

STATE OF MICHIGAN
COURT OF APPEALS

FRED BERRY,

Plaintiff-Appellant,

v

JOHN CARLO, INC.,

Defendant-Appellee.

UNPUBLISHED

May 18, 2001

No. 221174

Wayne Circuit Court

LC No. 98-834606-NO

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

Wayne County hired defendant to dredge Newburgh Lake, which is located in Hines Park. Hines Drive, a road running along the lake, was closed to facilitate the project. Plaintiff, a Wayne County Sheriff's deputy, was assigned to park patrol. At 12:00 a.m. on June 18, 1997, plaintiff began patrolling activities in Hines Park. Part of his regular duties included patrolling closed roads to check for any trespassers or criminal activity. As plaintiff drove on Hines Drive his car hit a pile of dredged material left on the road by defendant. Plaintiff's car became airborne and he sustained a back injury in the ensuing crash.

Plaintiff filed suit, alleging that defendant acted in a grossly negligent manner by placing the dredged material on the road and by failing to place proper warning devices around the material. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's claim was barred by the fireman's rule. That rule precludes a firefighter or a police officer from recovering damages for injuries resulting from conduct that drew the officer to the location to perform his regular duties. *Harris-Fields v Syze*, 461 Mich 188, 197-198; 600 NW2d 611 (1999).¹ However, the rule does not preclude recovery if the injuries

¹ 1998 PA 389, MCL 600.2965 *et seq.*; MSA 27A.2965 *et seq.*, effective November 30, 1998, significantly modified the law with respect to the fireman's rule. The new provisions do not apply to a cause of action arising prior to the effective date of the legislation, and thus do not impact the instant case.

resulted from the subsequent, unrelated negligence of the defendant. *Id.* The trial court granted the motion, finding that the undisputed evidence showed that defendant's act of blocking the road with the dredged material took place prior to plaintiff beginning his patrol activities. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree. Plaintiff's assertion that defendant's allegedly grossly negligent conduct could not have occurred until he collided with the dredged material is without merit. Defendant's conduct of which plaintiff complained occurred prior to the commencement of plaintiff's patrol and his arrival on the road. Moreover, defendant's conduct was not unrelated to plaintiff's reason for being at the location where the collision occurred. The area in which plaintiff was injured was closed due to defendant's activities, and plaintiff's patrol duties included checking the area for trespassers. The trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly