No. 24-5704

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

LORI M. MOODY — PETITIONER
(Your Name)

vs.

EDWARD W. HORAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIRST DISTRICT COURT OF APPEAL

STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

LORI M. MOODY
(Your Name)

7709 PARADISE DRIVE
(Address)

DONALSONVILLE, GA 39845
(City, State, Zip Code)

(850) 583-4475
(Phone Number)

QUESTIONS PRESENTED

1. Does the right to a jury trial secured by the Seventh Amendment extend to a private citizen in a state court[1] in an action for defamation *per se*?

2. Does absolute privilege (immunity) protect a lawyer who accuses a private citizen of a crime in a court pleading whose only connection to the litigation is that she is married to the opposing party?

3. Does the Due Process guaranteed by the Fourteenth Amendment give the petitioner in this case the right to be heard, despite her complaint having been dismissed with prejudice because a state court determined the defendant was protected under absolute immunity?

4. Does a private citizen have a liberty interest in her reputation when the accusation of a crime in a court pleading destroyed her reputation with the very community that makes up the predominant client base for her business?

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[1] The action could have been brought in federal court based on diversity jurisdiction.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

Moody v. Horan, No. 1D2023-1765, 2024 Fla. App. LEXIS 4060 (1st DCA May 24, 2024) - This is the *Per Curiam* Affirmance of the Order subject to this Writ of Certiorari

Moody v. Horan, No. 1D2023-1765, 2024 Fla. App. LEXIS 5679 (1st DCA July 2, 2024) - Rehearing Denied.

Moody v. Horan, 386 So. 3d 611 (Fla. 1st DCA 2024) - Writ of Prohibition regarding disqualification of the lower court Judge.

Moody v. Horan, No. 1D2023-3061, 2024 Fla. App. LEXIS 4915 (1st DCA June 5, 2024) - Rehearing Denied.

Florida First District Court of Appeal Case Number 1D2023-3062, which deals with an award of Sanctions in the form of attorney fees being awarded to the Defendant, Mr. Horan for Ms. Moody bringing an "unsupported" claim under Section 57.105 of the Florida Statutes. Briefing was complete in this case on May 8, 2024, so this case is awaiting a decision from the Florida First District Court of Appeals.

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[2] In Florida, there is no discretionary review available by the Florida Supreme Court if the State District Court of Appeals *Per Curiam* Affirms a case without written opinion.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

Moody v. Horan, No. 1D2023-1765, 2024 Fla. App. LEXIS 4060 (1st DCA May 24, 2024) - This is the *Per Curiam* Affirmance of the Order subject to this Writ of Certiorari

Moody v. Horan, No. 1D2023-1765, 2024 Fla. App. LEXIS 5679 (1st DCA July 2, 2024) - Rehearing Denied.

JURISDICTION

The date on which the highest state court decided my case was May 24, 2024, a copy of that decision appears at Appendix A. A timely petition for rehearing was thereafter denied on the following date: July 2, 2024, and a copy of the order denying rehearing appears at Appendix C. Since the appellate court *per curiam* affirmed the lower court's order, that order appears at Appendix B. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VII - In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall

be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

United States Constitution, Amendment XIV, Section 1 -All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C.S. § 1983. Civil action for deprivation of rights - Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of

Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Ms. Moody, the Petitioner filed her Complaint for Defamation *per se* against Mr. Horan, the Defendant with the Leon County Clerk of Court on December 10, 2022, and properly served the Complaint on Mr. Horan on April 7, 2023. Ms. Moody's Complaint asserted that Mr. Horan had defamed her by accusing her of a felony when he wrote, "(t)his is an important issue, as Mrs. Moody's involvement in this case constitutes the unauthorized practice of law."[1] Ms. Moody requested a Jury Trial in her Complaint.

Then on April 24, 2023, Mr. Horan filed his Motion for Dismissal With Prejudice of Plaintiff, Lori Moody's Initial Complaint for Defamation. Mr. Horan's Motion was based solely on the affirmative defense that he is entitled to absolute privilege because the defamatory statement was made as part of litigation.

On April 27, Mr. Horan emailed the court asking for a hearing on his Motion to Dismiss as well as his Motion for Sanctions, which had not yet been filed with the court and the lower court gave him choices of times for a hearing without copying Ms. Moody. When presented with the times, Ms. Moody responded that she wanted to wait to schedule a hearing until she had time to file a response to Mr.

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[1] The unauthorized practice of law is a third degree felony under Florida Statutes Section 454.23.

Horan's Motion for Dismissal, so that could be heard as well, and believed that to be in line with the Policies posted online for the Judge assigned to the case. (*See* https://2ndcircuit.leoncountyfl.gov/resources/Marsh/JudgeMarshPolicesProcedures.pdf) The lower court ignored Ms. Moody's reservations and made the determination that Ms. Moody did not "wish to participate in coordinating a hearing" and asked Mr. Horan to pick a time.

While these emails were going back and forth, on May 2, 2023, Ms. Moody filed her Response to Defendant's Motion to Dismiss With Prejudice. This Response included a Memorandum of Law as required per Judge Marsh's Policies and asked the lower court, "(f)inally, Plaintiff Lori Moody, *pro se* prays for a Jury Trial on all issues so triable and asks that this Court to rule on this responsive pleading and Defendant's Motion to Dismiss filed April 24, 2023 based on the written pleadings, as not to waste this Court's time with a hearing that is clearly not needed."

Ms. Moody was frustrated because of not understanding why a hearing would be needed when the lower court is confined to the four corners of the Complaint in deciding on Mr. Horan's Motion to Dismiss and she reached out to Judge Marsh.

Judge Marsh responded on May 3, 2023, with his "Order on Email Sent by Plaintiff" in which he rules, "(t)he Court has elected not to rule without hearing as

Plaintiff has opposed the motion and the Court desires to hear oral argument by the parties. Accordingly, a hearing on the matter is appropriate."

The matter was scheduled and Mr. Horan prepared and filed the Notice of Hearing on May 4, 2023 stating the following: "that the Defendant's Motion for Dismissal with Prejudice of Plaintiff, Lori Moody's Complaint and any responses thereto filed in this matter will be called up before the Honorable J. Lee Marsh . . . . Thirty minutes have been set aside for this hearing. An anticipated amended notice will be filed prior to the date of hearing, once procedural requirements for a 57.105, Fla. Stat. Motion have been satisfied."

On May 16, 2023, Mr. Horan filed his Amended Motion for Sanctions Against Plaintiff, Lori M. Moody Under the Provisions of Section 57.105, Florida Statutes asking for attorney's fees and/or additional sanctions for Ms. Moody "raising an unsupported claim." Mr. Horan argued that Ms. Moody's claim is unsupported because he is entitled to absolute privilege under the the legal doctrine of judicial immunity. On that same day, Mr. Horan filed an Amended Notice of Hearing which included: "Defendant's Motion for Dismissal with Prejudice of Plaintiff, Lori Moody's Complaint (filed 04/24/2023) and any responses thereto filed in this matter, as well as Plaintiff's Amended Motion for Sanctions (filed 05/16/2023) to be heard at the June 6, 2023 hearing.

On May 19, 2023 Mr. Horan filed a Motion to Continue the hearing on his Motion for Sanctions, which he apparently self granted since the lower court never ruled on this Motion and he did not bring this at the June 6, 2023 hearing.

Then, Mr. Horan filed a "Notice of Supplemental Authority" in response to Ms. Moody's Response to his Motion to Dismiss regarding the case, *James v. Leigh*, 145 So.3d 1006 (Fla. 1st DCA 2014), although this case is already cited in Ms. Moody's Response to the Motion for Dismissal.

On June 6, 2023 the Zoom hearing took place as scheduled with Judge Marsh allowing Mr Horan to begin his argument and he delved right into privileges and immunities. There, Mr. Horan told the court that the answer to the following question, "did it have some relation to the appeal?" is:

> Certainly it did because the First District Court of Appeals had the right to know that he was not a *pro se* litigant, and he was getting the assistance of someone who was preparing pleadings on his behalf.[2] And Judge, I think this is about as clear a case as I have seen, and I understand that Ms. Moody is not a practicing attorney, but I know that she knows about immunities. I know that she knows about privileges. I think she even knows about *ex parte* communications. So, I think that this needs to be dismissed with prejudice without going any further. I appreciate the time.

It is also of note that Judge Marsh did not interrupt or ask Mr. Horan any questions during his argument.

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[2] This was irrelevant to the subject matter of the appeal, which had to do with whether the Father (Mr. Moody, the current husband of Ms. Moody) owed back child support to the mother for a child that he cared for 100% of the time. *See Moody v. Moody*, 250 So. 3d 770 (Fla. 1st DCA 2018)

Then, Ms. Moody began her argument which Judge Marsh constantly interrupted and asked questions, even stopping her from presenting binding case law[3]. Ultimately, Judge Marsh announced his decision at the end of the hearing:

> All right. Thank you, Ms. Moody. Before the Court today is Case No. 2022 CA 2183, *Moody v Horan.* We're here on the defendant's Motion to Dismiss with prejudice based on the litigation immunity and privilege here in the State of Florida. In ruling on a Motion to Dismiss, the Court has confined itself to the four corners of the Complaint itself in which, in this case, the Plaintiff has alleged that Defendant Horan has made statements to the First District Court of Appeals in a filing in a family law case regarding Ms. Moody's involvement in potentially writing the brief for her husband who was the party in this case, Mr. Andrew Moody. Accordingly, the Court finds that the statement was made in the course of a judicial proceeding, and it has some relevance or relation to the proceeding, and accordingly the Motion to Dismiss with prejudice is granted based on the litigation immunity and privilege in the State of Florida so the Court will grant that. Mr. Horan, I'll have you prepare the order and pass it through Ms. Moody in Word format and send it to my judicial assistant. The Court will also retain jurisdiction as it relates to the pending motion for sanctions and any other pending motions." (Emphasis Added.)

