STATE OF MICHIGAN

COURT OF APPEALS

ROSZETTA MARIE MCNEILL and MARK A. MCNEILL, a Minor,

Plaintiffs-Appellants,

v

HENRY FORD HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
December 26, 2000

No. 214743
Wayne Circuit Court
LC No. 96-691291-NO

Before: Gribbs, P.J., and Kelly and Sawyer, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant. We affirm.

Plaintiffs argue on appeal that Mark McNeill's (Mark's) negligence action against defendant was improperly dismissed. Although plaintiffs stated this issue in their "statement of issue" section, plaintiffs do not discuss this issue in their argument section and do not present any law in support of their position. In order to properly present issues for appeal, an appellant must properly argue issues identified in the statement of questions presented. *Richmond Twp v Erbes*, 195 Mich App 210, 220; 489 NW2d 504 (1992). It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. As this issue was not properly presented, plaintiffs have waived review by this Court. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Plaintiffs also argue that the trial court improperly considered as res judicata Roszetta McNeill's (Rozetta's) stipulation, given in exchange for the dismissal of criminal charges against her, that there was probable cause for her arrest. Again, plaintiffs have not presented any case law or other law in support of their position that res judicata does not apply to the stipulation. It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. As this issue is not properly presented, plaintiffs have again waived review by this Court. *Id.*

Plaintiffs next argue that they were denied the right to a jury trial when the trial court granted defendant's motion for summary disposition. We disagree. The trial court can properly dismiss cases on motion where no genuine issue of material fact exists. As our Supreme Court noted in *Moll v Abbott Laboratories*, 444 Mich 1, 26; 506 NW2d 816 (1993),

> We have long recognized that a jury is charged with resolving disputed facts. However, '[b]efore a jury is ever reached a preliminary decision must always be made, namely, whether or not there is anything to go to the jury.' Where the facts of a case are uncontroverted and the only question left is what legal conclusions can be drawn from the facts, the question is for the court and not the jury. [Citations omitted.]

The trial court's finding that no genuine issue of material fact existed did not violate plaintiffs' constitutional right to a jury.

Plaintiffs argue that the trial court erred in granting defendant's motion for summary disposition as defendant did not produce sworn statements and plaintiffs created a genuine issue of material fact. There is no merit to this claim. This Court recently addressed the issue of evidentiary requirements for motions for summary disposition under MCR 2.116(C)(10) in *Marlo Beauty Supply, Inc v Farmers Ins Group of Companies*, 227 Mich App 309, 321; 575 NW2d 324 (1998):

> Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in a motion for summary disposition pursuant to MCR 2.116(C)(10) must be filed with the motion. MCR 2.116(G)(3); *SSC Associates v General Retirement System of Detroit*, 192 Mich App 360, 363-364; 480 NW2d 275 (1991). The affidavits must be made on the basis of personal knowledge and must set forth with particularity such facts as would be admissible as evidence to establish or deny the grounds stated in the motion. *Id.*, 364. Opinions, conclusionary denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule; disputed fact, or the lack of it, must be established by admissible evidence. *Id.* The party opposing a motion for summary disposition has no obligation to submit any affidavit until the moving party submits a proper affidavit regarding a dispositive fact. *Id.*

Defendant provided case reports of the incident prepared by its security personnel, an order of dismissal of Roszetta's criminal charge, written statements by two other witnesses, a copy of the City of Detroit Ordinance it contends that Roszetta violated, excerpts from Roszetta's deposition, a report by Day, the preliminary complaint record, a notice of noncompliance for Roszetta's criminal charge, and another supplemental report by Day. Many of the items offered by defendant would be admissible evidence. MRE 803(1); MRE 803(6). Because defendant did provide other admissible evidence as required by MCR 2.116(G)(3)(b), plaintiffs were not freed from their obligation to present affidavits, depositions and documentary evidence which set forth specific facts showing that there is a genuine issue for trial, pursuant to MCR 2.116(G)(4). *Marlo Beauty Supply, Inc, supra*, 227 Mich App 321.

Plaintiffs next argue that, based on the evidence presented, a genuine issue of material fact existed. Plaintiffs' first claim, for false imprisonment, requires that plaintiffs show a lack of probable cause and an unlawful restraint of Roszetta's personal liberty or freedom of movement. *Burns v Olde Discount Corp,* 212 Mich App 576, 581; 538 NW2d 686 (1995); *Clarke v K Mart Corp,* 197 Mich App 541, 546-547; 495 NW2d 820 (1992). The trial court found probable cause due to the res judicata effect of Roszetta's stipulation to probable cause for the dismissal without prejudice of her criminal charge. This Court will not examine the issue of res judicata due to plaintiffs' failure to properly present the issue. In any case, there was ample evidence of probable cause in this case. Rozetta walked toward Mark's room after being asked to wait in the waiting room. Defendant's security officer, Day, grabbed her arm, and she pulled away from Day, saying, "let go of me, a-----e." Defendant's employees asked Rozetta to calm down but she did not. Rozetta continued on to Mark's room, when Day ran in front of Roszetta, shut Mark's door, again grabbed her arm and restrained her, and put handcuffs on her. Plaintiffs also argue that Rozetta presented a valid claim of battery. We do not agree. An arresting officer may use such force as is reasonably necessary to effect a lawful arrest. *White v City of Vassar,* 157 Mich App 282, 293; 403 NW2d 124 (1987). Here, where it is established by the stipulation of probable cause that Rozetta disturbed the peace and trespassed into areas of defendant Hospital where she was not authorized to go, the evidence does not support an action for either false imprisonment or battery.

Plaintiffs' last claim is for intentional infliction of emotional distress upon Roszetta, caused by defendant preventing Roszetta from seeing Mark. The elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress. *Roberts v Auto-Owners Ins Co,* 422 Mich 594, 602; 374 NW2d 905 (1985); *Haverbush v Powelson,* 217 Mich App 228, 234; 551 NW2d 206 (1996). Again, because defendant had probable cause to arrest Rozetta and remove her from the scene, defendant's action was not "extreme and outrageous." *Id.* The trial court did not err in granting summary disposition.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ David H. Sawyer