

IN THE SUPREME COURT OF SICILY

Paulina,)	
Petitioner,)	
v.)	Civil No. 2021-1
King Leontes and Queen Hermione,)	
Respondents.)	

King Leontes of Sicilia and King Polixenes of Bohemia had been best friends since childhood, and Polixenes spent a long and joyous visit with his old friend. When Polixenes insisted it was time for him to return home, Leontes urged his wife, Hermione, to persuade him to stay, and she succeeded. At that point Leontes became irrationally convinced that Hermione and Polixenes were lovers. He ordered his courtier Camillo to kill Polixenes but instead Camillo warned Polixenes and they fled together to Bohemia. Upon learning that they had fled, Leontes became even more convinced that he had been cuckolded and that Polixenes and Camillo had been plotting his murder. He was also certain that the child Hermione was carrying had been fathered by Polixenes and not by him. Leontes ordered Hermione to be put in prison, and their young son Mamillius to be taken from her.

Hermione soon gave birth, and her attendant, Paulina, took the baby to show Leontes, hoping he would recognize the baby as his. Leontes rejected the baby and ordered Antigonus, Paulina’s husband, to kill the child, but then amended his order and told him to take the baby to a deserted place and leave her exposed to the elements. Leontes had consulted the oracle of Apollo to be certain he was right about Polixenes and Hermione, but the message from Apollo was that Hermione was chaste and Polixenes blameless. Leontes refused to believe the oracle. At that point Leontes was told that Mamillius had died, and Hermione fell into a swoon at the news. Paulina reported that Hermione had died, and Leontes immediately acknowledged his error, repented, and said he would conduct daily vigils at the grave of his son and wife. He did so for the next sixteen years.

The Lords of Sicilia believed Leontes had suffered long enough and urged him to marry again to assure there would be an heir to the throne. Paulina reminded Leontes of his perfidy and insisted that he could find no wife to compare with Hermione, and also reminded him that the oracle said he would have no heir until what was lost was found. The abandoned baby, Perdita, had been rescued and raised by kindly shepherds in Bohemia, and had fallen in love with Florizel, the son of Polixenes. They all traveled to Sicilia where it was revealed that Perdita was Leontes’s child and the union of Florizel and Perdita was joyously embraced by both fathers. Paulina led the assembled guests into a secluded chamber in her home, where she had kept a statute of Hermione, which came to life and was reunited with her daughter and husband. When Hermione began to ask her daughter to tell her about her life in Bohemia, Paulina interceded and

said that would only lead to Hermione being asked to tell her story and there would be time for all that later.

Hermione and Leontes talked long into the night about their sixteen year separation. Leontes was shocked that Paulina kept Hermione as a prisoner for all that time and never told her that Leontes had repented his actions in mistrusting Hermione and sending Perdita to be abandoned in the wilderness, actions he believed had caused Hermione's death. Hermione too thought that Paulina had been cruel to Leontes and had unfairly deprived her of the opportunity to forgive and reunite with her husband years earlier.

Leontes and Hermione sued Paulina for damages for loss of consortium and emotional distress caused by keeping them apart. Paulina moved to dismiss their emotional distress claims on the ground that her speech and related actions were protected by Sicilia's constitutionally guaranteed freedom of speech. The plaintiffs' urged the court to deny her motion because, although Paulina's criticisms of Leontes's tyranny may have been matters of public concern, her machinations in lying about Hermione's death and keeping her apart from Leontes did not constitute protected speech. The court denied Paulina's motion to dismiss, and the plaintiffs' claims were tried to a jury. Plaintiffs argued that Paulina had arrogated to herself the role of judge and jury in deciding that Leontes deserved to be punished for his unreasoning jealousy. They also argued that Paulina could have acted to prevent Perdita's being abandoned on a mountain-side and thus avoided the entire sixteen years' of torture to which Paulina subjected them. Hermione emphasized that she would not have agreed to remain in seclusion if Paulina had been honest with her about Leontes' remorse. Leontes, for his part, argued that Paulina's actions in flaunting Hermione's baby when she knew he was in the thrall of irrational jealousy and would take it out on the baby, in lying to him and saying Hermione was dead, and in perpetuating that lie for sixteen years was outrageous and shocking behavior that justified a hefty award of damages for her cruel and malicious conduct (the higher standard required when a public figure was a plaintiff). He argued that she hated him and sought revenge for her loss of Antigonus who acted on Leontes's orders.

Paulina argued that she had not imprisoned Hermione because she willingly agreed to her confinement. She argued that Hermione wanted to have nothing to do with Leontes, who had so falsely accused her and whose irrational jealousy had caused the death of Mamillius and the abandonment and presumed death of Perdita. She argued that the conditions of Hermione's confinement were gracious and refined, and that she had not suffered at all during her seclusion. She emphatically argued that Hermione had not supported a claim for any damages flowing from Paulina's conduct. Paulina also argued that she had done nothing to cause emotional distress to Leontes. She argued that she had to keep him in a remorseful state, had to prevent his marriage to anyone else, and had to keep Hermione in seclusion to fulfill the dictates of the god Apollo, who had decreed that Leontes would live without an heir "if that which is lost be not found." Paulina noted that she was in no position to find Perdita and fulfill the prophecy, so any emotional distress Leontes suffered was entirely the result of his own actions, not hers.

The jury found in Leontes and Hemione's favor and awarded them 10,000 florin. Paulina appealed, and the appellate court affirmed the verdict and judgment. She then petitioned for Supreme Court review and the Court agreed to resolve the following questions:

- 1) Did the lower court err in refusing to dismiss the emotional distress claim because Paulina's speech and actions involved matters of public concern shielded by the constitutional guarantee of freedom of speech?
- 2) Was there sufficient evidence to support the verdict that Paulina had intentionally inflicted emotional distress on Leontes and Hermione under the "actual malice" standard required in the law where Hermione had willingly agreed to remain in seclusion and Leontes's distress was caused by his own tyrannical conduct, and not Paulina's behavior?