

STATE OF MICHIGAN  
COURT OF APPEALS

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RANDY SEGUIN,

Plaintiff-Appellant,

v

BENZIE COUNTY, BENZIE COUNTY  
SHERIFF, JOHN BRAZASKI, and BETH  
BAESCH,

Defendants-Appellees.

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UNPUBLISHED

July 26, 2002

No. 230707

Benzie Circuit Court

LC No. 95-004599-NI

Before: Neff, P.J., and White and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendants<sup>1</sup> summary disposition pursuant to MCR 2.116(C)(7) and (10). We affirm.

Plaintiff, a civilian, alleged he was injured when a vehicle struck him while he was assisting at the scene of an automobile accident near his home. Plaintiff claimed defendant John Brazaski, a Benzie County Sheriff's Department sergeant, acted with gross negligence that led to plaintiff's injuries, and that Benzie County was vicariously liable for Brazaski's negligence.<sup>2</sup>

The circuit court granted summary disposition, concluding that a reasonable trier of fact could not find that Brazaski's conduct amounted to gross negligence.<sup>3</sup> The circuit court

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<sup>1</sup> The parties stipulated to dismissal of defendants Benzie County Sheriff and Beth Baesch. Therefore, "defendants" refers only to Benzie County and John Brazaski.

<sup>2</sup> Plaintiff initially brought a claim against the individual defendants for gross negligence in the operation of their motor vehicles and a negligence claim against the Benzie County sheriff. The trial court earlier granted defendants summary disposition on these two claims. This Court affirmed the lower court's decision concerning operation of the motor vehicles. *Seguin v Benzie County*, unpublished opinion per curiam of the Court of Appeals, (Docket No. 194387 issued 5/9/97). Plaintiff did not appeal the trial court's decision regarding the sheriff's liability.

<sup>3</sup> Plaintiff argues that the circuit court erred in equating "gross negligence" under the statute with "willful and wanton misconduct." It is clear, however, that the court applied the statutory definition of gross negligence.

concluded that summary disposition was also proper on the alternative ground that Brazaski's conduct was not the proximate cause of plaintiff's injuries.

A trial court's grant of summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In deciding a motion for summary disposition pursuant to MCR 2.116(C)(7), we review the plaintiff's complaint to see whether facts have been pleaded justifying a finding that recovery is not barred by governmental immunity. *Vermilya v Dunham*, 195 Mich App 79, 81; 489 NW2d 496 (1993). We review a trial court's grant of summary disposition pursuant to MCR 2.116(10) to determine whether the movant was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999). To that end, we must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

Governmental employees acting within the scope of their authority are generally immune from tort liability unless their conduct amounted to gross negligence. MCL 691.1407(2); *Maiden, supra* at 121-122 (1999). "Gross negligence" is statutorily defined as conduct "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c). Evidence of ordinary negligence does not create a material question of fact concerning gross negligence. *Maiden, supra* at 122-123.

Viewed in the light most favorable to plaintiff, a reasonable trier of fact could conclude Brazaski acted negligently in enlisting plaintiff's help, but could not find that Brazaski's conduct was "so reckless as to demonstrate a substantial lack of concern for whether" plaintiff was injured. Evidence of ordinary negligence does not create a material question of fact concerning gross negligence. *Id.* Therefore, the circuit court did not err in granting summary disposition on this basis.

Because we conclude the circuit court properly granted defendants summary disposition on this first ground, we need not address plaintiff's arguments concerning the alternative ground for the court's ruling.

Affirmed.

/s/ Janet T. Neff  
/s/ Helene N. White  
/s/ Donald S. Owens