

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT MCDONALD,

Plaintiff-Appellant,

v

CITY OF DETROIT and  
OFFICER DARINE JEFFERSON,

Defendants-Appellees.

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UNPUBLISHED

March 26, 1999

No. 203263

Wayne Circuit Court

LC No. 96-612178 NO

Before: Doctoroff, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm.

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) after concluding that defendant City of Detroit was entitled to governmental immunity. We disagree. We review a trial court's grant or denial of a motion for summary disposition de novo. *Hawkins v Mercy Health Services*, 230 Mich App 315, 324; 583 NW2d 725 (1998). When deciding a motion for summary disposition brought pursuant to MCR 2.116(C)(7), we must consider all documentary evidence submitted by the parties. *Iovino v State of Michigan*, 228 Mich App 125, 131; 577 NW2d 193 (1998). All well-pleaded allegations are accepted as true and considered in a light most favorable to the nonmoving party to determine whether the defendant is entitled to judgment as a matter of law. *Id.*

Here, in order for plaintiff to have defeated the City of Detroit's motion for summary disposition pursuant to MCR 2.116(C)(7), he would have had to allege facts giving rise to an exception to a claim of governmental immunity. *Iovino, supra*, 228 Mich App 131. Plaintiff argues that his claim falls within an exception to governmental immunity because his injuries were the result of a violation of his rights under the Michigan Constitution. *Smith v Dep't of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987), *aff'd* on other grounds sub nom *Will v Michigan Dep't of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989). To support such a claim, plaintiff must show that he was deprived

of a constitutional right by virtue of a custom or policy of defendant City of Detroit. *Jones v Powell*, 227 Mich App 662, 677; 577 NW2d 130 (1998).

However, a review of plaintiff's complaint reveals that plaintiff did not allege facts demonstrating that defendant City of Detroit deprived him of his constitutional rights by virtue of a custom or policy. Plaintiff alleged that defendant City of Detroit failed to "adequately train or supervise its officers." However, plaintiff alleged no facts in support of this assertion. Because plaintiff failed to allege facts to show that a custom or policy of defendant City of Detroit deprived him of a constitutional right, the trial court properly granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).

Plaintiff next argues that the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) with respect to defendant Jefferson because there was a genuine issue of material fact with respect to whether the manner in which defendant Jefferson used handcuffs constituted excessive force. We disagree. Again, a trial court's grant or denial of a motion for summary disposition is reviewed de novo. *Hawkins, supra*, 230 Mich App 324. A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. *First Security Savings Bank v Aitken*, 226 Mich App 291, 304; 573 NW2d 307 (1997). In ruling on the motion, the trial court must consider the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence submitted by the parties. *Id.* Giving the benefit of all reasonable doubt to the opposing party, the trial court must determine whether a record might be developed that would leave open an issue of material fact upon which reasonable minds could differ. *Id.* The moving party must specifically identify the issues on which there are no disputed facts and must support its position with affidavits, depositions, or other documentary evidence. *Munson Medical Center v Auto Club Ins Ass'n*, 218 Mich App 375, 386; 554 NW2d 49 (1996). The opposing party then bears the burden of showing, by evidentiary materials, that a dispute exists regarding a genuine issue of material fact. *Id.*

In their motion for summary disposition, defendants argued that Officer Jefferson did not commit the acts alleged in plaintiff's complaint. In support of their motion, defendants offered Officer Jefferson's affidavit stating that his only contact with plaintiff was transporting him from Henry Ford Hospital to the 13<sup>th</sup> Precinct. Defendants also submitted plaintiff's own deposition testimony that the officer that beat him was not one of the officers that transported him to the precinct. In addition, defendants noted that, although plaintiff testified at his deposition that he was handcuffed by two Detroit Police Officers at Henry Ford Hospital, plaintiff did not specifically name defendant Jefferson as the officer who handcuffed him. In response to defendants' motion for summary disposition, plaintiff offered medical and dental records to show that he was injured. Plaintiff also submitted a cash bond issued after his arraignment, which listed Officer Jefferson as the arresting officer. However, plaintiff failed to submit any documentary evidence indicating that Officer Jefferson was the officer who handcuffed him. To assume that Officer Jefferson handcuffed defendant would be mere speculation, which is insufficient to establish a genuine issue of material fact. *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 192-193; 540 NW2d 297 (1995). We also note that, because defendants submitted documentary evidence indicating that there was probable cause to arrest plaintiff, and plaintiff failed to submit any evidence to the contrary, summary disposition was properly granted with respect to plaintiff's false arrest and false imprisonment claims. *Young v Barker*, 158 Mich App 709, 720; 405 NW2d 395

(1987). Accordingly, plaintiff failed to satisfy his burden of establishing

a genuine issue of material fact for trial, and the trial court properly granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski

/s/ William C. Whitbeck