

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS J. PETIPREN,
Plaintiff-Appellee,

FOR PUBLICATION
October 20, 2011

v

No. 298088
Sanilac Circuit Court
LC No. 09-032990-NO

RODNEY JASKOWSKI,
Defendant-Appellant,

and

VILLAGE OF PORT SANILAC
Defendant.

RODNEY JASKOWSKI,
Plaintiff/Counter Defendant-
Appellant,

v

No. 301125
Sanilac Circuit Court
LC No. 10-033374-NO

THOMAS J. PETIPREN,
Defendant/Counter Plaintiff-
Appellee.

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

MURRAY, P.J. (*dissenting*).

The trial court held that defendant Rodney Jaskowski was not entitled to absolute governmental immunity under MCL 691.1407(5) because (1) Jaskowski acted outside the scope of his executive authority as chief of police, and (2) Jaskowski was motivated by a “personal vendetta” against plaintiff. Because Michigan law provides no support for such a conclusion under the undisputed material facts presented to the trial court, I respectfully dissent from the

majority's decision to affirm the trial court's order denying Jaskowski's motion for summary disposition.

As acknowledged by the majority, MCL 691.1407(5) provides that judges, legislators, "and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority." *Bennett v Detroit Police Chief*, 274 Mich App 307, 311; 732 NW2d 164 (2007). Thus, the test for whether a chief of police is entitled to absolute immunity is whether the official (1) is "the highest appointed or elected executive of a level of government[.]" *Grahovac v Munising Twp*, 263 Mich App 589, 596; 689 NW2d 498 (2004) (emphasis in the original), and if he is, (2) whether the chief's acts at issue in this case were within his executive authority, *Payton v Detroit*, 211 Mich App 375, 394; 536 NW2d 233 (1995). As the majority correctly recognizes, Jaskowski, as the Chief of Police for the Village of Port Sanilac, is the highest executive official of a level of government. See *id.* (MCL 691.1407(5) applies to a municipal police chief because he is the highest level official within a political subdivision).¹

However, the majority errs in its conclusion that Jaskowski acted outside the scope of his authority when he arrested plaintiff. Whether the highest official acted within the scope of his authority depends upon the nature of the specific acts alleged, the position held by the official, the laws defining the official's authority, and the structure and allocation of powers in that level of government. *American Transmissions, Inc v Attorney General*, 454 Mich 135, 141; 560 NW2d 50 (1997), quoting *Marrocco v Randlett*, 431 Mich 700, 711; 433 NW2d 68 (1988).

Jaskowski submitted an affidavit in which he attested that his executive authority as the chief of police included, amongst many other things, the duty to "arrest offenders." This testimony was based in part on the job description for the chief of police (which was also submitted to the trial court), which sets forth both the "functional responsibilities of the Police Department" as well as the "essential duties and responsibilities" of the position. The majority has quoted the "essential duties" but ignores the "functional responsibilities" which, according to the chief's affidavit, included the general aspects of the job he actually performed while serving as chief. And, as noted, Jaskowski testified that some of the tasks he was expected to, and did perform, were to "control public gatherings and perform miscellaneous services related to public health and safety including" to "arrest offenders." Importantly, plaintiff failed to submit *any* evidence to contradict Jaskowski's affidavit and documentary evidence, so the material facts as

¹ Contrary to plaintiff's arguments, the conclusion that the police department is a level of government emanates from the definitions contained within the governmental tort liability act (GTLA). A police department is a level of government because a "department" of a municipal corporation is a "political subdivision," MCL 691.1401(b), and a "political subdivision" is a "governmental agency" for purposes of governmental immunity, MCL 691.1401(d). *Mack v Detroit*, 467 Mich 186, 204; 649 NW2d 47 (2002); *Grahovac*, 263 Mich App at 599 (GRIFFIN, J. dissenting). Hence, although it may seem strange from a common sense perspective to consider a police department a "level of government", the statute and case law support this conclusion.

to what Jaskowski was expected to do (and actually did) as chief of police were undisputed before the trial court.²

Furthermore, the Legislature has given *all* police officers the authority to pursue, arrest, and detain persons suspected of committing a crime. See *Payton*, 211 Mich App at 392, citing MCL 117.34 (“The authority of the city’s police officers to ‘pursue, arrest and detain’ those suspected of violating the laws of Michigan is expressly granted.”). See also MCL 70.16 (granting village police officers power to preserve quiet and good order). Because Jaskowski was the highest executive official within the police department, and the authority granted to that executive position included the ability to arrest offenders, he acted within the scope of his executive authority when he arrested plaintiff.³

Plaintiff spends a significant amount of time arguing that Jaskowski was not entitled to absolute immunity because he was motivated by a “personal vendetta” against plaintiff, and because Jankowski “was acting upon his personal biases against individuals who looked different from him and played music that was unacceptable to him.” And, as noted earlier, the trial court’s decision was in part based upon Jaskowski being motivated by this perceived “personal vendetta.” However, whether any of these allegations are true is of no moment, and any facts pertaining to these allegations are certainly not material, for they have no bearing on the legal issue presented. A unanimous Supreme Court held more than a decade ago that there is no “malevolent heart” exception to absolute immunity, *American Transmissions*, 454 Mich at 143-144, and we have more recently held that in light of *American Transmissions*, whether a defendant acted with “an improper motive and purpose in” committing the acts at issue was “meaningless.” *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 594; 640 NW2d 321 (2001). Consequently, to the extent the trial court’s decision rested on a perceived “personal vendetta” that Jankowski had against plaintiff, that ruling had no legal support under Michigan law.

Based on the foregoing, Jankowski was entitled to absolute immunity under MCL 691.1407(5), and I would reverse and remand for entry of an order granting defendant’s motion

² The majority has effectively ignored Jaskowski’s affidavit, preferring instead to rely upon its own reading of the job description. However, because Jaskowski’s affidavit is undisputed, and it reveals that his actual duties extended to those matters listed under the “functional responsibilities” of the department, we must accept as true the factual statements of his actual job duties.

³ While the majority finds that the reasoning of *Scozzari v Clare*, 723 F Supp 2d 945 (ED Mich, 2010), “best reflects the legislative intent expressed in the words of MCL 691.1407(5)[,]” slip op, p 11, *Scozzari* is not persuasive. *Lee v Nat’l Union Fire Ins Co*, 207 Mich App 323, 328; 523 NW2d 900 (1994). The pivotal basis of the court’s holding was that defendant *failed to address* whether his authority extended to those also exercised by a patrol officer. *Scozzari*, 723 F Supp 2d at 967. To the contrary, Jaskowski *has* provided undisputed evidence of his authority to arrest, both as a matter of fact and law.

for summary disposition.

/s/ Christopher M. Murray