation
12 privilege was applicable to the filing of a suit,
13 the tort of malicious prosecution would not
14 survive."

15 And as the Court is well aware, the
16 malicious prosecution has been recognized as --
17 it's an ancient tort in Florida. It's always been
18 around. The Supreme Court has addressed it in the
19 past specifically. And one cannot lightly accept
20 the proposition that the Supreme Court, which
21 itself has indicated -- implicitly indicated at
22 least that the litigation privilege would not bar
23 a malicious prosecution claim. That the Supreme
24 Court itself would not adhere to the those rulings
25 and overturn a century of law recognizing the tort

1 of malicious prosecution.

2 We also submit that Wolfe is
3 distinguishable because the litigation privilege
4 was applied to the attorneys in that case. The
5 attorneys were involved, and I need not go over
6 all of the facts of the case, but it was a very,
7 very brief involvement by the lawyers. As I
8 suggested in the brief, lawyers may end up being
9 given a broader immunity under the litigation
10 privilege because of their obligations to their
11 clients to carry out their legal and ethical
12 responsibilities.

13 And the facts of that case are somewhat
14 compelling in that the attorneys who make a brief
15 appearance shouldn't be exposed to all of this.
16 Maybe their -- maybe the thought process was
17 something along the lines, well, we don't want to
18 put the attorneys through this. This should be
19 cut out right at the beginning.

20 THE COURT: Off the record for one second.

21 MR. KING: Yes.

22 (Discussion off the record.)

23 MR. KING: And I cited the Taylor case,
24 which was a Supreme Court of Idaho decision, which
25 discusses that issue and which shows that for

1 those very reasons that I identified, lawyers
2 should have a greater opportunity to --
3 opportunity to seize upon immunity which would cut
4 off their liability early on. So whether it's a
5 qualified immunity or absolute immunity discussed
6 in that decision, whatever, perhaps that was
7 the -- a factor or although they don't cite to
8 Taylor, but maybe that's a factor in Wolfe.

9 THE COURT: I guess I understand your
10 position that you're taking in terms of in the
11 Wolfe context, because as I indicated to
12 Mr. Brewer during his argument, the court made it
13 a point to indicate the very brief involvement of
14 the Kenny Knachwalter firm. But since I did ask
15 my question off the record, I'll indicate what I
16 did ask was whether or not Mr. Epstein was
17 represented at all times material to the
18 allegations now made by Mr. Edwards. And Mr. King
19 has answered in the affirmative.

20 I'm having difficulty then with trying to
21 reconcile why the claim was only brought against
22 Mr. Epstein as opposed to his attorneys,
23 especially where the emphasis has been made quite
24 strongly that despite the settlements that went on
25 Epstein, essentially himself as related to the

1 court, was the guiding influence here in
2 proceeding against Mr. Edwards in a -- for a --
3 for a time period that you believe is actionable.

4 MR. KING: Well, one response, without
5 going into the entire tortured history of
6 Mr. Epstein's actions and the various machinations
7 that he undertook, the initial complaint which
8 charged Mr. Edwards with all sorts of horrific
9 crimes -- fraud, perjury, conspiracy to commit
10 perjury, securities fraud, general fraud,
11 extortion, all -- all specific crimes that were
12 alleged against him, the lawyers who were involved
13 in that case withdrew. They abandoned those
14 claims.

15 Well, we can't ask them why, but I submit
16 that what happens is the evolution of that case
17 then becomes a case involving merely -- I
18 shouldn't say merely abuse of process, abuse of
19 process. So one response is that's a situation
20 that -- that you -- that is sort of suggested by,
21 perhaps, the court in Wolfe and in desiring to
22 protecting lawyers who recognize what happened and
23 then get out of the case.

24 They realize that whatever they were told
25 by their client, and we submit that, for example,

1 the attorneys would not necessarily know what
2 Mr. Epstein had in his mind. We know what Epstein
3 had in his mind because I have outlined somewhat
4 in the papers here the huge amount of evidence
5 accumulated by not only Mr. Edwards but the
6 federal government, by the state government which
7 showed that not only was -- did he abuse
8 Mr. Edwards' clients repeatedly from the time they
9 were 14 and 15 years old, he was abusing girls as
10 young as 12 years old. He was having -- he was
11 having orgies on his airplane, one of those
12 indications that they may have had reference to in
13 their papers and earlier made reference here about
14 why was discovery pursued by Mr. Edwards.

15 But they -- the lawyers are just not -- A,
16 they're not sued. That's not a situation that
17 we're facing here.

18 THE COURT: I know that.

19 MR. KING: And for the very reasons that
20 Taylor talks about, it's just unwise, it seems to
21 me, to pursue lawyers in a case where you may know
22 inside what's going on with Epstein and why he's
23 doing what he's doing.

24 And that's a fine line that the lawyers
25 have to face in every case; when do I step out?

1 The original lawyers in this case did step out.
2 And those claims were all abandoned. And I think
3 that speaks volumes. All of that, of course, goes
4 in part to the issues of malicious prosecution,
5 which we would ultimately argue if I had to get
6 into those facts.

7 I hope that answers your question. I mean,
8 Epstein stands in our -- from our standpoint, in a
9 completely different position than the lawyers at
10 this stage of the proceedings despite the fact
11 that after he settles the claims he then continues
12 to pursue the allegations.

13 And to us, your review of the size of those
14 settlements would have an impact on all of the
15 issues, not on this particular issue that we're
16 talking about now. But if we had to get into
17 those facts and the court took a look at what
18 those settlements were in camera, then we would
19 believe that that would be -- that's a strong
20 indication that all of this stuff that he seized
21 upon, that Edwards seized upon --

22 MR. BREWER: Excuse me, Your Honor. Motion
23 For Summary Judgment is supposed to be something
24 that is in evidence and in record and it's not.

25 THE COURT: Yeah, I have no plans on

1 reviewing the size of the settlement amounts.
2 They don't phase me at all. And I -- I don't --
3 it seems since they agreed to be confidential, I
4 think we should respect that.

5 MR. KING: And I understand, and since
6 we're not even discussing these, and I may be
7 going further than what your concerns were about
8 the lawyer's involvement in the case and why they
9 wouldn't be sued in a case like this.

10 THE COURT: What I'm saying is I can
11 understand both sides' argument. But on the one
12 hand, it's interesting that the line of cases here
13 on this immunity issue often bears on the facts of
14 the cases. Meaning, the most repugnant they
15 take -- there's a more liberal approach. The
16 Wolfe case where the Kenny Knachwalter firm
17 abandoned the claims immediately, there's a more
18 conservative approach. And I tend to -- tended --
19 tended to notice that while I was reviewing the
20 cases, which is understandable, certainly.

21 But the -- the -- what I said about both
22 sides is, yes, I can see in a situation where the
23 attorneys quickly abandoned the case there's the
24 indication that a claim would not lie. However,
25 where I -- where I have the representation made

1 without controvert that Epstein was represented
2 throughout the process, so to speak, even after
3 the settlements were effectuated, but represented
4 nonetheless by counsel, I can also see the other
5 side where it could -- it could weaken the
6 argument that Epstein would be at the control so
7 to speak.

8 MR. KING: Well, it -- it's our position
9 that the mass of evidence which we have, some of
10 which I just outlined, reflects that Mr. Epstein
11 seized upon a convenient situation, the RRA
12 implosion, to use that as a sword against
13 Mr. Edwards. And it became -- it was personal
14 with him, and he knew that the allegations against
15 him by not only his own clients were true. And as
16 you know, ultimately, what happens is the
17 attorneys dismiss the case on the eve of the
18 Motion For Summary Judgment. And --

19 Mr. Scarola corrects me. I wasn't in in
20 those the earlier stage, but he indicates that two
21 sets of lawyers got out.

22 THE COURT: That's okay. That's fine.

23 MR. KING: But in any event, then on the
24 eve of the summary judgment motion we submit that
25 the last set of lawyers gets out because -- they

1 withdraw those claims or dismiss those claims
2 because they are faced with the knowledge that
3 they couldn't uncover one iota of evidence that
4 Mr. Edwards was guilty of anything. His name
5 never appeared in the public, in any public
6 documents were filed. They took his deposition
7 for days. They have never been able to uncover
8 one piece of evidence that would remotely suggest
9 that he was involved. So the bottom line is -- I
10 really probably have gone further than the
11 Court --

12 THE COURT: No, not at all.

13 MR. KING: -- and I apologize for that.

14 THE COURT: I just want to give you a
15 ten-minute warning now, but --

16 MR. KING: All right.

17 THE COURT: Don't these cases, though,
18 teach us that essentially no matter how repugnant
19 the judicial conduct process -- the conduct during
20 the judicial proceedings, I should say, no matter
21 how far repugnant the conduct during the judicial
22 proceedings may be, as long as they are within the
23 judicial proceeding there is this immunity that
24 exists, particularly for an abuse of process
25 claim?

1 The malicious prosecution claim I am more
2 on the fence. But on, as far as the abuse of
3 process claim is concerned, and there's that
4 balancing that is taken into account that I
5 believe it's talked about primarily in the Levin
6 case about the full disclosure within the lawsuit
7 venue versus someone facing liability because of
8 what may be alleged in a complaint or during a
9 deposition or something along those lines. As
10 long as it's within the judicial proceeding, and,
11 again, no matter how repugnant it may be, is there
12 not this immunity afforded by the appellate courts
13 that would extend at least to the abuse of process
14 claim? And tell me, if not, why not, please.

15 MR. KING: We acknowledged in the memo that
16 both in the Third and the Fourth -- in the Fourth
17 in the American National Title Case, both applied
18 the doctrine to the abuse of process claim.

19 The full import of how far that will go
20 because each of those cases again involved
21 lawyers. But the question is: Will that in the
22 future -- because, again, that tort, abuse of
23 process, has been around a long time. But the
24 American National case was 1999. And also the
25 LatAm case, which was a precursor to Wolfe on that

1 issue, the litigation privilege and the abuse as
2 it applied to the abuse of process, that case was
3 cited by Wolfe.

4 So you had -- you had some rational prongs
5 that Wolfe could latch onto in terms of the issue
6 of the application of litigation privilege to
7 abuse of process. And we would distinguish it
8 on -- we would distinguish those cases based on
9 the fact that lawyers only were involved.

10 We would also maintain that that --

11 THE COURT: I guess, Mr. King, what it
12 comes down to is, shouldn't lawyers know better
13 than the litigants themselves? And, again, if --
14 I would be a bit more receptive to your argument
15 if I was told Epstein filed these documents
16 pro se. Because he is at least, you know, to a
17 degree an educated individual. He has a
18 background, I believe, in finance. So, you know,
19 there could be those facts that could be developed
20 within his educational purview, within his
21 experience purview, within his own personal
22 vendettas that he may have with Mr. Edwards.

23 But, again, shouldn't lawyers know better?
24 The lawyers are continuing this plight on behalf
25 their client. Why is Epstein the one who is the

1 focal point of this abuse of process claim?

2 MR. KING: And, again, I would go back to
3 the role that lawyers have in walking that ethical
4 line, walking that legal line, walking the
5 line where they have to advance their client's
6 cause as best they can. And when it comes to that
7 point where they recognize that, no, these claims
8 are false, there's no basis for us to proceed,
9 then they get out.

10 And now, as I'm advised, two firms did that
11 before. The last firm came in and dropped
12 their -- dropped those claims on the eve of
13 summary judgment.

14 So one, to me, as -- I shouldn't say that.
15 To -- to Mr. Edwards in this particular case we
16 see a clear distinction. And that distinction is
17 you don't go after the lawyers for these claims if
18 you recognize that there is a -- that they have
19 acted within the bounds of arguably of their
20 ethical responsibilities and legal
21 responsibilities to their client. They have to
22 zealously advocate for him. But that doesn't
23 excuse him. That doesn't excuse an individual who
24 over all those years were committing those heinous
25 acts against not only Mr. Edwards' clients, but

1 many, many others.

2 THE COURT: But those heinous acts as have
3 you communicated, and I won't take a position one
4 way or the other on the acts, but I'm just picking
5 up on what you just said, but they have nothing to
6 do with this case itself on the claims of abuse of
7 process and malicious prosecution. They just
8 simply don't. I mean, you may suggest to me that
9 they have something to do with them from the
10 standpoint of Epstein's dissatisfaction with the
11 settlement or whatever may have been attributed to
12 that, but they really have nothing to do with
13 these claims.

14 MR. KING: Well, with the litigation
15 privilege I will acknowledge other than what I
16 have already argued the situation was different
17 wherein, in, for example, Wolfe he had the brief
18 appearance by the lawyer and Judge, it was --
19 Judge Shepherd, in his concurring opinion, didn't
20 embrace that. What he said was, Look, there's two
21 elements, and malicious prosecution doesn't even
22 exist here. Let's get rid of it.

23 THE COURT: Right.

24 MR. KING: I would just suggest that the
25 facts that I have outlined, and which we have in

1 all of the materials that we submitted to you, all
2 of those facts are -- they -- they do go to the
3 other issues that you aren't addressing here; the
4 factual issues on good faith and the factual
5 issues on bona fide termination.

6 And so with that reservation, I would
7 suggest that the only other reason why these facts
8 are so significant is because anybody sitting -- a
9 court sitting back and looking at the landscape
10 here would have to ask themselves, look, in light
11 of -- for example, Judge Sasser's opinion, and the
12 reasons why we have malicious prosecution claims
13 and why they would survive is because of something
14 just like this. And I'm getting back to the
15 litigation privilege and malicious prosecution.

16 I really have ended my comments on that but
17 I just wanted to address your concerns about why
18 all of these facts might impact.

19 THE COURT: No. Go right ahead.

20 MR. KING: And those facts impact because
21 what it does is it cries out and it shows you that
22 this is why a malicious prosecution claim should
23 survive the litigation privilege. When you have a
24 torrent of evidence that he's committed these acts
25 and that he knows that the attorney for those

1 clients has acted appropriately and at every stage
2 he was involved before he ever got associated --
3 before Mr. Edwards ever got associated with RRA
4 and he continued them on after he did it.

5 He does pro bono work for clients, as you
6 know, in the federal case. He knows that.
7 Epstein knows that. And that's why the facts are
8 important to malicious prosecution claims because,
9 as Judge Sasser says, the idea here, the concept
10 here on a malicious prosecution claim is, this
11 is -- this is the kind -- this is why the
12 privilege shouldn't apply, because the vexatious
13 prosecution of a claim is something that the law
14 will recognize.

15 And everything that we have put into the
16 record about Epstein's involvement shows that this
17 use of that lawsuit was a pretext. And that he
18 had every evil motive in the world to pursue these
19 claims and continue those claims after Mr. Edwards
20 settled those claims -- Mr. Epstein settled those
21 claims.

22 So my only other comments is to try to
23 address your concerns vis-a-vis the issue of abuse
24 of process. That's more difficult. It's more
25 difficult because we have the Fourth's opinion and

1 the Third's precursor opinion, so it -- it -- it
2 clearly is problematic.

3 We our -- our position on it is essentially
4 this: Judge Corrigan in his opinion in the case
5 that I cited says the privilege shouldn't apply
6 either. Then you have what we submit are
7 egregious facts which should -- including a
8 settlement and he continued prosecution
9 afterwards, which we submit it is going to be --
10 the light's going to go off and say, Whoa, wait a
11 minute, we can't -- we can't count this the
12 application of privilege in the context of these
13 facts. Your concerns are legitimate and well
14 expressed. No matter how egregious the facts,
15 perhaps that won't make a difference to the
16 application of the privilege to -- to an abuse of
17 process claim, perhaps.

18 But we submit for the reasons that we have
19 identified that the litigation privilege should
20 equally not apply to the abuse of process claim
21 for those reasons.

22 THE COURT: Malicious prosecution.

23 MR. KING: Okay. Well, certainly to
24 malicious prosecution. But also your last
25 concern --

1 THE COURT: Your position is I think it
2 does apply to abuse of process.

3 MR. BREWER: Right.

4 MR. KING: But certainly not malicious
5 prosecution for the reasons that are
6 well-articulated by Judge Sasser and others. And
7 with regard to the reasons I've just expressed to
8 the abuse of process claim.

9 And make sure I didn't miss anything --

10 THE COURT: Three minutes to wrap up.

11 MR. SCAROLA: And I'm going to use two of
12 them, if I may, Your Honor.

13 THE COURT: Any objection?

14 MR. BREWER: Yes, Your Honor. They're not
15 allowed to split. This is not, you know, a
16 rebuttal on their part.

17 THE COURT: I agree.

18 MR. BREWER: So they're not allowed to
19 split it.

20 MR. SCAROLA: May I have just a moment?

21 THE COURT: Absolutely. Take your time.
22 But I do believe that protocol would dictate only
23 one attorney speak to the issues.

24 MR. KING: Right.

25 THE COURT: Thank you.

1 I have Judge Sasser's opinion. I have it
2 right here or, I should say, her order as opposed
3 to the opinion.

4 MR. KING: All right. You have that. And
5 just to wrap up then, Judge, with regard to the
6 comments in Levin about the other -- the
7 availability of other remedies that are -- that
8 would exist against attorneys if the -- you know,
9 if the privilege were not applied to the attorneys
10 as in Levin, there are a myriad that the court
11 has. Much more difficult when it comes to an
12 individual. And I -- I think there was one other
13 comment made. Let me just double-check my notes.

14 Counsel had referenced the abuse of process
15 claim and whether the facts support the abuse of
16 process claim. We submit from that standpoint
17 they do. We've satisfied all of the elements.

18 They -- they -- and the last comment I'll
19 make here is their focus was you can't have an
20 abuse of process claim based upon the pursuit of
21 all of these actions that were taken during the
22 course of the proceedings. And we submit that
23 under the circumstances of this case, where this
24 claim was commenced against Mr. Edwards during the
25 course of his prosecution of the underlying claims

1 and while multiple other claims were being pursued
2 against him, that under those circumstances the
3 abuse of process claim does survive a challenge to
4 whether or not we have satisfied the elements.

5 The process that's involved in the abuse of
6 process claim is the lawsuit. The subsequent
7 actions that all of the cases talk about are, in
8 our case, the pursuit of all of those efforts
9 during the course of the -- of that case. And
10 they were all done for an ulterior motive. We've
11 satisfied those elements.

12 I don't have the time to get into all of
13 the facts. I tried to give you the essence of
14 what we had by citing to the statement of
15 undisputed facts, Mr. Edwards' affidavit, the
16 materials relating to the filing of our motion for
17 punitive damages which was granted. We gave you
18 the depositions because, unfortunately, to really
19 grasp the entire background on this, you almost
20 have to read the entire depos. I tried
21 highlighting and pulling them out for you, but I
22 couldn't really do that. So I apologize.

23 THE COURT: No, that's okay.

24 MR. KING: But that would end my argument.
25 I appreciate your courtesy.

1 THE COURT: Thank you and Mr. Brewer for
2 your --

3 MR. BREWER: A few moments, Your Honor?

4 THE COURT: Sure.

5 MR. BREWER: I forgot to ask you if I could
6 address you from the chair here rather than the
7 podium.

8 THE COURT: That's fine.

9 No, I wanted to thank Mr. King and
10 Mr. Brewer for their initial arguments, and I
11 appreciate very much the professional.

12 MR. BREWER: Your Honor, you seemed to be a
13 little bit more troubled with regard to the
14 malicious prosecution aspects here. I'd like to
15 point out to you that in the case, the Wolfe case,
16 specifically they stated "because the law is clear
17 that the litigation privilege applies to abuse of
18 process, we affirm the trial court's order
19 granting judgment on the pleadings in favor of the
20 defendants below as to that cause of action.
21 Although the law is not as clear whether the
22 litigation privilege also applies for the cause of
23 action for malicious prosecution, we conclude that
24 it does and affirm the trial court's order finding
25 that the litigation privilege also applies to a

1 cause of action for malicious prosecution."

2 That was actually the issue before them
3 because it had already been determined that the
4 litigation privilege applied to the abuse of
5 process in both the Third and the Fourth District
6 Courts of Appeal. That's admitted by
7 the counterclaim in their motion in opposition.

8 I wanted to speak about this idea that the
9 worst -- the actions were of Mr. Epstein and/or
10 his attorneys that somehow or another there's a
11 sliding scale. And if you worked longer on the
12 case, or if you put in more pleadings or whatever,
13 that somehow or another that would have an effect.

14 That's not something that I have seen
15 anyway in the trilogy of cases. In fact, what is
16 said in the trilogy of cases is if the litigation
17 privilege applies, it's an absolute privilege.
18 Absolute.

19 The Olson vs. Johnson was mentioned to you
20 to say that to indicate that the -- that malicious
21 prosecution can still survive and exist. And, in
22 fact, the Olson case, which was a case in which
23 three ladies accused this guy of stalking, filed a
24 false police report. The guy got arrested.
25 Actually, I think -- I'm not sure if he went to

1 trial, but he was able to establish that he was
2 six miles away at the time of the alleged
3 stalking. And the ladies just lied to get him in
4 trouble.

5 The Olson case was addressed in the Wolfe
6 case, and it said, Wait a minute, that is -- a
7 cause of action for malicious prosecution will
8 stand there because that was an action that was
9 taken outside of the judicial process.

10 THE COURT: And that -- and that's, you
11 know, where, you know, I'll ask Mr. King to
12 briefly address this as well. But, you know, the
13 dilemma the court has here is the language that is
14 reaffirmed in Wolfe and extracted from the
15 Echevarria matter from the Florida Supreme Court.
16 And they quoted and say that Echevarria reaffirmed
17 the proposition -- and I'm using my own words by
18 saying "the proposition" -- that, quote, absolute
19 immunity must be afforded to any act occurring
20 during the course of a judicial proceeding so long
21 as the act has some relation to the proceeding.
22 And they clarify that although not all statements
23 made outside of the formal judicial process are
24 protected by the litigation privilege, an absolute
25 immunity applies to conduct occurring during the

1 course of the proceedings.

2 So that seems to tell me that if Epstein is
3 filing a complaint, if Epstein is seeking
4 discovery, if Epstein is making obnoxious
5 allegations against Edwards -- and I'm, again, not
6 taking a position one side or the other, that's
7 why I'm using the word "if" to preface all of my
8 commentary, as long as it has some relation to the
9 proceeding -- it is afforded absolute immunity.

10 If you're sitting in my shoes, Mr. Brewer,
11 or better yet sitting in Mr. Edwards' shoes, what
12 would be his best argument to defeat your motion
13 on malicious prosecution?

14 MR. BREWER: I don't know that they have
15 one, Your Honor, in light of Wolfe. Not at this
16 level.

17 THE COURT: Is there anything that you can
18 fathom as an officer of the Court that they are
19 claiming Epstein did in either the abuse of
20 process or the malicious prosecution claim -- and
21 as I said, I'm more concerned with the malicious
22 prosecution claim -- that Epstein did outside of
23 the judicial proceedings? Is there anything
24 alleged here that he did outside of the judicial
25 proceeding, such as -- I saw in the damages

1 portion of the argument made by the Edwards side,
2 and I think it may have had some relation to
3 Judge Crow's questions about damages relating to
4 Mr. Edwards -- but I saw that there were
5 some --that -- that Mr. Edwards felt there was
6 some threat to his or -- to him and his family.
7 Has there been any such threats made to your
8 knowledge by Mr. Epstein that would have gone to
9 him or his family?

10 MR. BREWER: Your Honor, I'm late to the
11 game. I was not a participant or counsel here
12 until, oh, probably three or four months ago. I
13 have done my best to familiarize myself in what
14 has gone on prior, but it's voluminous. And so I
15 can't swear to you that I've read everything or
16 seen everything. I, however, have no knowledge of
17 Mr. Epstein making any threats to -- towards
18 Mr. Edwards.

19 THE COURT: I'm just using that as an
20 example.

21 MR. BREWER: Well, I don't have any
22 knowledge of him making threats to Mr. Edwards or
23 to his family.

24 THE COURT: Anything outside of the
25 judicial proceeding as potentially or allegedly

1 obnoxious? And as Mr. King brought out earlier
2 the allegations being horrifying, egregious, no
3 matter how you might identify those allegations
4 that were quickly withdrawn, anything that you're
5 aware of that went on outside of the judicial
6 process that is being alleged here?

7 MR. BREWER: Not that is being alleged
8 here, Your Honor, no.

9 THE COURT: Mr. King, anything that's being
10 alleged here that goes outside of the broad
11 spectrum that I have read into the record that has
12 its genesis in Echevarria and was quoted by the
13 Wolfe Third District Court of Appeal opinion?

14 MR. KING: There's nothing alleged.
15 Mr. Edwards' testimony, though, was that he was
16 being stalked by an investigator which gave him
17 the additional concern. But that's not
18 specifically alleged as a matter that, you know,
19 that forms the basis for the malicious prosecution
20 or the abuse of process claim. It's not
21 specifically set forth in the pleadings.

22 THE COURT: How do I get around this
23 Echevarria language? Again, I recognize what's
24 gone on here, but personal empathy doesn't have
25 any part in a courtroom. It just doesn't and

1 shouldn't. I ruled in your favor and I've ruled
2 against you. I've ruled in Mr. Goldberger's
3 favor; I've ruled against him. I've ruled in
4 favor of Mr. Edwards' claims and contentions; I've
5 ruled against him.

6 But I'm just having difficulty coming away
7 from the reaffirmation of the Florida Supreme
8 Court's blanket statement here that absent extra
9 judicial activity, everything that is occurring
10 during the course of a judicial proceeding, so
11 long as the act has some relation to the
12 proceeding, is subject to absolute immunity.

13 MR. KING: If I may?

14 THE COURT: Absolutely.

15 MR. KING: Levin -- neither Levin nor
16 Echevarria dealt with the malicious prosecution
17 claim, which is really what I'm going to focus on
18 now.

19 THE COURT: But now I'm dealing with --
20 and, again, forgive me for interrupting, but just
21 to make clear the precedential value that I have
22 to ascribe to Wolfe, and as you indicated, the
23 Fourth in its case seems to, at least from the
24 abuse of process part of the matter, align itself
25 with that same side. The Third District Court of

1 Appeal is an appellate court that I must follow
2 unless there's a specific ruling to the contrary
3 by the Fourth District Court of Appeal. And the
4 Third is crystal clear in its analysis.

5 Whether you or I agree with it is not for
6 me to say. But its analysis is abundantly clear
7 and it, again, reaffirms the Supreme Court
8 language that talks about where we're within the
9 judicial proceeding, as repugnant as it may be, as
10 long as it bears relation, some relation, just let
11 this be the rather broad language utilized by the
12 Supreme Court of Florida, absent extrajudicial
13 process -- extrajudicial actions, better stated,
14 I'm left with this legal analysis while cogent,
15 it's clear, while short it's clear.

16 MR. KING: But that is why all of the
17 positions that I have articulated that would
18 suggest that Levin nor Echevarria would apply to a
19 malicious prosecution claim because it is
20 distinctly different from the nature of -- just as
21 Judge Sasser says, "It's not something that is
22 going on during the course of proceedings. It's
23 the proceeding itself."

24 Now that's what Wolfe -- Wolfe takes the
25 position otherwise. It says, Well, that -- that

1 clearly falls within the privilege.

2 THE COURT: And Wolfe is the binding
3 precedent. With all due respect to my suite mate,
4 she's not. And, you know, as a fellow circuit
5 court judge, again, her opinion is meticulous and
6 well-written, but it flies in the face of
7 precedential value here, and that is the Wolfe
8 case that ties the bow, so to speak, around the
9 malicious prosecution case.

10 Where there may have been before something
11 to hang one's hat on, the probable cause issue, as
12 I described before, clearly a factual issue.
13 Whether the case ended in a bona fide termination
14 in favor of Mr. Edwards, subject certainly to
15 factual review. But that -- but the elements are
16 taken away from us, in my view, from a trial
17 court's decision-making and we're left with the
18 global analysis that was rendered by the Third
19 District Court Of Appeal.

20 And the bow is tied to include malicious
21 prosecution cases as long as those actions, as
22 alleged and conceded by you, and I appreciate
23 incredibly the concession, but as conceded that
24 all of the allegations contained in the operative
25 Fourth Amended Complaint relate to the judicial

1 proceeding in some form.

2 MR. KING: If I may, Judge, just a final
3 conclusionary remark?

4 THE COURT: Absolutely. Please.

5 MR. KING: I would harken back to the
6 impact of Olson, which even though it does not
7 deal with a post-civil complaint issue such as you
8 have here, the language of the opinion is the
9 litigation privilege does not apply to malicious
10 prosecution. There is -- we submit that that sets
11 forth at least a conflict on that issue that
12 allows you to then peruse all of the issues that I
13 discussed.

14 THE COURT: Let me look at that Olson case
15 specifically, please.

16 MR. BREWER: I have a copy here if you
17 would like, Your Honor.

18 THE COURT: No. You have both done an
19 excellent job in tabbing all of these materials,
20 and I want to again compliment both sides on their
21 presentations and their performance as well as
22 well presentations. It's extremely gratifying,
23 especially when I've had I think 14 hearings in
24 addition to the 8:45s today to see the kind of
25 advocacy that I'm seeing here at this hearing.

1 But I will take a quick look at that Tab 16 that I
2 have. Thank you.

3 The Olson case that is cited in, and I've
4 read somewhat quickly, but I believe I've picked
5 up the genesis. And the import of the opinion
6 deals with prelitigation statements made by an
7 individual who is accusing Olson of stalking. And
8 the court distinguished that claim privilege from
9 a defamation case that was addressed in a case
10 called Fridovich vs. Fridovich, 598 So2d. 65,
11 Florida Supreme Court case 1992, in which the
12 Supreme Court was presented with a certified
13 question of whether a person who makes statements
14 to law enforcement about another individual prior
15 to the instigation of judicial proceedings.

16 And that is important here I think in our
17 review of the case since those statements that
18 were made allegedly by the accuser in Olson were
19 made prior to the instigation of judicial
20 proceedings and whether those statements were
21 protected by an absolute privilege for liability
22 against defamation, and the court held that
23 defamatory statements voluntarily made by private
24 individuals to the police or to the State's
25 Attorney's Office before institution of criminal

1 charges are presumptively qualifiedly privileged.
2 And such voluntary statements are treated
3 differently than statements made under the State
4 Attorney's investigatory subpoena, which are
5 encompassed within a judicial proceeding and thus
6 are absolutely privileged.

7 So there is that distinguishing
8 characteristic here as well. And, again, the
9 issue was met head on by Wolfe. It was not
10 discussed in the Olson case, respectfully, that I
11 can gather here. So based on the Third District
12 Court's decisions in Wolfe quoting in large part
13 from the Florida Supreme Court's decision in
14 Echevarria, whereas here all of the allegations
15 made in both the abuse of process claim and the
16 malicious prosecution claim, as conceded by the
17 Edwards side, are acts occurring during the course
18 of a judicial proceeding and bear some relation to
19 the proceeding, the Court has no other alternative
20 than to grant the motion on both counts.

21 MR. BREWER: Your Honor, I have prepared an
22 order which I think fairly closely -- it does not
23 have in it about the conceding the points, but it
24 does grant the motion based upon the cases that
25 you have just indicated.

1 THE COURT: I would ask you to kindly go
2 ahead and order the transcript and track the
3 language that I have tried to utilize here
4 distinguishing Olson, as well in following the
5 Supreme Court's directive in Echevarria and the
6 Third District Court of Appeal dictates in the
7 Wolfe case.

8 MR. BREWER: Yes, Your Honor.

9 THE COURT: That's the cornerstone of the
10 Court's decision.

11 Again, thank you all very, very much for
12 your input and your professionalism and your
13 arguments. No one could have done a better job on
14 both sides. So thank you very much.

15 MR. BREWER: Thank you, Your Honor.

16 THE COURT: Thank you, Madam Court
17 Reporter.

18 THE COURT REPORTER: Thank you, Your Honor.

19 (Thereupon, the proceedings were concluded
20 at 4:23 p.m.)

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COURT CERTIFICATE

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Robyn Maxwell, Registered Professional
Court Reporter, State of Florida at Large, certify that I
was authorized to and did stenographically report the
foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

Dated this 29th day of January, 2014.

ROBYN MAXWELL, RPR, FPR, CLR
REALTIME SYSTEMS ADMINISTRATORS