

STATE OF MICHIGAN
COURT OF APPEALS

JOHN C. MOURADIAN,

Plaintiff-Appellant,

v

DETROIT NEWS and RICHARD WILLING,

Defendants-Appellees.

UNPUBLISHED

July 29, 1997

No. 194720

Wayne Circuit Court

LC No. 95-522941 NZ

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition granted in the Wayne Circuit Court pursuant to MCR 2.116(C)(8) and (C)(10), concerning his claims for libel, invasion of privacy, and intentional infliction of emotional distress. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff has failed to establish the actual malice prerequisite to a defamation suit by a public figure. As the article concerns plaintiff's status as an attorney and desire to continue practicing law, plaintiff is a public figure as respects any comment regarding his fitness to practice law. *Peisner v Detroit Free Press, Inc*, 421 Mich 125, 137 n 12; 364 NW2d 600 (1984); *Hayes v Booth Newspapers, Inc*, 97 Mich App 758, 774; 295 NW2d 858 (1980). Furthermore, the claimed falsity is in defendants' characterization of plaintiff's legal arguments in the federal litigation concerning the Americans With Disabilities Act. Michigan jurisprudence, however, holds that characterizations of a legal theory are constitutionally protected opinions when based upon disclosed facts of the case, and therefore a cause of action for libel in this regard cannot be maintained. *Fisher v Detroit Free Press*, 158 Mich App 409, 415; 404 NW2d 765 (1987).

The invasion of privacy claim relates to medical information available from the public records of the Attorney Discipline Board and the pleadings and other documents on file in the federal litigation. The First Amendment extends an absolute privilege, with respect to a claim for

* Circuit judge, sitting on the Court of Appeals by assignment.

invasion of privacy, to information acquired from official or other public sources. *Time, Inc v Firestone*, 424 US 448, 455; 96 S Ct 958; 47 L Ed 2d 154 (1976); *Meyer v Hubbell*, 117 Mich App 699, 708; 324 NW2d 139 (1982); *Cox Broadcasting Co v Cohn*, 420 US 469; 95 S Ct 129; 43 L Ed 2d 328 (1975).

To the extent that the claims for libel and invasion of privacy depend on claimed falsehoods, any discrepancies between the article and the actual facts would not detract from the “sting” that a more accurate report would have produced. *Rouch v Enquirer & News of Battle Creek (After Remand)*, 440 Mich 238, 253; 487 NW2d 205 (1992); *Morganroth v Whitall*, 161 Mich App 785; 411 NW2d 859 (1987). That the article made its point using some amount of humor does not make it actionable. *Fisher v Detroit Free Press, supra*; *Morganroth v Whitall, supra*.

Finally, defendants’ essentially true report of matters affecting the fitness and competence of professional licensees in this State to practice their professions, and republication of information concerning plaintiff’s medical condition, cannot be characterized as so intolerable in a civilized society that an average community member, on hearing the facts, would exclaim “Outrageous!”. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 342; 497 NW2d 585 (1993); *Doe v Mills*, 212 Mich App 73, 93; 536 NW2d 824 (1995).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn