STATE OF MICHIGAN

COURT OF APPEALS

LELAND A. ARMBRUSTER,

Plaintiff-Appellant,

v

VILLAGE OF AKRON, VILLAGE OF AKRON FIRE DEPARTMENT, DEAN COLEMAN, KEN PROCTOR, MICHAEL DANIEL, STATE OF MICHIGAN, KIM DUFRESNE, and RON MARTENS,

Defendants-Appellees.

UNPUBLISHED
June 26, 2001

No. 221493
Tuscola Circuit Court
LC No. 97-016486-NZ

Before: Sawyer, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10) in favor of defendants. We affirm.

The trial court's decision on a motion for summary disposition is reviewed de novo. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). Plaintiff's first issue alleges that the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) because plaintiff did not have an opportunity to conduct discovery because of difficulties he encountered in obtaining service on all defendants. However, nowhere in his brief on appeal does plaintiff argue this issue; therefore, plaintiff has abandoned it. It is not sufficient for a party simply to announce a position or assert an error and then leave it to this Court to discover and rationalize the basis for his claims, or unravel and elaborate his arguments for him, and then search for authority either to sustain or reject his position. *Wilson v Taylor*, 457 Mich 232, 242-243; 577 NW2d 100 (1998).

Noting that the trial court never entered a pretrial scheduling order and that he was therefore not in violation of any such order, plaintiff also argues that granting summary disposition was premature because discovery was not complete. However, a party opposing the motion for summary disposition must provide some independent evidence that a factual dispute exists. *Michigan National Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993). Summary disposition may be granted if further discovery does not

stand a fair chance of uncovering factual support for the opposing party's position. *State Treasurer v Sheko*, 218 Mich App 185, 189; 553 NW2d 654 (1996); *Great Lakes Gas Transmission Co v MacDonald,* 193 Mich App 571, 574-575; 485 NW2d 129 (1992). Here, plaintiff argued during the summary disposition hearing that with additional time, he would discover whether he could meet the elements of his malicious prosecution claim. However, the hearing on defendants' motion for summary disposition was held ten months after the complaint was filed. Plaintiff had ample time to conduct discovery, but in ten months time, he was only able to produce his own hearsay-based affidavit, stating what someone said to him. Plaintiff's affidavit did not constitute sufficient independent evidence of a factual dispute on the requisite elements of his malicious prosecution claim, see, generally, *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 377-378; 572 NW2d 603 (1998), and "[a] litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10)." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules." *Id.* at 121. For the reasons set forth below, plaintiff does not stand a fair chance of uncovering factual support for his claim. Therefore, plaintiff's argument, on the merits, is not sufficient to disturb the trial court's ruling.

Next, plaintiff argues the trial court erred in granting defendants' summary disposition motion pursuant to MCR 2.116(C)(8) on plaintiff's malicious prosecution claim against the Village of Akron and the Village of Akron Fire Department.[1] A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Maiden, supra* at 119. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmoving party. *Id.* A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.* When deciding a motion for summary disposition pursuant to this section, a trial court considers only the pleadings. *Id.* at 119-120; MCR 2.116(G)(5).

It is well-settled that city departments, like a fire department, are not separate legal entities against which a tort action can be directed. *McPherson v Fitzpatrick*, 63 Mich App 461, 463-464; 234 NW2d 566 (1975). See also *Michonski v Detroit*, 162 Mich App 485, 490; 413 NW2d 438 (1987); *Davis v Chrysler Corp*, 151 Mich App 463, 466 n 1; 391 NW2d 376 (1986). Therefore, the trial court did not err in granting summary disposition in favor of defendant Village of Akron Fire Department pursuant to MCR 2.116(C)(8).

Summary disposition with regard to plaintiff's malicious prosecution claim against the Village of Akron is likewise appropriate pursuant to MCR 2.116(C)(7), because this governmental defendant is, under the circumstances, entitled to governmental immunity. MCL 70.1 provides, "The [village] council may adopt ordinances and regulations to protect against fires and may establish and maintain a fire department and organize and maintain fire companies." MCL 691.1407(1) provides, "Except as otherwise provided in this act, a

[1] Plaintiff's issue in this regard addresses only defendants Village of Akron and Village of Akron Fire Department, not the individual defendants.

governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." "A governmental function is an activity which is expressly or impliedly mandated or authorized by constitution, statute, or other law." *Isabella Co v Michigan*, 181 Mich App 99, 104; 449 NW2d 111 (1989). The term "governmental function" is interpreted broadly. *Id*. Here, the fire department was performing a governmental function when it investigated the 911 call. Because the general nature of the activity in this case related to the operation of the fire department, the law is clear that the city and its fire department are immune from liability pursuant to MCL 691.1407(1). *Payton v Detroit*, 211 Mich App 375, 392-393; 536 NW2d 233 (1995); *McPherson, supra* at 463-464.

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell