

MODIFIED: MARCH 29, 2011

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

BRYAN K. RICHARDSON

RESPONDENT,

v.

**TRAYCIE SHERWOOD, STATE OF MISSOURI, DEPARTMENT OF CORRECTIONS,
DIV. OF PROBATION**

APPELLANT.

**DOCKET NUMBER WD70674
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: February 15, 2011

Appeal From:

Clay County Circuit Court
The Honorable Anthony Rex Gabbert, Judge

Appellate Judges:

Division Three: James M. Smart, Jr., P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Attorneys:

Mark J. Murphy, Liberty, MO, **for respondent.**

Peggy Ann Whipple, Jefferson City, MO, **for appellant.**

MISSOURI APPELLATE COURT OPINION SUMMARY

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RESPONDENT,

v.

**TRAYCIE SHERWOOD, STATE OF MISSOURI, DEPARTMENT OF CORRECTIONS,
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APPELLANT.

No. WD70674

Clay County

Before Division Three: James M. Smart, Jr., P.J., Joseph M. Ellis and Gary D. Witt, JJ.

Traycie Sherwood, a probation officer with the Missouri Board of Probation and Parole, appeals the judgment of the Circuit Court of Clay County determining that she tortiously interfered with the employment relationship of one of the probationers she supervised, Bryan K. Richardson, by informing Richardson's employer that Richardson was then using drugs. Mr. Richardson contended that the information communicated was false. He also contended that the communication of the information, even if not false, was a violation of Sherwood's statutory duty not to disclose confidential information. On appeal, Sherwood contends, inter alia, that the trial court erred in rejecting her affirmative defenses of official immunity and qualified privilege.

AFFIRMED.

Division Three holds: The trial court did not err in denying Sherwood's motion for directed verdict based on official immunity, nor did the court err in rejecting her jury instruction as to official immunity, because the doctrine applies only to public officials whose actions are discretionary. Sherwood's act of disclosing privileged, confidential information about a probationer was precluded by law (section 559.125.2) and, thus, was not discretionary. For the same reason, the court also did not err in refusing to instruct the jury as to the doctrine of qualified privilege. The trial court did not abuse its discretion in excluding certain aspects of Richardson's driving record showing a suspension of his driving privileges, which was offered on the issue of damages. The court did not err in denying a directed verdict to Sherwood on Richardson's claim of tortious interference. Richardson made a submissible case, even setting aside the effect of section 559.125.2, because the jury could reasonably have believed that Sherwood's actions were *not* grounded in concerns about public safety but arose instead from personal animus toward Richardson; and that she therefore intentionally violated her duty by informing his employer of the drug usage (and/or fabricated the allegation that he admitted using drugs), consequently lacking "justification or excuse" for her actions. The judgment is affirmed.

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