Just forty five minutes after the hearing ended, Mr. Horan sent his proposed order to Ms. Moody, and on June 11, 2023, Ms. Moody Responded with the following via email:

> Sorry, I had a small family emergency, so was unable to respond before now.
> All is good except #2 seems to lack candor.... You actually accused me of committing a crime "the unlicensed practice of law" and the order should reflect what the accusation actually was.

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[3] Ms. Moody was attempting to argue a specially concurring opinion in the case of *James v. Leigh*, 145 So. 3d 1006 (Fla. 1st DCA 2014).

> Also, there is quite a bit of speculation & I don't believe the Judge should sign an order that states, "meaning that Mr. Moody's representations concerning his unfamiliarity with Court procedures and being "a mere teacher" reflected a lack of candor with the appellate court."[4] This is a conclusion that is your opinion - nothing more.

Ms. Moody is unaware of whether the lower court even viewed her input since when Mr. Horan sent the proposed order via email to Judge Marsh's Judicial Assistant, per the Judge's oral instructions, Ms. Moody was not copied on that email. Despite, this input from Ms. Moody, on June 12, 2023, the lower court signed Mr. Horan's proposed order verbatim and entered it as a final Order.

On June 21, 2023, Mr. Horan submitted an "Affidavit of Attorney's Fees" with the lower court, as well as an unsigned "Affidavit Regarding Attorney Fees" from Ethan Andrew Way.

On July 11, 2023, Ms. Moody timely filed her Notice of Appeal and properly attached the Order to be appealed. On August 28, 2023, the Leon Clerk certified the record and transmitted it to Florida's First District Court of Appeal, at this same time the lower court case was set to the status of closed.

On June 27, 2023, before the clerk closed the lower court case, Mr. Horan prepared and filed another Notice of Hearing for September 7, 2023 to hear his Motion for Attorney fees. In light of her appeal, Ms. Moody asked Mr. Horan to

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[4] This statement about Mr. Moody, a non-party to this case, which appears in the court's Order demonstrates that Mr. Horan believes that he has every right to defame whoever he wants without consequence.

agree to a continuance of the September 7, 2023 hearing, which he said he would not. Ms. Moody was then going to file a Motion for Continuance in the case, but did not because the case showed as closed on the lower court official docket and the September 7, 2023 hearing had been cancelled. Ms. Moody proceeded to call the Leon County Clerk to confirm this, and they confirmed that the September 7, 2023 hearing was indeed cancelled.

On September 7, 2023, Judge Marsh held the hearing on Mr. Horan's Amended Motion for sanctions pursuant to Florida Statutes Section 57.105, despite the court's official docket showing it was cancelled, and without Ms. Moody being present. The first Ms. Moody was aware of this happening was when she received an email from Mr. Horan with the proposed order from the hearing. Ms. Moody then double checked the docket in the lower court case, which now showed that the case had been re-opened by Judge Marsh at 2:29pm on September 7, 2023, which was almost 30 minutes after the cancelled hearing was originally scheduled.

Judge Marsh once again signed Mr. Horan's proposed order verbatim and filed the "Order Granting Fees Pursuant to Section 57.105 Florida Statutes" with the lower court on September 10, 2023. The very next day, Ms. Moody filed a Motion for Disqualification based on the Judge's actions in holding a cancelled hearing without her present - in essence having a full 30 minute *ex parte* with Mr. Horan, the Defendant. On September 15, 2023, Judge Marsh denied Ms. Moody's Motion for Disqualification as legally insufficient.

On September 19, 2023 Mr. Horan filed a Motion to Dismiss the case in the Florida First District Court of Appeal, which was later denied. Then on October 9, 2023 Ms. Moody filed a Writ of Prohibition for the Florida First District Court of Appeal to review Judge J. Lee Marsh's denial of Ms. Moody's Motion for Disqualification filed in the lower court. This filing also asked for a review of the lower court order which awarded attorney fees as sanctions against Ms. Moody under Section 57.105 of the Florida Statutes.

On October 23, 2023 Mr. Horan asked the Florida First District Court of Appeals to further sanction Ms. Moody in accordance with Rule 9.410(a) of the Florida Rules of Appellate Procedure, which the appellate court refused to do.

At the Florida First District Court of Appeal, the case was split into three distinct appeals with case numbers 1D2023-1765, 1D2023-3061, and 1D2023-3062. As of the filing of this Writ of Certiorari, 1D2023-1765 is closed with the First District Court of Appeal rendering its *Per Curiam Affirmance* on May 24, 2024, and denying Ms. Moody's Motion for Rehearing and Rehearing *En Banc* and Written Opinion on July 2, 2024. This is an unpublished opinion found at *Moody v. Horan*, No. 1D2023-1765, 2024 Fla. App. LEXIS 5679 (1st DCA July 2, 2024). This is also the Order that Ms. Moody is asking this Court to review under the instant Writ of Certiorari.

