STATE OF MICHIGAN

COURT OF APPEALS

ULANDA A. MCEACHRAN,

Plaintiff-Appellant,

v

OFFICER KENNETH MACKEY and CITY OF WYANDOTTE,

Defendants-Appellees.

UNPUBLISHED
March 26, 1999

No. 206215
Wayne Circuit Court
LC No. 96-636891 NZ

Before: Murphy, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants in this negligence/governmental immunity case pursuant to MCR 2.116(C)(7), (8) and (10). We affirm.

Plaintiff first argues that the trial court erred in granting summary disposition with regard to defendant Mackey. We disagree. We review a trial court's decision to grant summary disposition de novo on appeal. *Terry v Detroit*, 226 Mich App 418, 423; 573 NW2d 348 (1997). Summary disposition is proper under MCR 2.116(C)(7) for a claim that is barred because of immunity granted by law. *Smith v Kowalski*, 223 Mich App 610, 616; 567 NW2d 463 (1997). When reviewing a grant of summary disposition on the ground that the claim is barred by governmental immunity, this Court considers all documentary evidence submitted by the parties. *Id*. All well-pleaded allegations are accepted as true and construed in favor of the non-moving party. *Id*. A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim. *Markis v Grosse Pointe Park*, 180 Mich App 545, 551; 448 NW2d 352 (1989). It must be decided on the pleadings alone, with all well-pleaded facts and reasonable inferences drawn therefrom taken as true. *Id*. When determining whether the trial court properly granted summary disposition pursuant to MCR 2.116(C)(10), we review the record de novo to determine whether the prevailing parties were entitled to the judgment as a matter of law. *Westfield Cos v Grand Valley Health Plan*, 224 Mich App 385, 387-388, 568 NW2d 854 (1997).

We conclude that the trial court did not err in granting summary disposition in favor of defendant Mackey on the basis of his claim of governmental immunity. The governmental tort liability act (GTLA),

MCL 691.1401 *et seq*.; MSA 3.996(101) *et seq*., broadly grants immunity to governmental employees to enable them to enjoy a certain degree of security as they go about performing their jobs. *Pavlov v Community Emergency Medical Service, Inc*, 195 Mich App 711, 722; 491 NW2d 874 (1992). Defendant Mackey can claim the protection of governmental immunity unless he was acting in so reckless a manner as to constitute "gross negligence." *Vermilya v Dunham*, 195 Mich App 79, 82; 489 NW2d 496 (1992). Gross negligence "means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c); MSA 3.996(107)(2)(c); see *Jackson v County of Saginaw*, 458 Mich 141, 147-152; 580 NW2d 870 (1998).

Although the facts leading up to plaintiff's fall are in dispute, plaintiff has presented no evidence, in our judgment, from which reasonable minds could conclude that defendant Mackey was grossly negligent in his conduct. See *Jackson, supra*. Wyandotte police officers, defendant Kenneth Mackey and Tom Sheets, were dispatched to a home in Wyandotte because of a domestic disturbance reported at the residence. Plaintiff's son, Tommy McEachran, had called the police seeking assistance. Apparently, plaintiff and her husband at one time both resided at the home, but because the couple was involved in a divorce, plaintiff was no longer living at the house. According to Mackey, the officers who had worked the previous shift had also been called to the house earlier in the day. These officers had informed Mackey that plaintiff had threatened to return to the house with a weapon.

According to Mackey, when he and Sheets arrived at the house, Tommy met them in the front of the home. Tommy informed the officers that plaintiff no longer lived at the address and that his parents were in the process of getting a divorce. Tommy also informed the officers that plaintiff was trying to steal his father's motorcycles. Tommy escorted Mackey to the backyard where several people were gathered, including plaintiff. Plaintiff and two male individuals were in a shed and appeared to be trying to forcibly remove a lock from some motorcycles. Plaintiff, however, testified that she was standing in front of the shed, not in the shed. Mackey testified that he asked plaintiff for identification several times and to leave the shed but plaintiff refused to comply with his requests. Plaintiff admitted that she refused to provide the officer with identification, but contended that she explained to Mackey that she owned the house. Mackey testified that upon plaintiff's continued refusal to comply with his requests, he "took hold" of her arm to escort her out of the shed, so that he could speak to her outside the earshot of her companions, whereupon plaintiff lost her balance and fell to her knees but immediately got back up to her feet. Mackey stated that he made no attempt to pull plaintiff from the shed. Although plaintiff alleged in her complaint that Mackey "jerked her to the ground," she testified in her deposition that "the next thing was I had an officer grabbing my jacket here and I'm going down to the cement."

In viewing the evidence in the light most favorable to plaintiff, there is no evidence on this record that would support a finding that officer Mackey was grossly negligent in the performance of his duty. On the contrary, the evidence reveals that officer Mackey responded to a potentially volatile situation, involving a domestic dispute between plaintiff and her husband, and encountered plaintiff apparently attempting to steal or assist in stealing a motorcycle. When plaintiff refused to provide officer Mackey with identification, Mackey took hold of plaintiff's jacket around the arm, causing plaintiff to fall to the ground. There is no evidence to support that officer Mackey threw plaintiff to the ground or otherwise

acted in an unreasonable manner. The trial court correctly determined that these facts do not establish gross negligence. See *Cebreco v Music Hall Center for the Performing Arts, Inc*, 219 Mich App 353, 362; 555 NW2d 862 (1996).

We also reject plaintiff's argument that defendant Mackey was not acting within the "scope of his authority" when he was involved in the above-described incident. A government employee is immune from tort liability for discretionary actions taken in good faith during the course of his employment if "he is acting or reasonably believes that he is acting" within the scope of his authority. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 593; 363 NW2d 641 (1984). Under the circumstances presented in this case, officer Mackey's act of taking plaintiff's arm to escort her from the immediate area was clearly with the scope of the his authority.

Plaintiff also argues that the trial court misapplied the gross negligence standard. However, a review of the record reveals that the trial court was aware of the proper standard as provided in MCL 691.1407(2)(c); MSA 3.996(107)(2)(c) and properly applied it.

Plaintiff also argues that defendant Mackey was not entitled to summary disposition on governmental immunity grounds. Specifically, plaintiff maintains that once she told officer Mackey that she was the owner of the house, officer Mackey's continued presence on the property constituted trespassing. We disagree. Defendant Mackey was not a trespasser because he entered private property in response to a call requesting assistance, and as such, entered "pursuant to public right." *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347, 359-360 n 10; 415 NW2d 178 (1987) (firefighter who enters private property pursuant to public employment does so not as a trespasser but pursuant to public right).

Finally, plaintiff argues that the trial court erred in granting summary disposition to defendant City of Wyandotte because it was vicariously liable for defendant Mackey's grossly negligent and unlawful conduct. Again, we disagree. "A governmental agency can be held vicariously liable only when its officer, employee, or agent, acting during the course of employment and within the scope of authority, commits a tort while engaged in an activity which is nongovernmental or proprietary, or which falls within a statutory exception" to the immunity granted by the GTLA. *Ross*, *supra* at 625. Under the facts of this case, we conclude that officer Mackey was acting during the course of employment, within the scope of authority, and performing a governmental function when plaintiff fell. Further, plaintiff failed to demonstrate the applicability of an exception to the immunity granted by the GTLA. Accordingly, the trial court did not err in granting summary disposition to defendant City of Wyandotte.

Affirmed.

/s/ William B. Murphy
/s/ Hilda R. Gage
/s/ Brian K. Zahra