STATE OF MICHIGAN

COURT OF APPEALS

BOBBIE SLEDGE,

Plaintiff-Appellant,

v

CITY OF DETROIT, ALBERT THOMAS, MICHAEL TAYLOR, WILLIAM WALTON and PATRICIA GRACE,

Defendants-Appellees.

UNPUBLISHED
July 31, 2001

No. 218868
Wayne Circuit Court
LC No. 97-721655-NO

Before: White, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants. We affirm.

This action arises from plaintiff's alleged illegal arrests in April 1994 and December 1996, for failure to appear in court on appearance tickets. City of Detroit Housing Inspectors, defendants Patricia Grace and William Walton, issued thirty-nine complaints to plaintiff, in the form of appearance tickets, alleging that plaintiff unlawfully allowed various dwellings to be occupied without first obtaining a certificate of approval, contrary to Detroit Ordinance No. 124-H § 12-7-2(A). Defendants Michael Taylor and Albert Thomas signed the tickets as deputy clerks of the 36th District Court.

When plaintiff failed to appear in court as directed by the tickets, his name was entered into the Law Enforcement Information Network (LEIN) system pursuant to 36th District Court procedures, and warrants for plaintiff's arrests were computer-generated in accordance with court procedure. Plaintiff was arrested on April 22, 1994, while at the 36th District Court on an unrelated matter. Plaintiff alleges that he was arrested by a Detroit Police officer, not a party to this suit, upon the urging of defendant Walton. Plaintiff's counsel was given a copy of the LEIN printouts used by the 36th District Court, but was not provided any warrant. Plaintiff was released on bond that same day. Plaintiff was arrested again the next day following a traffic stop.

Plaintiff subsequently filed several motions challenging the appearance tickets on various grounds. Eventually, this Court held that the tickets were improperly issued, reasoning that although MCL 764.9c(2) authorized granting city building inspectors authority to issue tickets,

such authority had not actually been granted by a duly enacted ordinance. *Detroit v Sledge*, 223 Mich App 43, 45-47; 565 NW2d 690 (1997). Accordingly, this Court dismissed the underlying appearance tickets. *Id.*

During the pendency of that appeal, plaintiff was again arrested on December 9, 1996, based on his failure to appear as directed by the tickets, following questioning by police on an unrelated matter. Plaintiff subsequently brought this lawsuit, alleging claims for false arrest, violation of his rights under the Fourth and Fourteenth Amendments of the United States Constitution, and violation of his civil rights under 42 USC 1983.[1] Plaintiff also sought damages under MCL 600.4379 based on the lack of presentation of warrants. Defendants brought a motion for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10), which the trial court granted.

I

On this appeal, plaintiff first argues that defendants' actions violated his right against an unreasonable search and seizure under the Michigan Constitution. Const 1963, art 1, § 11. However, plaintiff did not advance this theory below and, therefore, it was not properly preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999); *Alford v Pollution Control Inds of America*, 222 Mich App 693, 699; 565 NW2d 9 (1997). Regardless, the decision in *Jones v Powell*, 462 Mich 329, 335-337; 612 NW2d 423 (2000), makes clear that such a cause of action is not available against the city or the individual defendants.

II

Plaintiff next argues that the trial court erred in granting summary disposition of his false arrest claim on the basis of governmental immunity. We disagree.

The applicability of governmental immunity is a question of law, which we review de novo. *Diehl v Danuloff*, 242 Mich App 120, 123; 618 NW2d 83 (2000). Likewise, a trial court's decision on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A. Immunity of the city

Tort immunity is broadly granted to government agencies pursuant to MCL 691.1407(1), which provides:

> Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

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[1] Plaintiff's federal claims were removed to federal district court.

A "governmental function" is an activity "expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f). When there is some constitutional, statutory or other legal basis for the activity in which the agency was engaged, tort liability may be imposed only if the agency was engaged in an ultra vires activity. *Hyde v University of Michigan Bd of Regents*, 426 Mich 223, 252-253; 393 NW2d 847 (1986); *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 97; 494 NW2d 791 (1992). The determination whether an activity was a governmental function must focus on the general activity, not the specific conduct involved at the time of the tort. *Pardon v Finkel*, 213 Mich App 643, 649; 540 NW2d 774 (1995), citing *Smith v Dep't of Public Health*, 428 Mich 540; 410 NW2d 749 (1987).

In the instant case, despite the fact that the appearance tickets were ultimately determined to be invalid for procedural reasons, the city's general activity of regulating housing conditions and seeking to ensure that repairs are made so that rented dwellings are habitable constituted a governmental function. *Pardon, supra*. Because defendants were engaged in a "governmental function" when they issued the appearance tickets, defendant city is immune from liability and summary disposition was proper. MCL 691.1407(1).

B. Immunity of the individual defendants

Employees of a governmental agency may be immune from tort liability for injury or damage caused during the course of their employment. MCL 691.1407(2).[2] However, individual employees' intentional torts are not shielded by the governmental immunity statute. *Sudul v Hamtramck*, 221 Mich App 455, 458; 562 NW2d 478 (1997); see MCL 691.1407(3). Whether the individual defendants may be held liable in the present case rests upon the application of the common law tort of false arrest to the facts of this case.

A false arrest is an illegal or unjustified arrest. *Lewis v Farmer Jack Division, Inc*, 415 Mich 212, 218; 327 NW2d 893 (1982). In analyzing a claim of false arrest, the emphasis is not on whether the arrestee was in fact, innocent, but rather, whether the arrest was legal. *Id.* at 218 n 1. A plaintiff claiming false arrest must prove that the arrest lacked legal authority. See *Burns v Olde Discount Corp*, 212 Mich App 576, 581; 538 NW2d 686 (1995). In *Lewis*, the defendant business was sued for false arrest after an employee wrongly identified the plaintiff to police as one of the persons who had committed a previous robbery. *Id.* at 217. Although the plaintiff claimed that the defendants should be held liable even though the arrest was valid from the perspective of the arresting officer, the *Lewis* majority held that the plaintiff's claim failed because the defendant employee merely provided information to the officer, leaving the decision whether to arrest the plaintiff to the officer. *Id*. at 218-219.

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[2] For the reasons discussed prior, we reject plaintiff's argument that the individual defendants are not immune from the present suit because the city was not engaged in the discharge of a governmental function. See MCL 691.1407(2)(b). Moreover, despite the fact that the appearance tickets were ultimately determined to be invalid, defendants were acting within the scope of their authority as officers of the city's housing department and department of buildings and safety when they issued and signed the tickets. Plaintiff does not allege that defendants' conduct in regard to the tickets or his arrest constituted gross negligence. MCL 691.1407(2)(a) and (c).

Here, plaintiff maintains that he was arrested on April 22, 1994 at the "urging" of defendant Walton. Defendant Walton testified at deposition that when he became aware that plaintiff was present at the 36th District Court on another matter, he requested "the presiding Judge . . . request that her bailiff make an arrest." Plaintiff did not elicit any other testimony or present other evidence establishing defendant Walton's involvement in that arrest. Thus, there is no evidence that defendant Walton did anything more than encourage plaintiff's arrest based on his knowledge that the 36th District Court had ordered defendant's arrest for nonappearance, before plaintiff challenged the validity of the appearance tickets. Plaintiff's evidence in this regard is insufficient to establish a claim of false arrest against defendant Walton. See *Lewis, supra* at 218-219 n 2 and 3. Plaintiff has not alleged that any of the other individual defendants took direct action in effectuating his arrests and, therefore, plaintiff's false arrest claims against those defendants also fail as a matter of law. *Id*. at 218-219.

III

Last, plaintiff argues that he is entitled to damages under MCL 600.4379. We disagree. That statute provides, in pertinent part:

> Any officer or other person who refuses or neglects for 6 hours to deliver a copy of any order, warrant, process or other authority by which he detains any person, to any one who demands such copy and tenders the lawful fees therefor, is liable to the person so detained in the sum of $200.00 damages. [MCL 600.4379.]

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Elia v Hazen*, 242 Mich App 374, 381; 619 NW2d 1 (2000).

The plain language of MCL 600.4379 establishes that it applies to the persons who detained the individual seeking redress. The statute does not assign liability to any other individual or a government agency. In the instant case, there is no evidence that any of the named defendants actually detained plaintiff. Therefore, plaintiff cannot prevail on this issue.

Affirmed.

/s/ Helene N. White
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra