

STATE OF MICHIGAN
COURT OF APPEALS

WILFRED S. PINNACE,

Plaintiff-Appellant,

v

MERLIN K. TAYLOR and CITY OF
YPSILANTI,

Defendants-Appellees.

UNPUBLISHED

November 27, 2001

No. 225769

Washtenaw Circuit Court

LC No. 98-004894-NO

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff Wilfred Pinnace appeals as of right from the circuit court order granting summary disposition to defendants Merlin Taylor and the City of Ypsilanti under MCR 2.116(C)(10) because they were immune from suit. We decide this appeal without oral argument pursuant to MCR 7.214(E). We affirm.

I. Basic Facts And Procedural History

On June 25, 1997, Ypsilanti police officer Antonio Allen was in pursuit of a suspect who was fleeing the scene of an accident when he contacted the police dispatcher to report the suspect's description. Officer Allen described the suspect as a black male, around six feet tall, wearing a white or dirty white shirt, and white or khaki shorts. Whether Officer Allen described the suspect's weight to the dispatcher is not clear. If he did, Officer Allen indicated that the suspect weighed between 180 and 190 pounds. Relying on the license plate of the car in which the suspect was riding, Officer Allen surmised that the suspect was heading to his residence on East Ainsworth.

Taylor, an Ypsilanti police officer, responded to a radio dispatch describing the suspect Officer Allen was pursuing. He was dispatched to the Ainsworth address. When Officer Taylor arrived at the Ainsworth address, Pinnace answered the door. According to Officer Taylor, Pinnace closely matched the description given in the dispatch. Pinnace was a black male, medium build but slimmer, and wearing dusty shorts and a white shirt. As a result, Officer Taylor asked Pinnace to step outside the house. Pinnace was very cooperative and complied with the request. Officer Taylor informed Pinnace that he matched the description of a suspect and detained him until Officer Allen arrived and confirmed that Pinnace was not the suspect. Officer Taylor released Pinnace and apologized for the mistake.

Pinnacle sued, claiming that he was arrested wrongfully, Officer Taylor acted in a grossly negligent manner, and the City of Ypsilanti was negligent. The factual basis for the claim against both defendants was that Officer Taylor lacked probable cause to arrest or detain him because he did not physically resemble the suspect in several respects: Pinnacle weighed fifty to sixty pounds less than the suspect, and he was wearing a white t-shirt with a printed design and white shorts. Defendants moved for summary disposition arguing that governmental immunity barred the suit. The trial court agreed, holding that no genuine issue of material fact existed concerning whether Officer Taylor's conduct amounted to gross negligence, the degree of negligence necessary to avoid governmental immunity.

II. Standard of Review

Review do novo is appropriate for a motion granting summary disposition.¹

III. Legal Standards

The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) even though (C)(7) is the appropriate subrule under which to grant summary disposition because of governmental immunity. This Court, however, may analyze the trial court's decision under the correct subrule.² Fortunately, the analysis for both subrules is substantively the same. As with motions for summary disposition under subsection (C)(10),³ the fundamental question in ruling on a motion for summary disposition under subsection (C)(7) is whether the movant "is entitled to judgment as a matter of law."⁴ To answer this question, the deciding court must consider "[t]he affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties[.]"⁵

IV. Governmental Immunity

Governmental immunity protects police officers from tort liability unless they acted in a grossly negligent manner.⁶ "[G]ross negligence" means "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."⁷ In *Ross v Consumers Power Co.*,⁸ the Michigan Supreme Court sketched the boundaries of governmental immunity as it applies to police officers:

¹ *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

² *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995).

³ *Waldan General Contractors, Inc v Mich Mutual Ins Co*, 227 Mich App 683, 685; 577 NW2d 139 (1998).

⁴ *O'Connell v Kellogg Community College*, 244 Mich App 723, 724; 625 NW2d 126 (2001).

⁵ MCR 2.116(G)(5).

⁶ See MCL 691.1407(2).

⁷ MCL 691.1407(2)(c).

⁸ *Ross v Consumers Power Co.*, 420 Mich 567, 659-660; 363 NW2d 641 (1984).

Police officers, especially when faced with a potentially dangerous situation, must be given a wide degree of discretion in determining what type of action will best ensure the safety of the individuals involved and the general public, the cessation of unlawful conduct, and the apprehension of wrongdoers. *The determination of what type of action to take, e.g., make an immediate arrest, pursue a suspect, issue a warning, await backup assistance, etc., is a discretionary-decisional act entitled to immunity.* Once that decision has been made, however, the execution thereof must be performed in a proper manner, e.g., the arrest must be made without excessive force, the pursuit of the suspect must not be done negligently, the request for assistance must include reasonably accurate information, etc.^[9]

Although the Legislature subsequently removed the ministerial/discretionary distinction from MCL 691.1407(2),¹⁰ police officers remain entitled to wide latitude while in performing their official duties¹¹ under the language of the statute so long as the officer “is acting or reasonably believes he or she is acting within the scope of his or her authority.”¹²

In this case, the record is devoid of evidence that Officer Taylor was grossly negligent when he temporarily detained Pinnace. Pinnace answered the door at the suspect’s house. Though his appearance may not have matched the general description Officer Allen gave the dispatcher, there were obvious similarities between the two. These similarities gave Officer Taylor probable cause to believe that he was detaining the suspect Officer Allen was pursuing.¹³ Accordingly, the trial court properly determined that Officer Taylor was acting within the scope of his authority – not in a grossly negligent manner – when he detained Pinnace temporarily.¹⁴ Because defendants were entitled to judgment as a matter of law, summary disposition was proper.

Affirmed.

/s/ William C. Whitbeck
/s/ Janet T. Neff
/s/ Joel P. Hoekstra

⁹ Emphasis added and footnote omitted.

¹⁰ See *Williams v Coleman*, 194 Mich App 606, 608, n 4; 488 NW2d 464 (1992).

¹¹ MCL 691.1407(2)(b).

¹² MCL 691.1407(2)(a).

¹³ See *Bell v Fox*, 206 Mich App 522, 525; 522 NW2d 869 (1994).

¹⁴ MCL 691.1407(2)(a), (b).