

[Cite as *Toledo Heart Surgeons, Inc. v. The Toledo Hosp.*, 2003-Ohio-5172.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Toledo Heart Surgeons, et al.

Court of Appeals No. L-02-1059

Appellees

Trial Court No. CI-00-2618

v.

The Toledo Hospital, et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: September 30, 2003

* * * * *

Sandra A. Westfall, Karen A. Novak, Andrew B. Wachler and
Robert S. Iwrey, for appellees.

Cary Rodman Cooper, for appellants.

* * * * *

KNEPPER, J.

{¶1} This is an appeal from the judgment of the Lucas County Court of Common Pleas which granted the motion for summary judgment filed by appellees, Toledo Heart Surgeons, Inc., and Xavier Mousset, M.D. (collectively referred to as "Dr. Mousset"),

{¶2} against The Toledo Hospital and ProMedica Health System, Inc. (collectively referred to as "the hospital"), on its counterclaims alleging defamation and disparagement.

{¶3} On May 15, 2000, Dr. Mousset sought a temporary restraining order against the hospital on claims arising out of the hospital's refusal to renew his contract, which was

granted.¹ On June 12, 2000, the hospital filed counterclaims against Dr. Mousset, alleging defamation and disparagement, arising out of statements made by Dr. Mousset on his website, <http://patientsshouldchoose.com>, to the news media, in published newspaper ads, and in letters to physicians and patients. The trial court granted the hospital summary judgment on Dr. Mousset's claims, which Dr. Mousset appealed. Dr. Mousset's appeal, however, was fully dismissed by this court on October 15, 2002. Accordingly, the only issues on appeal concern the trial court's grant of summary judgment to Dr. Mousset against the hospital on its defamation and disparagement counterclaims.

{¶4} The hospital raises the following assignments of error:

{¶5} "First Assignment of Error:

{¶6} "The trial court erred in holding that Dr. Mousset's statements accusing The Toledo Hospital and ProMedica of making anticompetitive deals and of engaging in many anticompetitive business practices were not actionable, defamatory statements of fact, but rather were protected opinions.

{¶7} "Second Assignment of Error:

{¶8} "The trial court erred in holding that Dr. Mousset's statements that the Toledo Hospital and ProMedica unlawfully failed to maintain an open medical staff and thereby risked losing millions of dollars annually were not actionable, defamatory statements of fact, but rather were protected opinions.

{¶9} "Third Assignment of Error:

{¶10} "The trial court erred in dismissing the Toledo Hospital's disparagement claim."

{¶11} Upon thorough review of the record, applicable law, the hospital's arguments

¹On July 19, 2000, Dr. Mousset filed a complaint for declaratory judgment.

on appeal, and the decision of the trial court, we find that the trial court correctly considered the pertinent facts and issues in dispute, correctly applied the law to the facts, and rendered judgment accordingly. We therefore adopt the well-reasoned decision of the trial court as our own. (See *Toledo Heart Surgeons, Inc. v. The Toledo Hospital* (Nov. 16, 2001), Lucas C.P. No. CI2000-2618, pages 6-17, attached hereto as Appendix A.)

{¶12} The hospital's assignments of error are therefore found not well-taken. On consideration whereof, the court finds substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. The hospital is ordered to pay the court costs of this appeal.

JUDGMENT AFFIRMED.

Richard W. Knepper, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE