STATE OF MICHIGAN

COURT OF APPEALS

ROSEMARY KEMP, Personal Representative of the Estate of ELWOOD KEMP, deceased,

Plaintiff-Appellee/Cross-Appellant,

v

SCOTT CIUPAK, JOHNNY RAY COLLINS, HAROLD HOAGLIN, CITY OF ALBION, THE ALBION DEPARTMENT OF PUBLIC SAFETY,

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
December 10, 1999

No. 203733
Calhoun Circuit Court
LC No. 95-000607 NZ

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Defendants appeal as of right and plaintiff cross appeals from a judgment, following a jury trial, awarding plaintiff $55,000 plus attorney fees and costs against the City of Albion, but declaring no cause of action as to plaintiff's individual claims against defendants Scott Ciupak and Johnny Ray Collins. We affirm.

Plaintiff's decedent, Elwood Kemp, died from an overdose of cocaine while in a holding cell at the Albion Department of Public Safety. The arresting officer informed his superior that he suspected Kemp had swallowed some cocaine just prior to his arrest. Plaintiff commenced this action, alleging claims under 42 USC 1983, and state law claims for gross negligence.

First, we find that the trial court did not err in denying defendants' motion for a directed verdict of plaintiff's § 1983 claim based on failure to train. Viewed in a light most favorable to plaintiff, the testimony was sufficient to raise a question of fact as to whether defendants had a policy of inaction amounting to deliberate indifference of Kemp's constitutional rights. *York v Detroit (After Remand)*, 438 Mich 744, 754-756; 475 NW2d 346 (1991); *Allen v Owens-Corning Fiberglass Corp*, 225 Mich App 397, 406; 571 NW2d 530 (1997).

Plaintiff argues the trial court abused its discretion by excluding a police officer's opinion testimony as to whether one of the defendants was "deliberately indifferent" to Kemp's medical needs and in excluding opinion testimony from plaintiff's expert as to whether the action of another defendant was "so reckless as to demonstrate a substantial lack of concern as to whether an injury resulted." Plaintiff contends that the testimony was admissible under MRE 704. We disagree. MRE 704 does not allow an expert to invade the province of the jury, and no witness is permitted to tell the jury how to decide a case. *Koenig v South Haven*, 221 Mich App 711, 725-726; 562 NW2d 509 (1997), rev'd in part on other grounds 460 Mich 667; 597 NW2d 99 (1999). Here, the challenged testimony constituted the primary question for jury resolution and its admission would have unduly invaded the province of the jury. The trial court did not abuse its discretion in refusing to admit the proffered testimony.

Plaintiff also claims the trial court abused its discretion when it permitted one of the defendants to testify that, upon learning of Kemp's death, he contacted his pastor who came to the police station and they prayed together. Plaintiff argues that this testimony was inadmissible under MRE 610. We disagree. MRE 610 provides that "[e]vidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced." Here, the trial court found that the testimony was relevant to the issue of "deliberate indifference," a necessary element of plaintiff's § 1983 claim. *York, supra* at 754-756. The testimony was not offered for the purpose of enhancing the witness' credibility. Thus, the trial court did not abuse its discretion in admitting the testimony. *Davidson v Bugbee*, 227 Mich App 264, 266; 575 NW2d 574 (1997).

We also reject plaintiff's claim that the trial court abused its discretion when it refused to allow plaintiff to voir dire prospective jurors regarding their religious beliefs. *Willoughby v Lehrbass*, 150 Mich App 319, 331; 388 NW2d 688 (1986).

Finally, plaintiff claims the trial court erred in granting defendants' motion for a directed verdict of her claims for gross negligence. *Allen, supra* at 406. We find that plaintiff's reliance on MCL 691.1407(2); MSA 3.996(107)(2), as a basis for the "statutory purpose doctrine" exception to the "wrongful conduct rule" is misplaced. Plaintiff clearly does not fall within the class of persons that the gross negligence exception to governmental immunity was devised to protect. *Orzel v Scott Drug Co*, 449 Mich 550, 558-561, 574; 537 NW2d 208 (1995).

Affirmed.

/s/ Gary R. McDonald
/s/ Michael J. Kelly
/s/ Mark J. Cavanagh