

STATE OF MICHIGAN
COURT OF APPEALS

FREDERICK GUY BROOKS,

Plaintiff-Appellant,

UNPUBLISHED
March 27, 1998

v

OWOSSO PUBLIC SCHOOLS, MERT WING
and THOMAS LENNOX,

No. 188556
Shiawassee Circuit Court
LC No. 94-003468

Defendants-Appellees.

DAVID HOENSHELL,

Plaintiff-Appellant,

v

OWOSSO PUBLIC SCHOOLS
and THOMAS LENNOX,

No. 194424
Shiawassee Circuit Court
LC No. 93-003247-NZ

Defendants-Appellees,

and MERT WING,

Defendant.

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

In docket no. 188556, plaintiff, Frederick Guy Brooks, appeals as of right an order of the Shiawassee Circuit Court granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7) and (C)(10). In docket no. 194424, plaintiff, David Hoenshell, appeals as of right an order of the Shiawassee Circuit Court granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7) and (C)(10). We affirm.

Plaintiffs were employed as maintenance workers by the Owosso Public Schools. Defendants Mert Wing and Thomas Lennox were employed as maintenance supervisors at the Owosso Public Schools. On the night of August 2, 1993, or in the early morning hours of August 3, 1993, a van belonging to the Owosso Public Schools was vandalized. The rear and side doors of the van were kicked in and there were dents in the rear right quarter panel of the van. Defendants contacted the police to report the vandalism. Officer Arbogast of the Owosso Police Department responded to the call. Officer Arbogast asked defendant Wing if he knew of anyone who might be responsible for the vandalism. Defendant Wing indicated that he knew of two disgruntled employees who he felt could have been responsible for the vandalism, but that he wanted to speak to his supervisor, Defendant Lennox, before giving Officer Arbogast their names. Sometime later, defendants Wing and Lennox reported plaintiffs' names to Officer Arbogast as employees who they felt could have been responsible for the vandalism. Plaintiffs were investigated by the police, but ultimately were not charged in connection with the vandalism incident. Plaintiffs filed defamation actions regarding the statements made to Officer Arbogast and subsequent statements allegedly made to other school employees regarding plaintiffs' possible involvement in the vandalism incident. Plaintiffs cases were heard together below. The trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(7) and (C)(10).

With respect to the statements defendants made to Officer Abogast, the trial court granted summary disposition to defendants pursuant to MCR 2.116(C)(7) on two alternative grounds. The trial court ruled that plaintiffs' claims were barred by governmental immunity, MCL 691.1407(2); MSA 3.996(107)(2), because defendants were engaged in the exercise of a governmental function at the time the statements were made. Furthermore, the trial court concluded that the statements made by defendants Wing and Lennox to Officer Arbogast regarding the vandalism were absolutely privileged.

In docket nos. 188556 and 194424, plaintiffs argue summary disposition was not proper on either basis. We disagree. We find that the trial court properly granted summary disposition to defendants on the basis that their statements to Officer Abogast were absolutely privileged.

To establish a defamation claim, plaintiffs must establish 1) a false and defamatory statement concerning the plaintiff, 2) an unprivileged communication to a third party, 3) fault amounting at least to negligence on the part of the publisher, and 4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod). *New Franklin Enterprises v Sabo*, 192 Mich App 219, 221; 480 NW2d 326 (1991).

The defense of privilege exists as a matter of public policy that some communications are so necessary that they should be made, even if defamatory. *Postill v Booth Newspapers, Inc*, 118 Mich App 608, 619; 325 NW2d 511 (1982). Privileged communications may be either absolutely privileged or qualifiedly privileged. *Id.* at 619-620. The difference between absolute and qualified privileges is that qualified privileges only protect the publisher in the absence of ill will, spite, or malice in fact. *Id.* at 620. If an absolute privilege applies, there can be no action for defamation. *Couch v Schultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992). The doctrine of absolute privilege is narrow and applies only to matters of public concern. *Froling v Carpenter*, 203 Mich App 368, 371; 512 NW2d 6 (1994). It is generally stated that the privilege extends to: "1) proceedings of legislative bodies; 2)

judicial proceedings; and 3) communications by military and naval officers.” *Id.*, citing *Chonic v Ford*, 115 Mich App 461, 465; 321 NW2d 693 (1982) and *Raymond v Croll*, 233 Mich 268; 206 NW 556 (1925). However, both the Michigan Supreme Court and this Court have held that statements made to the police regarding criminal activity are also entitled to an absolute privilege. *Shinglemeyer v Wright*, 124 Mich 230, 239-240; 82 NW 887 (1900); *Hall v Pizza Hut of America, Inc*, 153 Mich App 609, 619; 396 NW2d 809 (1986). Because the statements of defendants Wing and Lennox to Officer Arbogast regarding their suspicions that plaintiffs may have been responsible for the vandalism were absolutely privileged, we conclude that plaintiffs are unable to establish an unprivileged communication to a third party, which is an essential element of a defamation claim. *New Franklin*, *supra* at 221. Accordingly, defendants were entitled to summary disposition of plaintiffs’ defamation claims regarding the statements to Officer Arbogast. In light of our finding that summary disposition was proper on this basis, we need not determine whether the trial court erred in ruling that plaintiffs’ claims regarding the statements to Officer Arbogast were barred by governmental immunity.

In docket no. 188556, plaintiff Brooks also argues that the trial court erred in failing to address his defamation claim as to the statements made by defendants Wing and Lennox to plaintiff Brooks’ coworkers regarding the vandalism allegations. We disagree.

It is clear that the trial court addressed plaintiff Brooks’ claim regarding statements made to his coworkers regarding the vandalism allegations. In its opinion granting summary disposition in favor of defendants, the trial court found:

The deposition testimony of the summer employees clearly shows that they did not hear that Plaintiff was being investigated regarding the vandalism of the van from Defendants. Therefore, there is no genuine issue of any material fact that the Defendants published any defamatory statements to any unqualified third parties. Accordingly, summary disposition is granted as it relates to information allegedly given to the summer employees by the Defendants regarding the vandalism of the van and the involvement of the Plaintiff, pursuant to MCR 2.116(C)(10).

Moreover, the documentary evidence submitted by the parties indicated that plaintiff Brooks’ coworkers first learned of the vandalism allegations against plaintiff Brooks from plaintiffs themselves or other school employees, but not from defendants Wing or Lennox.¹ Therefore, we conclude the trial court properly granted summary disposition of plaintiff Brooks’ defamation claim regarding the statements made to his coworkers in favor of defendants pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski

¹ Plaintiff Brooks cites to the deposition testimony of Ms. Pamela Cox that defendants Wing and Lennox made statements to her regarding the vandalism allegations. However, this testimony was not a

part of the lower court record. Only one page of Cox's deposition was attached to plaintiff Brooks' brief below, and the cited testimony is not found on that page. Accordingly we have not considered this testimony on appeal. MCR 7.210(A); *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 18; 527 NW2d 13 (1994).