The second case 1D2023-3061 was a Writ of Prohibition in regards to the Judge at the lower court denying Ms. Moody's Motion for Disqualification, which

the First District Court of Appeal in Florida *Per Curiam Dismissed* and is decision without a published opinion found at *Moody v. Horan*, 386 So. 3d 611 (Fla. 1st DCA 2024). The final case 1D2023-3062 where Ms. Moody appealed the sanctions awarded against her for bringing an "unsupported claim" under Florida Statutes Section 57.105 is still pending resolution at the Florida First District Court of Appeal.

REASONS FOR GRANTING THE PETITION

There is no case exactly on point where a lawyer in the representation of his client in a case defamed the spouse of the other side and accused that spouse of committing a crime. So the facts of this case are one of first impression, and give this Court the perfect opportunity to further clarify the following: (1) whether a lawyer is protected by absolute privilege under these facts; (2) whether the court is allowed to violate an individual's Seventh and Fourteenth Amendment rights under these facts; and (3) whether the Plaintiff had a protected right in her reputation when the defamatory statement destroyed her credibility, which is essential to her business and therefore her livelihood.

I. Absolute Privilege was applied too broadly by the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida

Absolute privilege is called absolute for a reason, and typically would absolutely protect certain speakers from a claim of defamation made against them. But, even absolute privilege can be defeated, as it is intended to protect only

certain statements made at certain times, and in certain places by certain individuals. The New York Supreme Court in *Park Knoll Assoc. v. Schmidt*, 59 N.Y.2d 205, 209-210 (1983) succinctly states "the protected participants include the Judge, the jurors, the attorneys, the parties and the witnesses. . . The immunity does not attach solely because the speaker is a Judge, attorney, party or a witness. . ." While here, the Defendant was allowed to claim absolute immunity solely because he is a lawyer, thereby precluding the Plaintiff from ever having her day in court.

This case, if review is granted, would clarify the rule of law to add that in order to qualify for absolute privilege, the communication must also be about certain individuals, thereby protecting a class of private individuals in need of this protection. This Court, by granting the Writ of Certiorari in this case could clarify just how broadly the absolute privilege is intended to go, and whether there is any legal safeguard to protect individuals from defamation in court documents, whose only relation to the lawsuit is that they are connected through familial ties to one of the parties.[5]

Both the cause of defamation and the assertion of privileges to defend against defamation are a part of most state's statutes and usually adhere to the

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[5] Although in this case, the statement was made about the wife of the opposing party, what happens when a lawyer starts defaming a judge's family members, are those statements absolutely privileged?

language found in the Restatement (2nd) of Torts, §558 and §559, which has resulted from common law. Florida is the same, "The Defamation Statute" found in Florida Statutes Section 836.05 (2022), states (emphasis added):

> Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of chastity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

In this case the Defendant, an attorney accused the Plaintiff of violating Florida Statutes Section 454.23 (2022) which states:

> Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The lower court erred when it dismissed Ms. Moody's claim with prejudice because it decided that Mr. Horan was entitled to absolute immunity. As the Restatement (Second) of Torts explains, "absolute privileges are based chiefly upon a recognition of the necessity that certain persons, because of their special

position or status, should be as free as possible from fear that their actions in that position might have an adverse effect upon their own personal interests." In *Sussman v. Damian*, 355 So. 2d 809, 811 (Fla. 3d DCA 1977), the reasoning behind the absolute privilege in Florida is explained:

> The basis for such...privileges for lawyers is to permit a free adversarial atmosphere to flourish, which atmosphere is so essential to our system of justice. In fulfilling their obligations to their client and to the court, it is essential that lawyers, subject only to control by the trial court and the bar, should be free to act on their own best judgment in prosecuting or defending a lawsuit without fear of later having to defend a civil action for defamation for something said or written during the litigation. A contrary rule might very well deter counsel from saying or writing anything controversial for fear of antagonizing someone involved in the case and thus courting a lawsuit, a result which would seriously hamper the cause of justice. *Id.* (Emphasis Added.)

The problem here is that the defamatory statement was made about someone not involved in the case.

While it is clear from the face of Plaintiff's Complaint that the defamatory statement was made in a judicial proceeding in the Florida First District Court of Appeals, it is a mixed question of law and fact whether Mr. Horan is in fact entitled to absolute immunity. Florida law is unequivocally clear that to qualify for absolute immunity the person who made the statement must not only have made the statement in a judicial proceeding, but that the statement must have some relation to the case in which it was made. *See DelMonico v. Traynor*, 116 So. 3d 1205 (Fla. 2013); *Fridovich v. Fridovich*, 598 So. 2d 65, 66 (Fla. 1992); *See also Levin,*

Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co., 639 So.2d 606 (Fla.1994) (Emphasis Added.)

State and Federal Courts alike agree that this is the standard to qualify for absolute immunity, and cases in many different jurisdictions are clear that if the statement is irrelevant to the case being litigated that absolute immunity should not apply. In *Matthis v. Kennedy*, 243 Minn. 219 (Minn. 1954), the Supreme Court of Minnesota states:

> The majority opinion in this country adds the condition that the privilege will be lost if the slander or the libel is irrelevant. The leading early American cases are: *Hastings v. Lusk*, 22 Wend. (N.Y.) 410, 34 Am. D. 330; *Hoar v. Wood*, 44 Mass. (3 Metc.) 193; *Maulsby v. Reifsnider*, 69 Md. 143, 161, 14 A. 505, 510. These cases establish the rule which seems to be the prevailing one in this country today.

The same case goes on to state:

> It is also established by the prevailing authorities that, in determining whether matters spoken in the conduct of an action or contained in the pleadings are privileged, the test is not "Is it legally relevant?" but "Does it have reference and relation to the subject matter of the action and is it connected therewith?" In other words, does it have reference to or relation to or connection with the case before the court? If that relationship or connection exists, there is no liability for the utterance even if defamatory under the circumstances. *Id.*

The Order states that, "(t)he statements complained of also had some relation to the proceeding in which they were filed," and then goes on to state, "(t)he statements made in the appeal, whether true or not, had some relation to the

appeal." The problem with these determinations made by the court is that the Judge himself orally stated, "I don't consider that appeal. It's not in front of me. I've never seen it. I'm sticking with the four corners of the document because we're on a Motion to Dismiss." Yet, at the end of the hearing the Judge states, "the court finds that the statement was made in the course of a judicial proceeding, and it has some relevance or relation to the proceeding, and accordingly the Motion to Dismiss is granted based on the litigation immunity and privilege in the state of Florida." So, the Judge in the lower court made two statements that cannot both be true. If the Judge did not consider the appeal (i.e. the underlying action in which the defamatory statement was made) how can he say that the statement "has some relevance or relation to the proceeding" in which it was made?

The lower court made the following finding: "Mr. Horan's allegedly defamatory statements were attempting to inform the appellate court that it was his belief that, Mr. Moody was not preparing the pleadings on his own behalf but was filing pleadings that were prepared in whole or part by the Plaintiff, who had attended law school." This is categorically false, it is not relevant to the underlying case, nor was it information that would have been Mr. Horan's duty as a lawyer to disclose to the court.

It is doubtful that the law intended that when involved in a contentious law suit that a lawyer (who should at least be held to the professional responsibility

standards) can defame any private individual even as remotely connected as just being a spouse of the opposing party. (Emphasis added.)

Ms. Moody is asking that this Court consider absolute immunity and balance the competing interests at play here that Ms. Moody is able to enjoy a reputation unimpaired by defamatory attacks, and whether absolute immunity should sweep broadly enough to protect a lawyer who makes a clearly defamatory statement during litigation about an individual who has not participated in the litigation.

Ms. Moody did not consider a situation where she would be asking the United States Supreme Court to consider her case, but, her rights were violated, she was harmed, and for some reason the Florida Court system did not see her rights as important enough to protect.

It was thought that the Florida First District Court of Appeal instead of affirming the lower court's dismissal with prejudice of Ms. Moody's complaint for defamation *per se* would follow its own rules of law laid out by the Florida Supreme Court in *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So.2d 606 (Fla.1994):

> We hold that Florida's absolute privilege, as this Court has developed the common law doctrine, was never intended to sweep so broadly as to provide absolute immunity from liability to an attorney for alleged defamatory statements the attorney makes during ex-parte, out-of-court questioning of a potential, nonparty witness in the course of investigating a pending law- suit. *Id.*

Instead, the Florida First District Court of Appeal by affirming the lower court in this case, failed to follow the decisions by its own state Supreme Court and affirmed that the absolute immunity given to lawyers is in fact absolute. It does not matter that the non disputed facts are that the recipient of the defamation is a non-party, non-participant in the litigation. The Florida Supreme Court in *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.,* 639 So.2d 606, 608 (Fla.1994) resolved the issue of who is entitled to claim the absolute privilege:

> In determining that the public interest of disclosure outweighs an individual's right to an unimpaired reputation, courts have noted that participants in judicial proceedings must be free from the fear of later civil liability as to anything said or written during litigation so as not to chill the actions of the participants in the immediate claim....However, where the statements do not bear some relation to or connection with the subject of inquiry in the underlying lawsuit, the defendant is not entitled to the benefit of any privilege—either absolute or qualified. *Id.* (Emphasis Added.)

The court in this action, without a hearing on the merits of the case, decided that there was in fact a connection between the defamatory accusation of the wife of a Father violating a Florida Statute and a family case that had to do with child support payments.

The first reason this Court should grant this Writ of Certiorari is to clarify how broad absolute privilege sweeps, and if a lawyer is still protected from accusing individuals that only have a familial relationship to someone who is a party to the litigation in which the defamatory statement was made.

II. Ms. Moody, the Plaintiff had the right under the Seventh Amendment of the U.S. Constitution to have her case heard by a jury

Ms. Moody asked numerous times to have her case heard by a jury. First, in her Complaint, then in her Response to the Defendant's Motion to Dismiss her Complaint, then in both her initial and reply briefs in her state appeal. So, both the Circuit Court of the Second Judicial Circuit, in and for Leon County Florida, and the Florida First District Court of Appeal violated Ms. Moody's rights under the Seventh Amendment of the United States Constitution.

This Court stated in *SEC v. Jarkesy*, 144 S. Ct. 2117, 2128 (2024)

> The right to trial by jury is "of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right" has always been and "should be scrutinized with the utmost care." *Dimick* v. *Schiedt*, 293 U. S. 474, 486, 55 S. Ct. 296, 79 L. Ed. 603 (1935).

And then further states:

> By its text, the Seventh Amendment guarantees that in "[s]uits at common law, . . . the right of trial by jury shall be preserved." In construing this language, we have noted that the right is not limited to the "common-law forms of action recognized" when the Seventh Amendment was ratified. 19 v. *Loether*, 415 U. S. 189, 193, 94 S. Ct. 1005, 39 L. Ed. 2d 260 (1974). As Justice Story explained, the Framers used the term "common law" in the Amendment "in contradistinction to equity, and admiralty, and maritime jurisprudence." *Parsons*, 28 U.S. 433, 3 Pet., at 446, 7 L. Ed. 732. The Amendment therefore "embrace[s] all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume." *Id.*, at 447,

> 28 U.S. 433, 7 L. Ed. 732. SEC v. Jarkesy, 144 S. Ct. 2117, 2128 (2024)

This built on what this Court decided in *Tull v. United States*, 481 U.S. 412, 417, 107 S. Ct. 1831, 1835 (1987)

> The Seventh Amendment provides that, "in Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . ." The Court has construed this language to require a jury trial on the merits in those actions that are analogous to "Suits at common law." Prior to the Amendment's adoption, a jury trial was customary in suits brought in the English *law* courts. In contrast, those actions that are analogous to 18th-century cases tried in courts of equity or admiralty do not require a jury trial. See *Parsons* v. *Bedford*, 3 Pet. 433 (1830).This analysis applies not only to common-law forms of action, but also to causes of action created by congressional enactment. See *Curtis* v. *Loether*, 415 U.S. 189, 193 (1974).

The Florida First DCA case of *Randazzo v. Fayer*, 120 So. 3d 164 (Fla. 1st DCA 2013) states, "that it was improper to raise the affirmative defense of absolute immunity in a motion to dismiss because its applicability is not clearly apparent on the face of the complaint.'" *See Fariello v. Gavin*, 873 So. 2d 1243, 1245 (Fla. 5th DCA 2004)" *Id.* *Fariello* went on to explain that "immunity is "a fact intensive issue" that may be raised in a motion to dismiss only in "exceptional" cases in which the facts giving application to the defense are clearly apparent on the face of the complaint." The conclusion in *Kirvin v. Clark*, 396 So. 2d 1203 (Fla. 1st DCA 1981) further supports the supposition that absolute privilege should not have been determined solely on a Motion to Dismiss, "that even if absolute privilege applied,

it was improper to raise the defense in a motion to dismiss because its applicability [was] not disclosed by the allegations." *Id.*

In the instant case, although it is disclosed from the face of Ms. Moody's complaint that the defamatory statements were made in court, there is nothing disclosed by the allegations that the defamatory statement was "related to the subject of inquiry" of the underlying case in which it was made, which would be required for the Defendant to have pled immunity in a motion to dismiss. *See Randazzo v. Fayer*, 120 So. 3d 164 (Fla. 1st DCA 2013); *DelMonico v. Traynor*, 116 So. 3d 1205 (Fla. 2013); *See also Fridovich v. Fridovich*, 598 So. 2d 65, 66 (Fla. 1992). The idea is that when there is a valid claim, that claim must be fairly heard by an impartial tribunal and with a jury if that right is asserted by either party. Here, the Plaintiff asked the court to give her just that, a fair hearing with a jury, and the state court failed her. *SEC v. Jarkesy*, 144 S. Ct. 2117, 2140 (2024) says it this way:

> The Seventh Amendment guarantees the right to trial by jury. Article III entitles individuals to an independent judge who will preside over that trial. And due process promises any trial will be held in accord with time-honored principles. Taken together, all three provisions vindicate the Constitution's promise of a "fair trial in a fair tribunal." *In re Murchison*, 349 U. S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955). *Id.*

Constitutional rights should be afforded to every individual, and for a state court to deprive any individual of their rights is a tragedy. It is even more of a tragedy when this deprivation is *per curiam* affirmed by a court of appeals, which

then by the rules in that state preclude the individual from asking any court other than the United States Supreme Court to uphold and enforce that individual's constitutional rights.

Therefore, the second reason this Court should grant the Writ of Certiorari in this case is that Ms. Moody's constitutional right to have a jury trial in her case was violated when the state court dismissed her complaint with prejudice.

III. There is no Supreme Court Precedent that establishes the correct balance between the absolute privilege provided to a lawyer in litigation and defamation *per se* of a private individual

"Since the latter half of the 16th century, the common law has afforded a cause of action for damage to a person's reputation by the publication of false and defamatory statements. *See* L. Eldredge, Law of Defamation 5 (1978)." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 11, 110 S. Ct. 2695, 2702 (1990)

In *Gertz v. Robert Welch*, 418 U.S. 323, 325, 94 S. Ct. 2997, 3000 (1974), this Court "granted certiorari to reconsider the extent of a publisher's constitutional privilege against liability for defamation of a private citizen. 410 U.S. 925 (1973)." *Id. Gertz* is the closest to the facts in this case, with the main difference being that the Court in the instant case would need to consider the breadth of an attorney's absolute immunity in litigation versus defamation of a private citizen not involved in the underlying litigation.

Most of *Gertz* discusses the First Amendment rights afforded to media and while there are no First Amendment considerations in the current case, there is the consideration of the absolute privilege in litigation. Absolute privilege is in place to protect participants in judicial proceedings from the fear of later civil liability as to anything said or written during litigation, so as not to chill the actions of the participants in the immediate claim. This is to ensure openness during litigation, so that the correct results may be achieved. (Emphasis Added.)

In *Gertz*, the "principal issue. . . is whether a newspaper or broadcaster that publishes defamatory falsehoods about an individual who is neither a public official nor a public figure may claim a constitutional privilege against liability for the injury inflicted by those statements. *Gertz v. Robert Welch*, 418 U.S. 323, 332, 94 S. Ct. 2997, 3003 (1974) Instead, in the instant case, the principal issue becomes whether a lawyer can claim an absolute privilege against liability for the injury inflicted by a statement in court documents that accuses a non-participant in the case of a crime.

This Court in *Gertz* describes some of the different approaches taken to this issue:

> One approach has been to extend the *New York Times* test to an expanding variety of situations. Another has been to vary the level of constitutional privilege for defamatory falsehood with the status of the person defamed. And a third view would grant to the press and broadcast media absolute immunity from liability for defamation. *Gertz v. Robert Welch*, 418 U.S. 323, 333, 94 S. Ct. 2997, 3004 (1974)

Ultimately, the Court in *Gertz* concluded "that the state interest in compensating injury to the reputation of private individuals requires that a different rule should obtain with respect to them." *Gertz v. Robert Welch*, 418 U.S. 323, 343, 94 S. Ct. 2997, 3008-09 (1974). Also, the *Gertz* court had no issue in distinguishing the differences between public and private individuals and stated, "(p)rivate individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater." *Id.* at 344. "Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery." *Id.* at 345. (Emphasis Added.) "For these reasons we conclude that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual." *Gertz v. Robert Welch*, 418 U.S. 323, 345-46, 94 S. Ct. 2997, 3010 (1974) If only the Florida State Courts had followed these guidelines in this case.

Dun & Bradstreet v. Greenmoss Builders, 472 U.S. 749, 762, 105 S. Ct. 2939, 2947 (1985) in discussing the protection provided to the writer of the defamatory statement states, "(t)his particular interest warrants no special protection when -- as in this case -- the speech is wholly false and clearly damaging to the victim's business reputation. Cf. *id.*, at 566; *Virginia Pharmacy Bd.* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771-772 (1976)."

Id. Other jurisdictions are also supportive that a case should not be dismissed even under summary judgment if the fact finder could make different findings. The Oregon Supreme Court in *Lowell v. Wright*, 306 Or. App. 325, 349 (Or. Ct. App. 2020), stated:

> The trial court erred in granting summary judgment to defendants on plaintiff's defamation claim. . . but a reasonable fact finder could find that Wright's review implies two assertions of objective fact about plaintiff. As such, the First Amendment does not preclude liability on those statements, and defendants were not entitled to summary judgment.

Two cases stand out in their holdings that come closer to striking this much needed balance, the first, *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 753, 105 S. Ct. 2939, 2942 (1985) held:

> the balance between a private plaintiff's right to recover presumed and punitive damages without a showing of special fault and the First Amendment rights of "nonmedia" speakers "must be struck in favor of the private plaintiff defamed by a nonmedia defendant." *Id.*, at 75, 461 A. 2d, at 418. Accordingly, the court held "that as a matter of federal constitutional law, the media protections outlined in *Gertz* are inapplicable to nonmedia defamation actions." *Ibid.*

In the instant case it should be the same, the recovery by a private individual must have heavier weight than affording the absolute privilege to a lawyer who went completely outside the case he was litigating to accuse a non-participant in the case of a crime in order to gain an advantage in litigation.

The second, *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 22-23, 110 S. Ct. 2695, 2707-08 (1990) states:

> The destruction that defamatory falsehood can bring is, to be sure, often beyond the capacity of the law to redeem. Yet, imperfect though it is, an action for damages is the only hope for vindication or redress the law gives to a man whose reputation has been falsely dishonored." 383 U.S. at 92-93 (concurring opinion). We believe our decision in the present case holds the balance true. The judgment of the Ohio Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion. *Id.* (Emphasis Added.)

This Court granting this Writ of Prohibition is the only hope that Ms. Moody has for vindication. The idea that a claim of defamation *per se* should not be able to be defeated by any claim of privilege or immunity including the absolute immunity afforded to participants in litigation is one that many courts struggle with. This Court should take the opportunity to clarify the rule of law regarding this very important concept. In December 2019, the New York Law Journal in its volume 262 - No. 108 issue published an article entitled "Should the Absolute Privilege Apply To Defamation Per Se?"

> The recent case of Deaton v. Nap- oli, No. 17-CV-4592, 2019 WL 4736722 (E.D.N.Y. Sept. 27, 2019) highlights how the absolute privilege can unwittingly (and unjustifiably) protect defamatory statements and overlook the undeserving harm they may cause. In Deaton, plaintiffs, John Deaton (head of the Deaton law firm) and Marie Deaton (John Deaton's wife), alleged that defendants made statements in court filings that John had an affair with one of his associate attorneys, that the affair caused John and Marie to get divorced, and that John subsequently harassed the associate when she went to work at the Shrader law firm. As a result of these defamatory statements, plaintiffs claimed that their personal and professional reputations were tarnished, that they lost significant business relationships—including a referral relationship with the Shrader law firm, and sought millions of dollars in damages.

> Notwithstanding the severity of the allegations, the U.S. District Court for the Eastern District of New York dismissed the action outright, holding that the statements at issue were absolutely privileged because they were made in the context of judicial proceedings.

This is a question that this Court can resolve through this case, and this is the third reason this Court should grant this Writ of Certiorari.

CONCLUSION

In *Gertz v. Robert Welch*, 418 U.S. 323, 341, 94 S. Ct. 2997, 3008 (1974), we are reminded that there is a legitimate state interest in cases like the instant one, so the application here would be significant and affect numerous individuals across the United States.

> The legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehood. We would not lightly require the State to abandon this purpose, for, as MR. JUSTICE STEWART has reminded us, the individual's right to the protection of his own good name "reflects no more than our basic concept of the essential dignity and worth of every human being -- a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system." *Rosenblatt* v. *Baer*, 383 U.S. 75, 92 (1966) (concurring opinion). *Id.*

There are a myriad of competing interests in this case including defamation *per se*, the application of absolute privilege (immunity), and violations of safeguards

provided by the Seventh and Fourteenth Amendments of the United States Constitution. Yet, there is not one case that resolves all of these issues clearly and succinctly.

The Florida State Courts precluded Ms. Moody from pursuing her case in the lower court in front of a jury, thereby violating her Constitutional rights. The defamatory statement in question placed Ms. Moody in a position where she has been fiscally and emotionally harmed and has no recourse to hold accountable the individual who caused this harm unless this Court grants this request for review. This Court is the highest in our judicial system and has some obligation to instruct other courts on their handling of cases, especially when legal error and deprivations of rights abound.

Finally, Ms. Moody would also like to point out to this Court that the defamation is still being perpetuated when the lower court's Order states "that Mr. Moody's representations concerning his unfamiliarity with Court procedures and being 'a mere teacher' reflected a lack of candor with the appellate court." It was inappropriate that this would appear in a lower court order where in this case, Mr. Moody has no connection to this case other than being married to the Plaintiff/ Appellant. Although, the Judge has absolute immunity, the Order itself was written by Mr. Horan, the defendant, and the lower court should not have allowed this defamatory statement about Ms. Moody's husband to appear in its Order. This

Court in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 12-13, 110 S. Ct. 2695, 2702-03 (1990) stated:

> As noted in the 1977 Restatement (Second) of Torts § 566, Comment *a:* Under the law of defamation, an expression of opinion could be defamatory if the expression was sufficiently derogatory of another as to cause harm to his reputation, so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him

Please put a stop to this lawyer who has overstepped the ethical standards required of the office he holds, and let it be instructive to others when they ask themselves the question of should I be declaring this accusation in a court pleading? Plaintiff prays that this Court grants her writ of certiorari and quashes the state court's Order allowing her to pursue her claim and receive not only justice but, the constitutional safeguards promised by the founding fathers.

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

/s/ Lori M. Moody

Lori M. Moody, *Pro Se*

Date: September 30, 2024