

STATE OF MICHIGAN
COURT OF APPEALS

CRAIG BROCK,

Plaintiff-Appellant,

v

GENESEE COUNTY BOARD OF
COMMISSIONERS, ROBERT WEISS, JOSEPH
WILSON, ART EVANS, JAMES GEARY,
CHARLES ABRAHAM, and ROBERT AGUIRRE,

Defendants-Appellees.

UNPUBLISHED
December 16, 1997

No. 193602
Genesee Circuit Court
LC No. 93-025536 CZ

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the summary dismissal of his tort claims on the ground that his claims were barred by governmental immunity. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

A county prosecutor is authorized to claim absolute immunity under MCL 691.1407(5); MSA 3.996(107)(5), for injuries to persons or damages to property whenever the prosecutor is acting within the scope of the prosecutor's executive authority. *Bischoff v Calhoun County Prosecutor*, 173 Mich App 802, 806; 434 NW2d 249 (1988). However, the intentional use or misuse of governmental authority for a purpose unauthorized by law is neither an exercise of a governmental function nor an act within the scope of governmental authority subject to immunity. *American Transmissions, Inc v Attorney General*, 454 Mich 135, 141; 560 NW2d 50 (1997); *Marrocco v Randlett*, 431 Mich 700, 707-708; 433 NW2d 68 (1988).

Defendant Weiss's decision to prosecute plaintiff fell within the scope of Weiss's executive authority as the county prosecutor. Const 1963, art 7, § 4; *Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672, 683; 194 NW2d 693 (1972); *Simmons v Telcom Credit Union*, 177 Mich App 636, 639; 442 NW2d 739 (1989). Accordingly, Weiss is immune from liability for malicious

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

prosecution pursuant to MCL 691.1407(5); MSA 3.996(107)(5). *American Transmissions, supra* at 144; *Payton v City of Detroit*, 211 Mich App 375, 393; 536 NW2d 233 (1995).

With regard to sheriff's deputies Geary and Abraham, however, the trial court erroneously concluded that they were entitled to governmental immunity with respect to plaintiff's malicious prosecution claim. Because Geary and Abraham are government employees, they are not immune from liability for intentional torts for which liability was imposed before July 7, 1986. MCL 691.1407(3); MSA 3.996(107)(3); *Sudul v City of Hamtramck*, 221 Mich App 455, 458 (Corrigan, J); 480-481 (Murphy, J); 562 NW2d 478 (1997). Individual police officers were not entitled to governmental immunity in the face of malicious prosecution claims before July 7, 1986. *Belt v Ritter*, 385 Mich 402, 405-408; 189 NW2d 221 (1971). Nevertheless, the trial court reached the correct result for an incorrect reason. Plaintiff failed to establish a prima facie case of malicious prosecution where the documentary evidence demonstrated probable cause for the issuance of an arrest warrant and an absence of malice on the part of the deputies. *Payton, supra* at 375.

Plaintiff's attempt to hold the remaining defendants vicariously liable must also fail. Vicarious liability is derivative. *Mallory v City of Detroit*, 181 Mich App 121, 124; 449 N2d 115 (1989). Accordingly, because the trial court correctly granted summary disposition with regard to plaintiff's claim against the prosecutor and the sheriff deputies, the remaining defendants cannot be vicariously liable for the actions of the prosecutor and the deputies.

Finally, plaintiff's claim for negligent investigation is also barred by governmental immunity where the documentary evidence established as a matter of law that the deputies did not perform their investigation in a grossly negligent manner. MCL 691.1407(2)(c); MSA 3.996(107)(2)(c).

Affirmed.

/s/ Gary R. McDonald
/s/ Myron H. Wahls
/s/ John R. Weber