

STATE OF MICHIGAN
COURT OF APPEALS

JOANN MCGHEE,

Plaintiff-Appellant,

v

COUNTY OF WAYNE,

Defendant,

and

PALMER COLEMAN, BERNADINE TROUT, and
FRANK PARE,

Defendants-Appellees.

UNPUBLISHED

April 18, 2000

No. 211754

Wayne Circuit Court

LC No. 97-723499 NZ

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

PER CURIAM.

Plaintiff was a social worker employed by Wayne County to work at the Wayne County Jail. After her employment was terminated in 1996, plaintiff sued Wayne County¹ and individual defendants Palmer Coleman, Bernadine Trout and Frank Pare,² setting forth numerous counts³ in connection with their involvement in an investigation of alleged security breaches and other alleged improper conduct by plaintiff during her employment. Plaintiff now appeals as of right from the trial court's order granting defendants summary disposition with respect to all of plaintiff's claims pursuant to MCR 2.116(C)(7), (8) and (10). We affirm.

We review de novo the trial court's decision regarding summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition pursuant to MCR 2.116(C)(10) is appropriate when the available pleadings and evidence fail to establish a genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* at 120. Summary disposition is proper under MCR 2.116(C)(7) if reasonable minds could not differ regarding whether defendants are entitled to governmental immunity. *Id.* at 119, 121-122.

Governmental employees, such as the individual defendants, are immune from liability for actions taken on behalf of a governmental entity if (1) the employees were acting or reasonably believed they were acting within the scope of their authority, (2) the agency was engaged in the exercise or discharge of a governmental function, and (3) the employees' conduct does not amount to gross negligence that is a proximate cause of the alleged injury or damage. MCL 691.1407(2); MSA 3.996(107)(2). "Gross negligence" is defined as "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); *Maiden, supra* at 121.

Plaintiff contends that summary disposition was improper because defendant Coleman was not acting within the scope of his authority when he asked her to resign. After reviewing the record, we conclude that plaintiff failed to establish a genuine issue of fact with regard to the accuracy or veracity of the evidence showing that defendant Coleman had, or reasonably believed that he had, the authority to ask plaintiff to resign in lieu of facing criminal prosecution. Furthermore, we note that the record demonstrates that plaintiff did not resign in response to Coleman's request, nor was Coleman the person who discharged her. Because reasonable minds could not find otherwise than that Coleman at least reasonably believed that he possessed authority to request plaintiff's resignation, we find that the trial court properly granted summary disposition with respect to this allegation of plaintiff's pursuant to MCR 2.116(C)(7) and (10).

Plaintiff further argues that summary disposition was inappropriate also because all of the individual defendants were grossly negligent in various aspects of their involvement in the investigation that led to plaintiff's discharge. Plaintiff failed, however, to proffer evidence supporting any of her claims that the individual defendants were grossly negligent in their handling of this matter. For example, no indication of gross negligence appears from the fact that Coleman did not initiate his investigation of plaintiff on behalf of the Wayne County Sheriff's Department's internal affairs division until approximately five and one-half months after being advised of a Department of Corrections investigation potentially involving plaintiff. Coleman's explanation that the sheriff's department commonly avoided involvement in other agencies' investigations of sheriff's department personnel to avoid jeopardizing the ongoing investigations was un rebutted. Additionally, although Coleman's memo mistakenly characterized as a "collect call" a telephone call that plaintiff otherwise received, no indication exists that this mistake was not inadvertent or that it somehow affected the course or credibility of Coleman's investigation. Plaintiff's acceptance of a third party call from an inmate was reasonably found to present a security risk, especially in light of the other circumstances that Coleman's investigation uncovered. In light of these available circumstances, including indications that plaintiff had falsified her time records, defendants reasonably decided to suggest to the prosecutor that he charge plaintiff with a felony, despite the eventual dismissal of the charge. Furthermore, given the circumstantial evidence against plaintiff that Coleman's investigation revealed, we cannot characterize Coleman's subsequent request for plaintiff's resignation as grossly negligent conduct. We also observe that although defendants admittedly talked to each other during the investigation of plaintiff, no evidence of a conspiracy to do anything illegal exists within this record.

The only unexplained detail alleged by plaintiff concerns the missing audio tape recordings of Coleman's conversations with plaintiff. Plaintiff has failed to show, however, that this loss was

attributable to anything beyond ordinary negligence, which is insufficient to overcome the governmental immunity statute. *Maiden, supra* at 122.

Therefore, we conclude that the trial court properly dismissed plaintiff's complaint under MCR 2.116(C)(7) and (C)(10).

Affirmed.

/s/ Brian K. Zahra

/s/ Henry William Saad

/s/ Hilda R. Gage

¹ At the first hearing regarding defendants' motion for summary disposition, plaintiff stipulated to dismiss Wayne County from the lawsuit.

² Michigan Department of Corrections investigator Fred Funkston was also named as an individual defendant, but apparently either was never served or was dismissed from the case.

³ These counts included plaintiff's allegations of (1) false arrest/imprisonment, (2) tortious interference with contractual relations, (3) malicious prosecution, (4) defamation, (5) many specific examples of defendants' gross negligence, and (6) intentional infliction of emotional distress.