

STATE OF MICHIGAN
COURT OF APPEALS

JOHN DOE,

Plaintiff-Appellant,

v

DEPARTMENT OF MANAGEMENT & BUDGET,
BUREAU OF STATE LOTTERY,

Defendant-Appellee.

UNPUBLISHED
February 25, 1997

No. 183993
Court of Claims
LC No. 93-15011-CM

Before: White, P.J., and Griffin and D.C. Kolenda,* JJ.

PER CURIAM.

Plaintiff appeals from an order granting summary disposition for defendant dismissing plaintiff's claims in tort and contract arising out of defendant's refusal to pay plaintiff the \$18 million jackpot for the Lotto 47 drawing on July 1, 1992 after plaintiff allegedly discarded the winning ticket upon being given incorrect information by defendant. We affirm.

Plaintiff testified at deposition that he held the winning ticket for the July 1 drawing, which he either purchased or found outside the store where he had purchased a ticket. In November, 1992, he discovered that he held the winning ticket when he checked with a woman who maintained a record of all winning lottery numbers obtained directly from the television broadcast. He then made two photocopies of the ticket and put it away for safekeeping. He did not attempt to collect the prize at that time because he was going through a divorce. He did not tell anyone about the ticket because he was "paranoid" about someone taking it. Around January 31, 1993, plaintiff heard television reports that the \$18 million prize had not been claimed. The winning numbers that were broadcast in those reports did not match the numbers on the ticket plaintiff believed to be the winning ticket. Plaintiff then checked the Detroit News and saw an article containing the same information and numbers as the television broadcast. Plaintiff called defendant the next day and spoke to the female who answered the phone. He asked which numbers won the July 1 Lotto 47 drawing and was given the same numbers reported by the media. He asked if she was "absolutely sure" and was told "yes sir, we don't make mistakes."

* Circuit judge, sitting on the Court of Appeals by assignment.

He then threw away the ticket without further inquiry. In late June, he saw another television report, this time with the numbers that were on the ticket. He called defendant's public relations director and informed her that he had had the winning ticket but had thrown it away because incorrect information was provided, and that he had a photocopy. The public relations director later informed plaintiff that defendant would not honor the claim. Plaintiff filed a formal claim for payment and then filed suit.

Defendant maintained that suit was barred and asserted that the photocopy of the ticket was fraudulent. Defendant's employee testified that information from the ticket machine that issued the alleged winning ticket was downloaded, and revealed that a ticket with the winning numbers was issued July 2, but not July 1. Defendant further asserted that the winning ticket was purchased in Hillsdale, not at the party store as alleged by plaintiff, and that various numbers on the photocopy indicated that it was fraudulent. Plaintiff's expert, however, opined that the photocopy was not altered.

Defendant moved for summary disposition, alleging both that it had statutory tort immunity pursuant to MCL 691.1407(1); MSA 3.996(107)(1), and that plaintiff otherwise failed to state a contract claim upon which relief could be granted because plaintiff had not alleged that he had presented the actual winning ticket to defendant. The court granted defendant's motion on both grounds and dismissed plaintiff's claims. With regard to plaintiff's tort claims, the court agreed that defendant enjoyed governmental immunity. It held that the operation of the state lottery was not a proprietary function because it was not conducted to generate a profit, given that all net lottery proceeds were deposited into the state school aid fund as required by statute. It therefore held that operation of the lottery did not fall under the statutory exception to governmental immunity. With regard to plaintiff's contract claim, the trial court noted that plaintiff's admitted failure to present the actual winning ticket precluded any recovery under a contract theory, citing *Ramirez v Bureau of State Lottery*, 186 Mich App 275, 279; 463 NW2d 245 (1990).

II

A lottery winner's entitlement to the lottery prize is governed by principles of contract law. *Paulsen v Bureau of State Lottery*, 167 Mich App 328, 334; 421 NW2d 678 (1988); cf. *Ramirez, supra* at 279. Disputed issues are governed, inter alia, by the procedural provisions of the lottery itself, in this case the Lottery Rules promulgated by defendant pursuant to the Legislative mandate in MCL 432.11(1); MSA 18.969(11)(1). Cf. *Ramirez, supra* at 282; *Coleman v Bureau of State Lottery*, 77 Mich App 349, 351, 258 NW2d 84 (1977).

Both the Lottery Act of 1972 and the lottery rules promulgated thereunder refer generally to the "holder" of a winning ticket. MCL 432.11(2)(e); MSA 18.969(11)(2)(e); 1979 AC, R 432.16(2) and R 432.17(6). A holder of a winning ticket must make a formal claim:

A claimant shall fill out a *claim form*, present the form *with the winning ticket* and receive a copy of the claim form as his receipt. [R 432.16(4) (emphasis added).]

After such a claim is made,
[t]he person whose name is entered on the *claim form* is considered the *bearer* of the ticket, notwithstanding that the name of another person may appear on the ticket face or reverse side. Payment of any prize shall be made to the *bearer* [R 432.17(1) (emphasis added).]

In granting summary disposition for defendant, the trial court relied on *Ramirez, supra*. In *Ramirez*, the plaintiff had substantial evidence that he purchased the winning ticket, but was unable to produce the actual ticket, and therefore failed to allege that he had presented the winning ticket for the prize he sought to claim. *Id.*, 277-279. The trial court dismissed on this basis and this Court affirmed, concluding that the presentment of the winning ticket was a condition precedent to defendant's contractual duty to pay the prize. *Id.*, 282.

Plaintiff acknowledges the rule set forth in *Ramirez*, but alleges that he was prevented from complying with the ticket presentment requirement due to defendant's negligence in providing incorrect information, and argues that defendant is therefore estopped from refusing to pay him the prize. We cannot agree.

Assuming the doctrine relied on by plaintiff would operate to excuse the requirement of presenting the actual winning ticket in an appropriate case, we cannot agree that it is applicable here. Viewing the evidence in the light most favorable to plaintiff, plaintiff had information that he possessed the winning ticket. He understood this information to have been obtained directly from the initial television broadcast of the lottery drawing. After obtaining the information, plaintiff did nothing to collect the prize. He then discarded the ticket after the news reports, relying only on the telephone representations of an unidentified employee of defendant. He did not seek official verification and did not submit the ticket for payment. We conclude that defendant did not prevent plaintiff from satisfying the condition precedent. Plaintiff chose to discard the ticket without further verification. We will not relieve plaintiff of the condition under these circumstances. We further note that the dispute concerning the authenticity of the photocopy in the instant case underscores the need for the original ticket.

As to plaintiff's negligence claims, we need not decide whether the court erred in holding the lottery to be a governmental function because we conclude that plaintiff may not maintain a negligence action as a means of circumventing the requirement of presenting the winning ticket.

Affirmed.

/s/ Helene N. White
/s/ Richard Allen Griffin
/s/ Dennis C. Kolenda