FILED
United States Court of Appeals
Tenth Circuit

August 29, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MICHELLE ALCORN,

Plaintiff - Appellant,

v.

LABARGE, WY, a Wyoming municipal corporation; JAY HARRISON,

Defendants - Appellees.

No. 18-8060
(D.C. No. 2:17-CV-00108-ABJ)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **BRISCOE**, **BALDOCK**, and **CARSON**, Circuit Judges.

This action arose out of Plaintiff Michelle Alcorn's termination from her job as a police officer in the town of La Barge, Wyoming. Alcorn alleges under 42 U.S.C. § 1983 that La Barge and former Police Chief Jay Harrison (collectively "Defendants") violated her Fourteenth Amendment procedural due process rights by depriving her of her liberty interest in her good name and reputation and her property interest in her continued employment with the town of La Barge. Alcorn also brings supplemental state law claims alleging that Defendants terminated her without cause

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

in breach of an express or implied contract of employment and defamed her good name and reputation. The district court entered summary judgment in favor of Defendants. We exercise jurisdiction under 28 U.S.C. § 1291 and affirm.

I.

In February 2014, the town of La Barge, Wyoming ("La Barge" or "the Town") hired Michelle Alcorn to serve as a police officer. Soon thereafter, she received a copy of La Barge's personnel policy and procedure manual. The front of that manual contained bolded and underlined language stating that "[n]othing herein contained shall be construed to be a contract between the employer and the employee" and that "[t]he Town of LaBarge retains the absolute right to terminate any employee at any time, with or without good cause." The second page of the manual—under the heading "At-Will Employment Statement"—stated that "[n]othing in these policies shall be interpreted to be in conflict with or to eliminate or modify in any way the employment-at-will status of the Town of LaBarge employees." This language was bolded, underlined, and in a noticeably larger font. Finally, the last page of the manual contained an "Acknowledgement" section providing that "[u]nless expressly prescribed by statute or contract, my employment is 'at will'" and that "I understand that I have the right to terminate my employment at any time, with or without cause, and that Town of LaBarge has the same right." Alcorn signed each of these three pages.

The personnel manual also included a section titled "Progressive Discipline." There, the manual again stressed that "employment with the Town of LaBarge is

based on mutual consent and both the employee and the Town of LaBarge have the right to terminate employment at will, with or without cause or advance notice." But it also provided that "the Town of LaBarge *may* use progressive discipline *at its discretion*." (emphases added). The manual then went on to describe the discretionary four-step progressive disciplinary program.

Alcorn signed the personnel manual on February 27, 2014, and she started work as a police officer just under two weeks later on March 10. She continued working in that capacity for several years until Police Chief Jay Harrison informed Alcorn in April 2016 that the Town was terminating her employment.

Events a month prior precipitated Alcorn's termination. Specifically, multiple town employees approached Harrison about discrepancies on Alcorn's timesheets. According to those employees, Alcorn allegedly claimed she had been working and getting paid when she had actually not been working. After an initial investigation during which Harrison determined some evidence existed that Alcorn falsified some of her timesheets, the Mayor of La Barge ordered that she be placed on administrative leave pending further inquiry. After further investigating the matter, Harrison presented his findings to the Mayor, who, in turn, decided to terminate Alcorn's employment.

When informing Alcorn of her termination, Harrison provided her with a letter both he and the Mayor signed. The letter stated the reasons for Alcorn's termination. In relevant part, it explained that Harrison had discovered twenty-five instances in which Alcorn submitted time sheets representing that she was on-duty when dispatch

records indicated she was not. Harrison noted, for instance, that the Assistant Town Clerk observed Alcorn watching youth activities in a different city even though her time sheet indicated she was "on duty" during that period. The letter further chastised Alcorn for her "excessive" personal use of the department's email system. It concluded by informing Alcorn that her conduct violated numerous La Barge police department policies.

Following Alcorn's termination, Harrison submitted a "Personnel Change-In-Status" form to the Wyoming Peace Officer Standards and Training Commission ("POST"). POST is a Wyoming governmental agency that sets standards and certifications for Wyoming police officers. Wyoming law requires law enforcement agencies to notify POST within fifteen days after the termination of a police officer via the change-in-status form. Wyo. Stat. Ann. § 9-1-704(a). Further, they must "set[] forth in detail the facts and reasons for the termination." Id. § 9-1-704(j).

Harrison recommended in the change-in-status form that POST should decertify Alcorn's law enforcement certification. Harrison also submitted an "Informal Complaint Form" to POST. The Informal Complaint Form described the reasons for Alcorn's termination and for recommending her decertification:

> There were several violations of policies and rules of conduct that were committed by Michelle Alcorn to include falsifying official documents and disobeying direct orders from her supervisor.
> The purpose of requesting decertification is as follows:
>
> Michelle Alcorn was falsifying her time sheets. She was putting time down her time sheet [sic] saying that she was working when she was not. She was getting paid for time not worked. This misconduct has been going for a long period of time. Currently this matter is

> underinvestigation [sic] to determin [sic] the amount of pay Alcorn received for time not worked. The Town of LaBarge is considering criminal charges.

[Id.]

POST eventually sought more details from Harrison about the reasons for Alcorn's termination. Harrison responded by letter. He again explained to POST that the Town had terminated Alcorn because she had "violated several polic[ies] and procedures . . . . [t]he most egregious" of which was also "a violation of Wyoming law." Harrison also informed POST that the Mayor chose to terminate Alcorn and, despite her violations of Wyoming law, not to prosecute her.

POST ultimately suspended Alcorn's certification. When it did, Alcorn was working as an unpaid reserve officer for the Sublette County Sheriff's Office. But when the Sublette County Sheriff learned that POST had suspended Alcorn's certification, the Sheriff removed her from reserve service.

Alcorn later reapplied for a position with Sublette County as a detention officer. The Sheriff denied her application because of information uncovered during her background check. He wrote Alcorn a letter stating that he denied the application because her background check showed three civil judgment cases, a dispute with the IRS, and the La Barge police department's investigation into her dismissal. The Sheriff also informed Alcorn that once she cleared up "two of the areas of concern" identified on her background check, she would be "a viable candidate."

Significantly, although Alcorn had the legal right to present to POST a written statement setting forth her version of the events, nothing in the record suggests she

did so. Wyo. Stat. Ann. § 9-1-704(j). Even so, after an investigation, POST decided not to decertify Alcorn. Alcorn allowed her law enforcement certification to lapse in April 2018.

Alcorn filed suit against Defendants in June 2017. She brought two claims under 42 U.S.C. § 1983 alleging that Defendants violated her Fourteenth Amendment procedural due process rights. She contends Defendants deprived her of a liberty interest in her good name and reputation without procedural due process by informing POST of the reasons for the termination. She further claims that Defendants, again without procedural due process, deprived her of a property interest in continued employment with La Barge. Alcorn also brings two state law claims against Defendants. She asserts that Defendants terminated her without cause in breach of an express or implied contract of employment and that Defendants defamed her good name and reputation.

The district court granted summary judgment to Defendants on all four counts. Alcorn now appeals.

II.

"Our standard of review on summary judgment is de novo; we apply the same legal standard . . . used by the district court." Carpenter v. Boeing Co., 456 F.3d 1183, 1192 (10th Cir. 2006). "Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Borchardt Rifle Corp. v. Cook, 684 F.3d 1037, 1042

(10th Cir. 2012). We "draw all inferences in favor of the party opposing summary judgment." Renaud v. Wyo. Dep't of Family Servs., 203 F.3d 723, 726 (10th Cir. 2000).

III.

The Fourteenth Amendment's Procedural Due Process Clause "ensures that a state will not deprive a person of life, liberty or property unless fair procedures are used in making that decision." Hennigh v. City of Shawnee, 155 F.3d 1249, 1253 (10th Cir. 1998) (quoting Archuleta v. Colo. Dep't of Insts., Div. of Youth Servs., 936 F.2d 483, 490 (10th Cir. 1991)). We evaluate whether an individual was denied due process by asking (1) whether "the individual possess[ed] a protected interest to which due process was applicable," and (2) whether "the individual [was] afforded an appropriate level of process[.]" Id.

Alcorn alleges she suffered due process violations to both a protected liberty interest and a protected property interest.

A.

Alcorn claims Defendants deprived her of a protected interest in her good name and reputation when they described to POST the circumstances giving rise to her termination. Specifically, she points to Harrison's statements to POST that the Town terminated her for violations of various policies and procedures—namely, "falsifying official documents and disobeying direct orders from her supervisors"—and that the Town was "considering criminal charges" against her. Alcorn also asserts that due process entitled her to a name-clearing hearing to dispute those

statements. Because the Town provided no such hearing, Alcorn argues that Defendants violated her Fourteenth Amendment right to procedural due process.

To demonstrate a deprivation of liberty under these circumstances, a plaintiff must satisfy a four-part test: "First, to be actionable, the statements must impugn the good name, reputation, honor, or integrity of the employee. Second, the statements must be false. Third, the statements must occur in the course of terminating the employee or must foreclose other employment opportunities. And fourth, the statements must be published." Renaud, 203 F.3d at 727 (quoting Workman v. Jordan, 32 F.3d 475, 481 (10th Cir. 1994)); see also Paul v. Davis, 424 U.S. 693, 701 (1976) (explaining that an individual's liberty interest in her reputation is only sufficient "to invoke the procedural protection of the Due Process Clause" if combined with "some more tangible interest[ ] such as employment"). Only after "a liberty interest is implicated" are "the due process protections of the Fourteenth Amendment . . . innervated." Workman, 32 F.3d at 480. At that point, a plaintiff must show she "was not afforded an adequate name-clearing hearing." Id.

Because the elements for demonstrating a deprivation of liberty "are not disjunctive, all must be satisfied to demonstrate deprivation of the liberty interest." Id. at 481. Even assuming that Alcorn had such a liberty interest, we need only address the fourth prong—the publication requirement—to conclude that Defendants did not deprive Alcorn of such a liberty interest in her good name and reputation.

A statement is "published" if it is "made public." Bishop v. Wood, 426 U.S. 341, 348 (1976). And we have held that "intra-government dissemination, by itself,

falls short of the Supreme Court's notion of publication" because such statements are not "made public." Asbill v. Hous. Auth. of the Choctaw Nation of Okla., 726 F.2d 1499, 1503 (10th Cir. 1984). We have not, however, precisely defined the scope of intra-government disseminations. See Monroe v. City of Lawrence, 124 F. Supp. 3d 1097, 1129 n.116 (D. Kan. 2015) (noting that in this circuit, "[n]o precedent clearly defines 'intra-government dissemination.'"). Given that gray area, Alcorn argues that the communication between the Town and POST—a Wyoming governmental agency, but one that is separate and distinct from the Town—was actually an *inter*-governmental dissemination. She thus claims that the statement to POST was, in fact, published.

We have used "intra-government dissemination" to describe the internal communications of the same unit of government, such as a state, city, or agency. See, e.g., Asbill, 726 F.2d at 1503 (holding that statements made within the Housing Authority of the Choctaw Nation of Oklahoma (a state agency) were not published for purposes of the Fourteenth Amendment); Ellison v. Roosevelt Cty. Bd. of Cty. Comm'rs, 700 F. App'x 823, 826, 832 (10th Cir. 2017) (unpublished disposition cited only for its persuasive value) (concluding that information about a former county employee was not published when a lieutenant with the county sheriff's office provided that information to the county "human resources administrator, the county contract attorney, and [unspecified] 'third parties'"); Lollis v. City of Eufaula, 249 F. App'x 20, 25 (10th Cir. 2007) (unpublished disposition cited only for its persuasive value) (explaining that statements between the city police department and the city

council were intra-governmental). We have also used the same terminology to describe communications made across governmental units. McCarty v. City of Bartlesville, 8 F. App'x 867, 874 (10th Cir. 2001) (unpublished disposition cited only for its persuasive value) (holding that the city police chief's discussion of a former employee's conduct with the county district attorney was not a publication).

We believe a similar rule should apply to communications between a municipal government and a state agency. Indeed, municipal corporations, like the town of La Barge, are created by states and are therefore akin to sub-units of the state. See Municipal Corporation, Black's Law Dictionary (11th ed. 2019) (defining "municipal corporation" as "[a] city, town, or other local political entity formed by charter from the state and having the autonomous authority to administer the state's local affairs"). And we see no meaningful distinction between applying the "intra-governmental dissemination" standard to communications across units of government (such as between a city and county) and between a state and its sub-units (such as here). Indeed, important overlapping interests often exist between municipalities and state agencies. Here, for example, the Town and POST share an interest in the substance of the communication. And the ability to communicate the reasons for terminating law enforcement officers to the agency tasked with setting standards for and certifying those officers is essential to the maintenance and integrity of local police departments. Accordingly, we conclude that the Town's communications to POST are intra-governmental. Thus, we do not consider these statements in and of themselves as published for purposes of Alcorn's liberty interest in her good name or

reputation. See Asbill, 726 F.2d at 1503; cf. Bailey v. Kirk, 777 F.2d 567, 580 n.18 (10th Cir. 1985) (noting in dicta that "the presence of false and defamatory information in an employee's personnel file *may* constitute 'publication' if not restricted for internal use" (emphasis added)).

Alcorn also argues that, in any event, the Town's statements to POST *were* eventually made public. She observes, for instance, that the Sublette County Sheriff contacted POST and that POST informed him that it had suspended her law enforcement certification and that a case to decertify her law enforcement certification was pending. But Alcorn failed to raise this argument before the district court and does not argue for plain error and its application on appeal. Accordingly, we will not consider it. Richison v. Ernest Group, Inc., 634 F.3d 1123, 1131 (Gorsuch, J.) ("the failure to argue for plain error and its application on appeal–surely marks the end of the road for an argument . . . not first presented to the district court").[1]

For the reasons discussed above, Alcorn cannot establish that Defendants deprived her of a protected liberty interest in her good name or reputation. Accordingly, we reject Alcorn's argument that Defendants violated her Fourteenth Amendment procedural due process rights.

[1] In any event, Alcorn on appeal fails to develop the argument beyond a single sentence in her opening brief. Appellant's Op. Br. at 20. Indeed, she does not cite a single case in support of this argument. "[I]nsufficient briefing . . . will serve to waive an issue in this court even if it was fairly presented and preserved in the district court." Eizember v. Trammell, 803 F.3d 1129, 1145 (10th Cir. 2015).

B.

Next, Alcorn argues that she had a protected property interest in her continued employment with the Town. Alcorn claims that even though she was putatively an at-will employee, a genuine dispute of material fact exists as to whether the Town could only terminate her for cause. Specifically, she points to the progressive disciplinary policy in the Town's personnel policy and procedure manual. She contends that this progressive disciplinary policy created an implied-in-fact contract that altered her at-will employment relationship to one where the Town could only terminate her for cause. As such, she claims that she had a reasonable expectation of continued employment—which, if true, would require the Town to have given her an opportunity to refute the allegations against her. Because the Town gave Alcorn no such opportunity, she claims Defendants violated her right to procedural due process.

To determine whether Alcorn possessed a property interest in her employment, we must determine whether she had "a legitimate expectation of *continued* employment." Hennigh, 155 F.3d at 1253 (emphasis added). Further, "[t]he existence of a property interest is defined by existing rules or understandings that stem from an independent source such as state law." Id. (quoting Driggins v. City of Okla. City, 954 F.2d 1511, 1513 (10th Cir. 1992). We thus turn to Wyoming law to determine whether Alcorn possessed a legitimate expectation of continued employment.

In Wyoming, at-will employees do *not* have a legitimate expectation of continued employment because "employment at will permits either party to terminate a contract of employment, which is for an indefinite duration, at any time, for any

reason or for no reason at all." Lincoln v. Wackenhut Corp., 867 P.2d 701, 703 (Wyo. 1994). By contrast, employees who can only be terminated for cause *do* have a legitimate expectation of continued employment. See Lucero v. Mathews, 901 P.2d 1115, 1119–20 (Wyo. 1995) (concluding that a law enforcement officer had a constitutionally protected property interest when he could only be terminated for cause). The resolution of this issue, therefore, turns on whether Alcorn was an at-will employee. If she was, then she may claim no procedural due process protections. If she was not, then she deserved "a meaningful opportunity to be heard" before Defendants terminated her. Sabatka v. Bd. of Trs. of Fremont Cty. Pub. Library Sys., 341 P.3d 403, 407 (Wyo. 2015).

"When an employment contract is silent about duration, and does not specify reasons for termination, the employment relationship is presumed to be at-will." Kuhl v. Wells Fargo Bank, N.A., 281 P.3d 716, 720 (Wyo. 2012). But under Wyoming law, "an employee handbook or personnel manual may supply terms for an implied in fact contract of employment." Lincoln, 867 P.2d at 703. "In particular, a systematic discipline procedure or other language in an employee handbook implying termination may be for cause only *may* defeat the rebuttable presumption that employment is at will." Id. (emphasis added).

Even so, "a sufficient disclaimer . . . in the employment application and subsequent relevant documents, such as an employee handbook . . . places the employee on notice that general statements or conduct do not promise employment security and are not to be relied upon by the employee." Id. "A conspicuous and

unambiguous disclaimer would then make any reliance on the subsequent [written] statements of the employer unreasonable." Id.

Here, Alcorn argues that the "tenor" of the Town's personnel manual created an ambiguity and that she could reasonably expect continued employment because the Town included a progressive discipline policy. We disagree and conclude that the manual was not ambiguous, and that the inclusion of the progressive disciplinary policy did not alter the at-will nature of Alcorn's employment.[2]

In Lincoln, the Wyoming Supreme Court concluded that an at-will disclaimer was sufficiently conspicuous when "[t]he lettering [was] approximately twice the size of the lettering used for the remaining text," was "in bold print[,] and . . . [was] capitalized." 867 P.2d at 704. Further, the court noted that the disclaimer was "on the first interior page" of the handbook such that "a reasonable person ought to notice it." Id. at 704–05 (emphasis omitted). And in Kuhl, the Wyoming Supreme Court again held that "a conspicuous and unambiguous disclaimer serves to preserve the employment at-will relationship, because it provides the employee with notice that the general statements in the handbook are not to be relied upon as contractual obligations." Kuhl, 281 P.3d at 726. In that case, four at-will disclaimers appeared throughout the employee handbook (including in the first paragraph of the handbook)

[2] Alcorn also argues that because Defendants provided her with the reasons for her termination, they acknowledged that they could only terminate her for cause. We reject that argument. In particular, the personnel manual made clear that as an at-will employee, the Town could terminate Alcorn "*with or without cause*." App. 67 (emphasis added). Thus, even if the Town had cause and said so, it does not alter the at will nature of Alcorn's employment.

and were always in "separate and distinct paragraphs with bold headings." Id. The court concluded that the "at-will disclaimers in the employment documents [were] unquestionably conspicuous." Id.

Here, the language in the La Barge personnel manual was also unquestionably conspicuous and unambiguous to sustain the presumption that Alcorn is an at-will employee. The personnel manual included at-will disclaimers in three distinct places—on the first two pages and on the last page. The disclaimer on the first page stated: "Nothing herein contained shall be construed to be a contract between the employer and the employee . . . The Town of LaBarge retains the absolute right to terminate any employee at any time, with or without good cause." . This language was bolded and underlined. The next disclaimer appeared on the second page under the heading "At-Will Employment Statement." It stated:

> Your employment with the Town of LaBarge is a voluntary one and is subject to termination by you or the Town of LaBarge at will, with or without cause, and with or without notice, at any time. **Nothing in these policies shall be interpreted to be in conflict with or to eliminate or modify in any way the employment-at-will status of the Town of LaBarge employees.**

(bolded and underlined in original). Significantly, the second sentence was in noticeably larger font in addition to being bolded and underlined. A third disclaimer appeared on the last page of the manual under the heading "Acknowledgement." Although not bolded, underlined, or otherwise conspicuous, it nonetheless stated: "Unless expressly prescribed by statute or contract, my employment is 'at will'. I understand that I have the right to terminate my employment at any time, with or

without cause, and that Town of LaBarge has the same right." Alcorn then signed below the "Acknowledgment" section. In fact, Alcorn signed each of these three pages containing at-will disclaimers. Like Kuhl, the disclaimers contained in the Town's personnel manual were conspicuous "by virtue of repetition, prominence, and placement." Kuhl, 281 P.3d at 726. Additionally, each section clearly stated that the Town employed Alcorn at will, and like the disclaimers in Kuhl, described the nature of an at-will relationship (i.e., that the relationship may be terminated by either party at any time, with or without cause). Thus, the disclaimers contained in the Town's personnel manual were also clear and unambiguous.

Further, the inclusion of the progressive disciplinary policy did not alter the at-will relationship between Alcorn and the Town. For one thing, the "Progressive Discipline" section of the manual *again* stated that "both the employee and the Town of LaBarge have the right to terminate employment at will, with or without cause or advance notice." It then provided that "the Town of LaBarge *may* use progressive discipline *at its discretion*." (emphases added). By its terms, the progressive disciplinary policy was discretionary and did not alter the nature of Alcorn's employment. Indeed, the progressive disciplinary policy contained *another* at-will disclaimer. Accordingly, the "tenor" of the personnel manual did not alter Alcorn's at-will status.

We conclude that Alcorn was an at-will employee. For that reason, she did not have a legitimate expectation of continued employment and was therefore not entitled to procedural due process protections.

IV.

Alcorn's wrongful termination claim also fails. That claim is premised on the theory that the Town's personnel manual created an implied contract of employment with Alcorn that the Town later breached when terminating her. Given that we conclude that Alcorn was an at-will employee, that claim must also fail. See Kuhl, 281 P.3d at 724 ("[E]mployment at will permits either party to terminate . . . employment . . . at any time, for any reason or for no reason at all.") (quoting Lincoln, 867 P.2d at 703)). Thus, Defendants could terminate Alcorn at any time and for any non-discriminatory reason.

V.

Alcorn's final claim is that Defendants defamed her by informing POST of the reasons for her termination. She specifically claims that Defendants' statements to POST that she violated police department policies and procedures and the Town's rules of conduct, in what amounted to accusations that she had engaged in criminal fraud, constitutes defamation *per se*.

Wyoming law defines a defamatory statement as one that "1) tends to hold the plaintiff up to hatred, contempt, ridicule, or scorn; 2) causes the plaintiff to be shunned or avoided; or 3) tends to injure the individual's reputation as to diminish the esteem, respect, goodwill, or confidence in which he is held." Stevens v. Anesthesiology Consultants of Cheyenne, LLC, 415 P.3d 1270, 1284–85 (Wyo. 2018). "Generally, to be actionable, the defamatory or disparaging words 'must affect the plaintiff in some way that is peculiarly harmful to one engaged in his trade

or profession,'" but "there is a certain category of defamatory statements that are actionable absent proof of special damages." Id. at 1285 (quoting Wilder v. Cody Country Chamber of Commerce, 868 P.2d 211, 224 (Wyo. 1994)). This category is called "defamation *per se*" and refers to "a statement which is defamatory on its face and, therefore, actionable without proof of special damages." Id. (quoting Hoblyn v. Johnson, 55 P.3d 1219, 1233 (Wyo. 2002)). Importantly, statements that impute "a matter incompatible with business, trade, profession, or office" or "a criminal offense" are defamatory *per se*. Id. (quoting Hoblyn, 55 P.3d at 1233).

With that said, "[a] statement that would otherwise be defamation *per se* may not be actionable if it was made pursuant to a conditional privilege." Id. Indeed, "[i]n those cases where one person has an interest in the subject matter of the communication and the person to whom the communication is made has a corresponding interest, every communication honestly made in order to protect such common interest is privileged by reason of the occasion." Id. (quoting Sylvester v. Armstrong, 84 P.2d 729, 732 (Wyo. 1938)). A plaintiff can defeat the conditional privilege by showing malice on the part of the defendant. Id. But "[u]nder the doctrine of conditionally privileged communication, an absence of malice is presumed." Id.

We do not decide whether Defendants' statements to POST amounted to defamation *per se* because even assuming that they did, Defendants made those statements pursuant to the conditional privilege and Alcorn presents no evidence of malice. Certainly, Defendants had an interest in the subject matter of the

communications because they were Alcorn's former employers who knew the reasons for her termination. Similarly, POST had a corresponding interest in ensuring that law enforcement officers met certain performance standards. In fact, the Wyoming legislature created POST to fulfill that role, and Defendants made these statements to POST because the law required them to do so. See Wyo. Stat. Ann. § 9-1-704(a). The record confirms as much; it clearly shows that Harrison honestly believed that Alcorn had violated department policy and that the law required him to provide that information to POST. As Harrison testified, "when there's separation of an employee in law enforcement, we're required to notify POST . . . that there's a separation." Harrison further observed that if the separation amounted to a termination, then Wyoming law also required him to inform POST about the reasons for the termination.

And Alcorn fails to rebut the presumption that Defendants made the communication without malice. See Stevens, 415 P.3d at 1285. In fact, Alcorn does not argue that Defendants made the statement with malice. Accordingly, no genuine issue of material fact exists that would preclude summary judgment. Id. at 1286.

For the foregoing reasons, we conclude that the conditional privilege applies to Defendants' statements to POST.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge