STATE OF MICHIGAN

COURT OF APPEALS

GAIL MUNSCHY,

Plaintiff-Appellant,

v

COMMUNITY MENTAL HEALTH SERVICES OF MONTCALM COUNTY,

Defendant-Appellee.

UNPUBLISHED
August 3, 1999

No. 208041
Montcalm Circuit Court
LC No. 96-000856 CZ

Before: McDonald, P.J., and Sawyer and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition on the basis of governmental immunity. We affirm.

Plaintiff argues this Court should reverse the trial court's grant of summary disposition because defendant is not entitled to governmental immunity in this case. We disagree. This Court reviews the trial court's grant of summary disposition pursuant to MCR 2.116(C)(7) de novo, considering the pleadings as well as any affidavits and documentary evidence submitted by the parties. *Coleman v Kootsillas*, 456 Mich 615, 618; 575 NW2d 527 (1998).

The Legislature has granted governmental agencies broad immunity from tort suits. MCL 691.1407(1); MSA 3.996(107)(1) provides:

> Except as otherwise provided in this act, all governmental agencies shall be immune from tort liability in all cases wherein the government agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act shall not be construed as modifying or restricting the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

The Michigan Supreme Court has explained that:

> When a governmental agency engages in mandated or authorized activities, it is immune from tort liability, unless the activity is proprietary in nature (as defined in § 13) or falls within one of the other statutory exceptions to the governmental immunity act. Whenever a governmental agency engages in an activity which is not expressly or impliedly mandated or authorized by constitution, statute, or other law (i.e. an *ultra vires* activity), it is not engaging in the exercise or discharge of a governmental function. The agency is therefore liable for any injuries or damages incurred as a result of its tortious conduct. [*Coleman, supra* at 619, quoting *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984).]

Plaintiff argues defendant is not entitled to governmental immunity, but she does not clearly articulate her position. Plaintiff's argument primarily relies on *Richardson v Jackson Co*, 432 Mich 377; 443 NW2d 105 (1989). We fail to see how *Richardson* supports plaintiff's position that defendant is not entitled to governmental immunity.

In *Richardson*, the plaintiff's decedent drowned in or near a public swimming area at Vandercook lake. The plaintiff claimed that the defendant county was wilful and wanton when it created the swimming area, which plaintiff alleged had a dangerous drop-off. *Id.* at 380. This Court ruled that because the defendant had not complied with § 141 of the Marine Safety Act,[1] its operation of the beach was prohibited by § 192 of the Marine Safety Act, and it was not entitled to governmental immunity for its *ultra vires* activity of operating the beach. *Id.* at 380. The Michigan Supreme Court reversed, framing the issue as "how the *Ross* [*v Consumers Powers Co (On Rehearing)*, 420 Mich 567, 591; 363 NW2d 641 (1984)] governmental function test applies to an activity authorized generally by one statute, yet regulated by another." *Richardson, supra* at 381. The Supreme Court explained that the defendant county was authorized to operate the beach, a recreational facility, by a 1917 statute. *Id.* at 381. The Court then recognized that the Marine Safety Act later regulated the operation of public beaches, but explained that the lower courts mistakenly concluded that when the Legislature enacted the Marine Safety Act that it "not only intended to impose a regulatory duty on the operation of public beaches, but also intended to condition all authority to engage in that activity upon compliance with that duty." *Id.* at 383. The Court rejected this conclusion, but explained that if the Marine Safety Act and the statute authorizing the defendant county to operate the public beach were *in pari materia*, it could then conclude that the Legislature intended to modify the grant of authority to the defendant by passing the Marine Safety Act. *Id.* 384. The Court found the statutes were not *in pari materia* because their purposes were different and held that noncompliance with the Marine Safety Act did not revoke the county's authority to operate the beach. *Id.* at 384-385. After reaching this conclusion, the Court discussed when an activity of a governmental agency is *ultra vires*. The Court held *ultra vires* activity is "not activity that a governmental agency performs in an unauthorized manner," but instead, is "activity that the governmental agency lacks legal authority to perform in any manner." *Id.* at 387.

Plaintiff argues that the statutory provisions involved in this case are *in pari materia* because the provisions setting forth the authority to create defendant Community Mental Health facility and the provisions protecting patient confidentiality are all found under the Mental Health Code. We believe plaintiff's argument fails to recognize the import of the Court's holding in *Richardson* that *ultra vires*

activity is "not activity that a governmental agency performs in an unauthorized manner," but instead, is "activity that the governmental agency lacks legal authority to perform in any manner." *Id.* at 387. At the time plaintiff's records were released, § 748 of the Mental Health Code[2] provided that information in the record of a recipient of mental health services, although confidential, could be disclosed under certain circumstances set forth in the statute. Accordingly, defendant did not lack legal authority to perform the activity of releasing records in any manner. The trial court properly held that defendant was entitled to governmental immunity and properly granted summary disposition to defendant under MCR 2.116(C)(7).

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Jeffrey G. Collins

[1] MCL 281.1001 *et seq.*; MSA 18.1287 *et seq.*

[2] MCL 330.1748; MSA 14.800(748). The Legislature amended the statute in 1995 and rewrote the subsections that specified the circumstances under which records could be released. 1995 PA 290.