



Justices Let 'Malice' Verdict Stand Against Environmentalist

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Law360 (January 11, 2021, 6:30 PM EST) -- A prominent Florida environmentalist is on the hook for a \$4.4 million verdict after the U.S. Supreme Court declined Monday to hear her appeal in a lawsuit stemming from her opposition to a limestone mining and water treatment project in Martin County.

In her petition, Maggy Hurchalla had told the high court that the underlying decision from Florida's Fourth District Court of Appeal upholding the jury verdict impinges on First Amendment free speech and petition rights and will undermine public debate, but the property owners, Lake Point Phase I LLC and Lake Point Phase II LLC, contested her description of her actions.

"Hurchalla has fought on, claiming that her tortious interference under Florida law is the equivalent of zealous testimony at a public hearing," Lake Point said. "But this court long ago ruled that the right to petition does not include an unqualified right to express harmful falsehoods."

The Supreme Court handed down its denial of Hurchalla's case without explanation, as is its custom.

"We had hoped the court would have taken the case to address this important First Amendment issue," said David Lehn of WilmerHale, one of Maggie Hurchalla's attorneys.

The Florida Supreme Court previously also denied a petition from Hurchalla, who is the sister of the former U.S. Attorney General Janet Reno.

In its decision, the Fourth District ruled that the environmentalist's activity wasn't free speech because she lied when she lobbied against the plan.

Judge Burton C. Conner, writing for a unanimous panel, said Hurchalla acted with actual malice when she wrote to all five members of the Martin County Commission in 2013 alleging a study to document the benefits for the project had been planned but never provided. She later said she had reviewed a study about the benefits, according to the opinion.

The panel also decided Hurchalla's actions went beyond her right to petition the government.

Hurchalla told the U.S. Supreme Court that her case posed the question of whether it is a violation of First Amendment free speech and petition rights to award damages against someone to a third party based on that person's statement to the government officials on an issue that harms the third party, when the statement could be "could reasonably be construed as a verifiable and true assertion or as an unverifiable opinion."

She argued the lower courts ignored the full context that she was discussing a particular type of study and also insisted that there was a total lack of evidence that her "supposedly false statement" had actually caused the county commission's actions.

"These serious errors pose a grave risk to the fundamental protections guaranteed by the First Amendment," her petition said. "The decision below sends a clear message to any deep-pocketed private actors who might be harmed by some governmental action: they can now wield tort litigation as a cudgel to intimidate and silence any critic or opponent — whether a public policy organization supporting or opposing legislation, a religious group seeking a regulatory exemption, a company bidding for government contracts, or an ordinary concerned citizen, like Ms. Hurchalla."

But Lake Point painted a much different picture of Hurchalla's actions, saying she used her contacts as a former county commissioner and "worked secretly behind the scenes" through a series of emails to commissioners' private addresses, some of which went missing, to sway the panel.

"The critical information that we actually know she fed to the commissioners was false," Lake Point said. "She either knew it was false or she portrayed it as true to the commissioners with reckless disregard for the truth."

Lake Point also noted that the county settled the property owner's case against it for \$12 million and issued a public apology for its "rush to judgment."

Hurchalla's petition had drawn "friends of the court" briefs from libertarian and conservative groups, including the Civil Liberties Defense Center and the Cato Institute, which argued Lake Point's case was a quintessential strategic lawsuit against public participation, or SLAPP, and also from environmental groups that argued the state courts "failed to recognize the complex, opinion-based nature of scientific/environmental facts."

Counsel for Lake Point did not respond to a request for comment Monday.

Hurchalla is represented by Jamie S. Gorelick, David W. Ogden, David M. Lehn and Spencer L. Todd of WilmerHale, Virginia P. Sherlock and Howard K. Heims of Littman Sherlock & Heims PA and Enrique D. Arana and Rachel Oostendorp of Carlton Fields PA.

Lake Point is represented by Chris William Altenbernd of Banker Lopez Gassler PA and Ethan J. Loeb and Jon P. Tasso of Smolker Bartlett Loeb Hinds & Thompson PA.

The case is Hurchalla v. Lake Point Phase I LLC et al., case number 20-332, in the Supreme Court of the United States.