

STATE OF MICHIGAN
COURT OF APPEALS

DONNA LEE GREER and JAYNE GREER,

Plaintiffs-Appellants,

v

NEWARK MORNING LEDGER, d/b/a
BOOTH NEWSPAPERS, INC., ANN ARBOR
NEWS, WILLIAM B. TREML, YPSILANTI
PRESS, MID-STATES NEWSPAPERS, INC.,
JAMES SHANTZ and CITY OF ANN ARBOR,

Defendants-Appellees.

UNPUBLISHED

March 3, 1998

No. 197915

Washtenaw Circuit Court

LC No. 94-001349 NZ

DONNA LEE GREER and JAYNE GREER,

Plaintiffs-Appellants,

v

NEWARK MORNING LEDGER, d/b/a BOOTH
NEWSPAPERS, INC., ANN ARBOR NEWS,
WILLIAM B. TREML, YPSILANTI PRESS, MID-
STATES NEWSPAPERS, INC., JAMES SHANTZ
and CITY OF ANN ARBOR,

Defendants-Appellees.

No. 199173

Washtenaw Circuit Court

LC No. 94-001350-NZ

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

PER CURIAM.

In this action for libel, plaintiffs appeal by right from summary disposition in favor of all defendants. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

At the outset, it should be noted that plaintiffs' statement of facts contains no references to any facts of record and is argumentative, one-sided and conclusory. But for the fact that forcing defendants to re-brief the case after allowing plaintiffs an opportunity to file a proper brief after striking their nonconforming brief would be unfair to defendants, this Court would be inclined to order that plaintiffs file a new and proper brief. MCR 7.212(C)(6).

In a series of articles in defendant newspapers, defendants reported that plaintiffs were charged with being part of a shoplifting ring operating in Washtenaw County and were awaiting preliminary examination. Details of the charges were supplied by defendant Shantz, a detective employed by defendant City of Ann Arbor. Shantz's statements were based on an investigation in which he had obtained information from James Telfer and Judy Eaton, who, so far as appears unbeknownst to Shantz, arguably bore a grudge against plaintiffs and who thus were acting out of malevolent motives. In the court below, plaintiffs conceded that "Telfer and Eaton lied to Detective Shantz. Shantz believed the lies" For purposes of reviewing the grant of summary disposition, we assume, as did the trial court, that statements alleging that plaintiffs were involved in criminal activities were false.

That, however, constitutes only one of the four prerequisite elements of a cause of action for defamation. The others are (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication.. *Locricchio v Evening News Ass'n*, 438 Mich 84, 115-116; 476 NW2d 112 (1991).

With respect to defendant newspapers, plaintiffs have adduced no evidence of negligence. In printing their stories, the newspapers knew that the detective's investigation was supported by two witnesses, who at the time bore the prosecutor's imprimatur because a complaint had been issued based on their statements. Absent evidence that the newspapers harbored a belief that the statements were false, or that they lacked reasonable grounds to believe in the truth of such statements, summary disposition for lack of proof of negligence was properly granted. *Dresbach v Doubleday & Co*, 518 F Supp 1285, 7 Media L R 2105 (Dist of Colo, 1981); *Howe v Detroit Free Press, Inc*, 219 Mich App 150, 153-158; 555 NW2d 738 (1996); 3 Restatement Torts, 2d, § 580B, p 221.

As to Detective Shantz, unless grossly negligent, MCL 691.1407(2)(c); MSA 3.996(107)(2)(c), he is protected by governmental immunity, MCL 691.1407(1); MSA 3.996(107)(1); *Cebreco v Music Hall Center for the Performing Arts, Inc*, 219 Mich App 353; 555 NW2d 862 (1996). Detective Shantz's statements, which were a report to the media of the results of a criminal investigation conducted in his official capacity, were well within the scope of his employment and responsibility as a police officer. MCL 691.1407(2)(a); MSA 3.996(107)(2)(a). No question of fact was created concerning whether Officer Shantz was grossly negligent, and any ordinary negligence is protected by governmental immunity. *Johnson v Wayne Co*, 213 Mich App 143, 158-159; 540 NW2d 66 (1995); see also *Sudul v Hamtramck*, 221 Mich App 455, 488; 562 NW2d 478 (1997)

(Murphy, P.J., concurring in part and dissenting in part). Defendant Ann Arbor is thus also protected by governmental immunity. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 421; 540 NW2d 710 (1995), disapproved on another ground *American Transmissions, Inc v Attorney General*, 454 Mich 135, 143-144; 560 NW2d 50 (1997).

Plaintiffs have briefed no issue as to defendant Treml, and accordingly any issue as to him is deemed abandoned. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski