

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES E. CROSS, WILLIAM CROSS,
JASON CROSS, SHANNON GDOWSKI and
CROSS ENTERPRISES, INC.,

UNPUBLISHED
July 31, 2001

Plaintiffs-Appellants,

v

THE DETROIT NEWS, INC., GANNETT
NATIONAL NEWSPAPER SALES, INC., a/k/a
GANNETT COMPANY and JANE
DAUGHERTY,

No. 221089
Wayne Circuit Court
LC No. 98-824700-NZ

Defendants-Appellees,

and

LUCETTA V. FRANCO,

Defendant.

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a stipulated order dismissing claims against defendant, Lucetta Franco, only, and disposing of the last pending claim in this defamation case. However, the issues raised by plaintiffs on appeal relate to an earlier order granting summary disposition in favor of defendants, The Detroit News, Inc., Gannett National Newspaper Sales, Inc., also known as Gannett Company, and Jane Daugherty (collectively the “Detroit News defendants”). We affirm.

Plaintiffs’ cause of action is based upon a Detroit News article published on August 4, 1997. The article contained a story regarding a sexual harassment lawsuit, filed in Wayne Circuit Court by three former employees of Snapper’s on the Boulevard, against plaintiffs Charles Cross and William Cross. The article was based on statements alleged in the complaint. Detroit News defendants successfully moved for summary disposition on the basis of MCL 600.2911(3), which protects the press from defamation actions for fair and true reports of matters of public record.

Plaintiffs argue on appeal that summary disposition was improperly granted because the allegedly defamatory subject article was not a fair and true report of the sexual harassment complaint and because Cross Enterprises, Inc., Jason Cross, and Shannon Gdowski were defamed in the article by implication. We disagree.

Appellate review of the grant or denial of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim and permits summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). This Court must review the entire record in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party. *Morales v Auto-Owners Ins.*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Plaintiffs' first argument, whether the article was a fair and true report of the sexual harassment complaint, is dispositive of this appeal. MCL 600.2911(3) states, in pertinent part, that "[d]amages shall not be awarded in a libel action for the publication . . . of a fair and true report of matters of public record" This standard has been further explained as meaning that "[i]f the gist of an article is substantially accurate, then the defendant cannot be liable." *Butcher v SEM Newspapers, Inc.*, 190 Mich App 309, 312; 475 NW2d 380 (1991). A comparison of the newspaper article and the sexual harassment complaint leads to the conclusion that the article was substantially accurate and a true and fair report of the allegations contained in the sexual harassment complaint. Therefore, the trial court properly granted Detroit News defendants' motion for summary disposition.

Several of the statements in the article report verbatim the allegations made in the complaint. Although, the article used more explicit terms, such as "intercourse" and "sex acts" and printed an incorrect address, the "gist" or "sting" of the article was substantially accurate, and any inaccuracy would have no different effect on the reader than that which the literal truth would produce. See *Northland Skating v Detroit Free Press, Inc.*, 213 Mich App 317, 325; 539 NW2d 774 (1995). In other words, even though the article has minor differences in its descriptions, the literal truth produces the same effect, making any differences immaterial. *Id.* The information published in the article substantially represented the matter contained in the sexual harassment complaint. Accordingly, the article was privileged and defendants cannot be held liable.

Due to our resolution of this issue, plaintiffs' remaining arguments need not be addressed.

Affirmed.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Brian K. Zahra