

STATE OF MICHIGAN
COURT OF APPEALS

RAPHAEL WASHINGTON,

Plaintiff-Appellant,

v

MARIE ANN WEBSTER,

Defendant-Appellee,

and

CITY OF DETROIT and ALLSTATE INSURANCE
COMPANY,

Defendants.

UNPUBLISHED

May 21, 1999

No. 205557

Oakland Circuit Court

LC No. 96-525552 NI

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from a final order of dismissal entered after the trial court granted summary disposition in favor of defendant Marie Ann Webster (defendant) pursuant to MCR 2.116(C)(10). We reverse and remand for reinstatement of plaintiff's claim against Webster only.

On June 11, 1996, plaintiff, a Detroit police officer, was struck and injured by a vehicle driven by defendant. On that day, plaintiff was assigned to a special detail that was providing a motorcycle escort for a motorcade that was driving a visiting South African dignitary between Pontiac and Detroit. At the time of the collision, plaintiff and other motorcycle officers dropped out of the motorcade after it began to rain and took shelter under a highway overpass. After donning protective clothing, the other motorcycle officers left to rejoin the motorcade. However, plaintiff continued to wait along the side of the highway. Shortly thereafter, plaintiff was struck by defendant's car. In ruling that plaintiff's negligence claim against defendant was barred by the firefighter's rule, the trial court reasoned:

Because the plaintiff was admittedly on I-75 in connection with his duties as a traffic officer, the Court finds that the [firefighter's] rule bars recovery. Plaintiff argues

that the rule should not apply because he was not injured while in the process of escorting a motorcade. However, in *Stehlik [v Johnson (On Rehearing)]*, 206 Mich App 83; 520 NW2d 633 (1994) . . . , the Court held that the rule applied even though Stehlik was not actually on patrol but was returning from an appearance in court because he was on duty . . . and was in his patrol area at the time the accident occurred. Plaintiff here was likewise on duty and in an area to which he had been assigned.

The firefighter's rule generally bars police officers from recovering for injuries (1) sustained as a result of the negligence that caused the officer's presence, or (2) stemming from the normal risks of the officer's profession. *Woods v City of Warren*, 439 Mich 186, 196; 482 NW2d 696 (1992). "The rationale for the rule is 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 . . . are intended to fulfill.'" *Atkinson v Detroit*, 222 Mich App 7, 10; 564 NW2d 473 (1997), quoting *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347, 368; 415 NW2d 178 (1987). A creature of public policy, application of the firefighter's rule depends in great part on the specific facts of any given case. *Gibbons v Caraway*, 455 Mich 314, 322; 565 NW2d 663 (1997).

Plaintiff argues that the trial court erred in granting summary disposition because at the time he was injured he was not engaged in his duties as a police officer. We agree. "On appeal, a trial court's determination of a motion for summary disposition is reviewed de novo." *Atkinson, supra* at 9. A motion for summary disposition under MCR 2.116(C)(10)

tests the factual basis underlying a plaintiff's claim. 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 damages 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. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

After reviewing the documentary evidence in a light most favorable to plaintiff, we conclude that plaintiff's claim should not be barred because such an action does not further the public policy rationale which underlies the firefighter's rule. Plaintiff had dropped out of the motorcade to take shelter from a downpour, approximately ten minutes had elapsed since the motorcade left the area, and the traffic that had been blocked by the police escort had been released. Plaintiff was not blocking ramps or intersections, the duties performed by motorcade escorts, but was waiting for the weather to clear so he could rejoin the motorcade and resume those duties. See *Atkinson, supra* at 11 (observing that the plaintiff-officer in that case "was not engaged in his specific police assignment . . . at the time of his injury"). Instead, he was injured during a discretionary break in his motorcade duties. See *id.* We do not believe that plaintiff's injury stems from the normal risks associated with his profession. *Woods, supra* at 196. Accordingly, we reverse the trial

court's decision to grant summary disposition in favor of defendant and remand for reinstatement of plaintiff's action against her.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff