

STATE OF MICHIGAN  
COURT OF APPEALS

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LANING DAVIDSON,

Plaintiff-Appellant,

v

DETROIT FREE PRESS, INC., JANET WILSON,  
LJUBISA DRAGOVIC and MARK WITECK,

Defendants-Appellees.

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UNPUBLISHED

August 4, 1998

No. 197170

Wayne Circuit Court

LC No. 94-436590 NO

Before: Markman, P.J., and Hoekstra and Saad, J.J.

PER CURIAM.

In this defamation case, plaintiff appeals as of right and we affirm the trial court's order granting defendants summary disposition pursuant to MCR 2.116(C)(8) and (10).

To demonstrate liability for defamation, a plaintiff must prove the following elements: (a) a false and defamatory statement concerning plaintiff; (b) an unprivileged publication to a third party; (c) fault amounting to at least negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by publication (defamation per quod). *Postill v Booth Newspapers, Inc.*, 118 Mich App 608, 618; 325 NW2d 511 (1982). Once a plaintiff has met his burden as to these common-law elements, a defendant introduces evidence on his defenses of truth or privilege. *Id.*

Here, regarding the requisite fault, plaintiff admits in his brief that he "must satisfy the actual malice standard." Actual malice means that the defamer published the statement with knowledge that it was false or with reckless disregard of whether it was false or not. *Id.* at 623. Actual malice must be shown by clear and convincing evidence, and the question of whether the evidence is sufficient to support a finding of actual malice is a question of law. *Garvelink v The Detroit News*, 206 Mich App 604, 608; 522 NW2d 883 (1994).

Here, the trial court properly dismissed all the defamation claims against all the defendants:

**Dragovic and Witeck.** Plaintiff failed to present any evidence that the statements attributed to Dragovic and Witeck were made with actual malice. To the contrary, both Dragovic and Witeck produced evidence to establish that their statements regarding plaintiff's improper handling of body parts and improper release of bodies for burial were documented contemporaneously with the alleged events. Importantly, plaintiff admitted in his deposition that he did not know whether Dragovic and Witeck believed the truth of these statements. We are not persuaded by plaintiff's argument that Dragovic and Witeck knew that plaintiff was not personally responsible for preparing the bodies for release. Plaintiff has admitted that he had supervisory responsibility over these cases. Under these facts, plaintiff cannot establish actual malice as to these two defendants.

**Janet Wilson and the *Detroit Free Press*.** Plaintiff cannot establish actual malice against these defendants. Wilson made reasonable inquiries into the veracity of the article's statements about plaintiff. Further, the statements pertaining to the allegedly defamatory headline and plaintiff's possession of a camera at autopsies were shown to be substantially true and, therefore, cannot be the basis of a defamation claim. *Fisher v Detroit Free Press, Inc*, 158 Mich App 409, 414; 404 NW2d 765 (1987). The other statements in the article are privileged under the fair reporting statute as "fair and true" reports of public record information. MCL 600.2911(3); MSA 27A.2911(3); *Northland Wheels Roller Skating Center, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 325; 539 NW2d 774 (1995).

We decline to assess sanctions because, though plaintiff's case is weak, we are not convinced that this appeal is vexatious under MCR 7.216(C)(1)(a).

Affirmed.

/s/ Stephen J. Markman

/s/ Joel P. Hoekstra

/s/ Henry William Saad