

STATE OF MICHIGAN
COURT OF APPEALS

DONALD JAMES ENBODY,

Plaintiff-Appellant,

v

CHRISTOPHER BRENT ACKLEY and GLEN J.
ACKLEY,

Defendants-Appellees.

UNPUBLISHED

January 12, 1999

No. 199953

Kent Circuit Court

LC No. 96-003651 NI

AMENDED

Before: MacKenzie, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Plaintiff Donald James Enbody appeals as of right a trial court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). The trial court granted summary disposition on the basis of the 'fireman's rule,' which bars recovery by public safety personnel for injuries sustained in the course of duty. We reverse and remand for trial.

Plaintiff is a volunteer fire fighter and rescue worker for the Oakfield Township Volunteer Fire Department. On August 15, 1993, he received a dispatch call at his home regarding a possible drowning incident at a nearby pool. Plaintiff immediately responded to the call, turned on the overhead lights and siren on his vehicle and proceeded toward the incident site. En route, his vehicle was hit just behind the driver's door by a vehicle operated by defendant Christopher Ackley and owned by defendant Glen Ackley.¹ Plaintiff stated that as he approached a curved, gravel section of Stacey Road, he was traveling only twenty-five to thirty miles per hour.² Defendant's car, containing defendant and three friends, approached the curve from the opposite direction. Plaintiff stated that defendant lost control of his vehicle, crossed the center of the unmarked road and struck his vehicle, even though he attempted to avoid the accident by moving to the shoulder of the road. Defendant disagrees and claims that he did not cross the center of the road.

After the accident, plaintiff began to suffer from pain in his neck and arm. He subsequently brought this negligence suit against defendants, and in response defendants filed a motion for summary disposition on the basis of the 'fireman's rule'. The trial court granted summary disposition to

defendants pursuant to MCR 2.116(C)(8) and (C)(10), stating, “I have to conclude that going to the scene of a fire or a rescue, in this case a drowning person that he was going to try to revive, is inherent to being a fireman.”

This court reviews decisions on motions for summary disposition *de novo* to determine if the moving party was entitled to judgment as a matter of law. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).

MCR 2.116(C)(8) permits summary disposition when the opposing party has failed to state a claim upon which relief can be granted. A motion under this subsection determines whether the opposing party’s pleadings allege a *prima facie* case. The court must accept as true all well-pleaded facts. Only if the allegations fail to state a legal claim is summary disposition pursuant to MCR 2.116(C)(8) valid.

* * *

MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to [judgment] as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Id.*]

The common law ‘fireman’s rule’ was adopted in Michigan in *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347, 370; 415 NW2d 178 (1987). The ‘fireman’s rule’ prevents police officers and fire fighters from recovering for injuries sustained in the course of duty. *Id.* at 371. The Supreme Court adopted this rule mainly on the basis of “the foundational policy rationale that the purpose of safety professions is to confront danger and, therefore, the public should not be liable for damages for injuries occurring in the performance of the very function police officers and fire fighters are intended to fulfill.” *Id.* at 368. Generally, the rule applies to two types of injuries: (1) “those deriving from the negligence [requiring] the safety officer’s presence;” and (2) “those stemming from the normal risks of the safety officer’s profession.” *Woods v City of Warren*, 439 Mich 186, 196; 482 NW2d 696 (1992). The focus must be on whether the injury stems directly from the safety officer’s professional functions. *Id.* at 193. Nevertheless, since case-by-case analysis of this issue requires “balanc[ing] the underlying rationales with the interest of allowing recovery when those rationales are not implicated,” *Kreski, supra* at 371, the ‘fireman’s rule’ may not apply where the policy rationales are not applicable. *McCaw v T & L Operations, Inc*, __ Mich App __; __ NW2d __ (Docket No. 206722, issued 6/23/98).

Accordingly, we must first determine whether the policy rationale behind the ‘fireman’s rule’ is implicated by the instant circumstances involving a person in plaintiff’s position, that of a volunteer fire fighter and rescue worker. The Supreme Court recently addressed this issue directly in *Roberts v Vaughn*, __ Mich __; __ NW2d __ (Docket No. 105364, released 12/28/98). In this case, the Court reversed the Court of Appeals, which held that the ‘fireman’s rule’ did extend to volunteer fire fighters.

Roberts v Vaughn, 214 Mich App 625, 630; 543 NW2d 79 (1995). The Supreme Court stated that it did not agree with the Court of Appeals determination that no valid distinction existed between professional and volunteer firefighters:

[N]o duty is owed [by the public] for ordinary negligence because professional safety officers are presumably extensively trained and specially *paid* to confront dangerous situations in order to protect the public, and that, therefore, these safety officers undertake their profession with the knowledge that their personal safety is at risk. Because of the unique relationship between the public, and safety officer, and those third parties who require the services of the officer, the otherwise applicable duty of care toward the safety officer is replaced by the third party's contribution to tax-supported compensation for those services: when injury occurs, liberal compensation is provided. This relationship is clearly missing between an uncompensated volunteer firefighter and a third party. [*Roberts, supra*, __ Mich __, slip op at 6-7 (footnotes omitted).]

Thus, the Supreme Court held that the 'fireman's rule' should not bar recovery for injuries sustained by a volunteer safety officer. Applying such holding to the case at issue here, we find that the trial court improperly granted summary disposition in favor of defendants on the basis of the 'fireman's rule,' barring recovery for injuries sustained by a volunteer fire fighter. Instead, the 'fireman's rule' does not apply to plaintiff as a volunteer fire fighter, and any possible recovery for injuries must not be barred on the basis of such rule.

For this reason, we reverse the trial court's grant of summary disposition in this case and remand for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Richard A. Bandstra

/s/ Stephen J. Markman

¹ "Defendant" hereafter refers to Christopher Ackley.

² Plaintiff stated that he may have reached speeds up to sixty miles per hour while driving on one road, then turned on to another road on which he drove up to forty-five miles per hour. Once he reached Stacey Road, he was driving only twenty-five to thirty miles per hour. We have no evidence regarding the legal speed limits on these roads.