

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD A. DEUTSCH,

Plaintiff-Appellant,

v

RONALD R. BERLINER,

Defendant-Appellee.

UNPUBLISHED

August 24, 2004

No. 246991

Washtenaw Circuit Court

LC No. 02-000589-NZ

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this defamation action based on defendant's republication of allegedly defamatory statements through an e-mail attachment of an item contained in a Missouri court record. The trial court granted summary disposition, finding that the document was a record generally available to the public, and damages could not be awarded under MCL 600.2911(3).

MCL 600.2911(3) provides in relevant part:

Damages shall not be awarded in a libel action for the publication or broadcast of a fair and true report of matters of public record, a public and official proceeding, or of a governmental notice, announcement, written or recorded report or record generally available to the public, or act or action of a public body, or for a heading of the report which is a fair and true headnote of the report. This privilege shall not apply to a libel which is contained in a matter added by a person concerned in the publication or contained in the report of anything said or done at the time and place of the public and official proceeding or governmental notice, announcement, written or reported report or record generally available to the public, or act or action of a public body, which was not part of the public and official proceeding or governmental notice, announcement, written or recorded report or record generally available to the public, or act or action of a public body.

To establish a defamation claim, the plaintiff must show that a false or defamatory statement was made, and there was an unprivileged publication to a third party. *Kefgen v*

Davidson, 241 Mich App 611, 617; 617 NW2d 351 (2000). MCL 600.2911(3) provides a fair reporting privilege for public documents. *Id*, 623, n 7.

Here, plaintiff's claim is based on defendant's republication of a document that was included in the Missouri court file. Plaintiff does not dispute that the document was a public record. Instead, he asserts that defendant improperly used MCL 600.2911(3) to shield his initial defamatory statements. However, there is no exception in the statute that would allow plaintiff to defeat the privilege.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly