

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN L. INGESOULIAN, Personal
Representative of the Estate of GEORGE M.
INGESOULIAN, Deceased,

UNPUBLISHED
February 5, 2002

Plaintiff-Appellant,

v

CITY OF LINCOLN PARK, RICHARD RUSEK
and AL DYER,

No. 226778
Wayne Circuit Court
LC No. 99-905445-NO

Defendants-Appellees.

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

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

The acts or omissions of an emergency medical technician in treating a patient do not give rise to liability unless the acts or omissions are the result of gross negligence or willful misconduct. MCL 333.20965(1). Plaintiff admitted that defendants did not engage in willful misconduct but alleged that they were grossly negligent. Gross negligence is defined the same as in the governmental immunity act, i.e., "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c); *Jennings v Southwood*, 446 Mich 125, 136-137; 521 NW2d 230 (1994). The only evidence of gross negligence was the affidavit of plaintiff's expert, who stated that defendants violated the applicable standard of care when Rusek and Dyer treated Ingesoulion, and that their breach of the applicable standard of care

“constituted negligence and/or gross negligence.” Negligence is the breach of a duty, which is “an obligation to conform to a specific standard of care toward another as recognized under the law.” *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). Therefore, the expert’s affidavit, which stated that defendants violated the applicable standard of care, provided evidence of ordinary negligence alone. “Evidence of ordinary negligence does not create a material question of fact concerning gross negligence. Rather, a plaintiff must adduce proof of conduct ‘so reckless as to demonstrate a substantial lack of concern for whether an injury results.’” *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999) (footnote omitted).

The evidence showed that prior to their arrival on the scene, Rusek and Dyer did not know that Ingesouliau had hit his head. There was a question of fact whether they were so informed upon their arrival, but they were never told he had been unconscious. Regardless, Rusek attempted to examine Ingesouliau, but he was uncooperative and refused to let Rusek do anything other than a superficial examination, declining to have his blood pressure or vital signs taken. He adamantly refused transportation to a hospital and insisted on going in his house. Despite his fall, Ingesouliau was coherent, had no obvious injuries apart from signs of intoxication, and could walk unaided. While Rusek and Dyer may have been negligent in failing to insist upon a more complete physical examination or transportation to a hospital, their conduct did not “demonstrate a substantial lack of concern for whether an injury results” and plaintiff’s expert’s statement that defendants’ violation of the applicable standard of care constituted gross negligence did not make it so. *Maiden, supra* at 129 n 11. Therefore, the trial court did not err in finding that the evidence did not establish a genuine issue of fact concerning gross negligence.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O’Connell
/s/ Brian K. Zahra