STATE OF MICHIGAN

COURT OF APPEALS

DEBRA SUE IMUS, Individually and as Personal Representative of the Estate of RUSSELL NILE PACKER III, Deceased,

Plaintiff-Appellant,

v

THOMAS WORGESS,

Defendant-Appellee.

UNPUBLISHED
July 7, 2000

No. 216598
Calhoun Circuit Court
LC No. 98-003357-NO

Before: Meter, P.J., and Griffin and Talbot, JJ.

PER CURIAM.

Plaintiff, the personal representative of the estate of her husband Russell Nile Packer III ("decedent"), appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

The following facts are undisputed. On the evening of February 5, 1997, plaintiff called 911 and reported that decedent was threatening to commit suicide with a twelve gauge shotgun. Defendant, the 911 dispatcher who received the call, was employed by the City of Battle Creek in the police department dispatch center. Although defendant's computer screen displayed the correct number of the call, defendant dispatched the police to the address of a previous call which had been handled by another dispatcher. Approximately sixteen minutes into the call, the police called defendant indicating doubt as to the incident location. At that point, defendant asked plaintiff for verification, learned that he had sent the police to the wrong address, and re-dispatched the units to the correct address. Decedent, who had been aware that the 911 call had been placed, committed suicide approximately two minutes after learning that the police were on the way to his residence.

Plaintiff sued defendant under the gross negligence exception to governmental immunity, MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). Plaintiff specifically alleged that defendant's failure to: employ the correct phone number on this computer screen; verbally ascertain the location where the intervention was needed promptly; and, heed the verbal warning of a fellow dispatcher regarding his use of the wrong address constituted gross negligence.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that, pursuant to the public-duty doctrine, he owed no duty to decedent. Defendant also argued that he was entitled to governmental immunity under MCL 691.1407(2)(c); MSA 3.996(107)(2)(c) because his conduct did "not amount to gross negligence that [was] the proximate cause" of decedent's suicide. The trial court granted defendant's motion, finding that no "special relationship" existed between defendant and the decedent to warrant the imposition of a duty under that exception to the public-duty doctrine; and, that defendant's conduct was neither grossly negligent nor the proximate cause of decedent's suicide.[1]

Plaintiff argues on appeal that the trial court erred in granting defendant's motion on grounds that no "special relationship" existed between defendant and decedent under the public-duty doctrine, and that defendant's conduct was neither grossly negligent nor the proximate cause of decedent's death. We disagree and hold that, even assuming defendant owed decedent a duty under the public-duty doctrine, summary disposition was nonetheless proper under the gross negligence exception to governmental immunity set forth in MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). See *Smith v Kowalski*, 223 Mich App 610, 615; 567 NW2d 463 (1997) (noting that the presence of "special relationship" for purposes of the public-duty doctrine does not preclude dismissal based on the governmental immunity statute).

This Court reviews rulings on summary disposition motions de novo. *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999). Summary disposition is proper under MCR 2.116(C)(7) for a claim that is barred because of immunity granted by law.[2] *Smith*, *supra* at 616. When reviewing a grant of summary disposition based on governmental immunity, this Court considers all documentary evidence submitted by the parties. *Id.*, citing *Codd v Wayne Co*, 210 Mich App 133, 134; 537 NW2d 453 (1995). However, unlike a motion under subsection (C)(10), a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant. *Id*. To survive a motion for summary disposition brought under MCR 2.116(C)(7), the plaintiff must allege facts warranting the application of an exception to governmental immunity. *Smith*, *supra* at 616.

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[1] The trial court also granted defendant's motion with respect to plaintiff's individual claim of intentional infliction of emotional distress. Plaintiff does not challenge the trial court's ruling with respect to this claim on appeal.

[2] It is not clear under which subrule(s) the trial court granted defendant's motion with respect to this issue. MCR 2.116(C)(7) is the appropriate subrule for granting summary disposition based on the gross negligence exception to governmental immunity, MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). *Smith*, *supra* at 616. In any event, an order granting summary disposition under the wrong subrule may be reviewed under the correct subrule. *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 216; 561 NW2d 854 (1997).

MCL 691.1407(2)(c); MSA 3.996(107)(2)(c) provides that a governmental employee is immune from tort liability for injuries to persons caused by the employee while in the course of employment if, inter alia, the conduct "does not amount to gross negligence that is the proximate cause of the injury or damage."[3] See also *Stanton v Battle Creek*, 237 Mich App 366, 374; 603 NW2d 285 (1999). As used in this subdivision, "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). In addressing the quantum of proof required to survive a motion for summary disposition in gross negligence actions involving government employees under § 7(2)(c), our Supreme Court has recently held:

> . . . . The plain language of the governmental immunity statute indicates that the Legislature limited employee liability to situations where the contested conduct was substantially more than negligent. Gross negligence is defined by statute 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.]
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> . . . evidence of ordinary negligence does not create a material question of fact concerning gross negligence. Rather, a plaintiff must adduce proof of conduct "so reckless as to demonstrate a substantial lack of concern for whether an injury results." To hold otherwise would create a jury question premised on something less than the statutory standard. [*Maiden, supra* at 122 (footnote omitted).]

Applying this standard to the present case, we hold that reasonable minds could not differ with respect to whether defendant was grossly negligent. *Stanton, supra* at 375. While defendant's alleged failures may establish that he was negligent or neglectful, they do not constitute evidence sufficient for a reasonable juror to conclude that his conduct was "so reckless as to demonstrate a substantial lack of concern for whether an injury results."[4] To the contrary, the evidence submitted by both parties established that defendant was attempting to help plaintiff by dispatching the police to what he believed to be the correct address; remaining on the phone with plaintiff during the incident; and, correcting his error as soon as it was discovered. Defendant also testified at deposition that he did not ask plaintiff to verify the address at the commencement of the call because she told him that she was in the presence of a man with a gun. Under these circumstances, we hold that plaintiff failed to meet her burden to come forward with specific facts to support her claim. *Maiden, supra* at 127. In light of our conclusion on the issue of gross negligence, we need not address the trial court's finding that defendant's conduct was

[3] The parties do not dispute that the two other requirements for immunity are satisfied. See MCL 691.1407(2)(a)-(b); MSA 3.996(107)(2)(a)-(b).

[4] Plaintiff makes much of the fact that defendant, his fellow dispatcher, and his supervisor were either disciplined or reprimanded as a result of the incident. If anything, this evidence shows that defendant's employer was dissatisfied with his performance and does not conclusively establish that his conduct was either negligent or grossly negligent.

not the proximate cause of decedent's suicide. Accordingly, the trial court properly granted

summary disposition for defendant.

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Michael J. Talbot