

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL MILLER and RITA MILLER,

Plaintiffs-Appellees,

v

TIMOTHY MALKASIAN,

Defendant-Appellant.

UNPUBLISHED

August 7, 1998

No. 190472

Oakland Circuit Court

LC No. 93-461877 NO

ON REMAND

Before: White, P.J., and MacKenzie and Wahls, JJ.

PER CURIAM.

This case returns for reconsideration in light of *Gibbons v Caraway*, 455 Mich 314; 565 NW2d 663 (1997), pursuant to the Supreme Court's order of remand, 457 Mich ____ (May 28, 1998).

Plaintiff Daniel Miller, a police officer, was dispatched on an emergency basis to investigate a report of a screaming woman in an apartment within an apartment complex owned by defendant Malkasian. In approaching the designated unit, Officer Miller observed that ceiling tiles had been removed, and he concluded that the perpetrator had gained access to the apartment in this fashion. Miller entered the apartment, and saw signs of a struggle and a trail of blood leading to a window. Miller then looked through a window and observed a man dragging a screaming woman through the parking lot. He then ran down the back stairs of the apartment building toward the parking lot, where he tripped on a glass light fixture globe that had been left in the middle of the stairs while the hallway was being painted. Officer Miller felt pain in his knee when he landed, but managed to persevere, proceed to the parking lot, and arrest the kidnapper.

Miller then filed suit against Malkasian for negligence, claiming that the leaving of the light fixture in the center of the stairs, the inadequacy of the lighting in the stairwell, and the failure to have a proper handrail were negligent acts or omissions which tortiously caused his injuries. Mrs. Miller sued for loss of consortium. Defendant sought summary disposition on the basis of the Fireman's Rule, and the motion was denied by the circuit court. The parties then stipulated to entry of a conditional judgment,

awarding total damages to plaintiffs in the amount of \$77,500, without prejudice to defendant's right on appeal to assert the applicability of the Fireman's Rule.

Initially, citing *Roberts v Vaughn*, 214 Mich App 625, 628-629; 543 NW2d 79 (1995),¹ and *Woods v City of Warren*, 439 Mich 186, 190-191; 482 NW2d 696 (1992), this Court reversed the circuit court, holding that the fact that Officer Miller was injured in the course of performing his duties as a public safety officer precluded a negligence action under the Fireman's Rule. This Court expressed its admiration for Officer Miller's "commendable devotion to duty and heroism under the circumstances," but was compelled by precedent to deny compensation.

We are now directed to reconsider our decision in light of *Gibbons v Caraway*, *supra*. Because the instant case does not involve subsequent negligence or injury that was sustained while off-duty, not in the performance of a police function, we conclude that *Gibbons* does not justify our departing from our original opinion in this case.

We further conclude that the various opinions in *Gibbons* do not reject the Court's decision in *Reetz v Tipit, Inc*, the companion case to *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347; 415 NW2d 178 (1987), and that application of *Reetz* to the instant case requires reversal. We are again compelled to reverse the conditional judgment entered by the circuit court and remand for entry of an order granting defendant's motion for summary disposition predicated on the Fireman's Rule.

Reversed. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Barbara B. MacKenzie

/s/ Myron H. Wahls

¹ The Supreme Court granted leave to appeal in *Roberts*, *supra*, limited to the unrelated issue whether the fireman's rule is applicable to a volunteer firefighter. 457 Mich 865 (1998),