

STATE OF MICHIGAN
COURT OF APPEALS

ALEC NASSAR, NHAD NASSAR and AHMAD NASSAR, Individually and as Next Friend of ZAKIA NASSAR and MARIEN NASSAR, Minors,

UNPUBLISHED
August 6, 2002

Plaintiffs-Appellants,

v

No. 231738
Wayne Circuit Court
LC No. 99-916349-NO

CITY OF DEARBORN, DEARBORN POLICE DEPARTMENT, MICHAEL STURM, GARY MURACA, ANTHONY MENCOTTI, LUKE COSENZA, ROBERT DOULETTE, T. WANCHI and M. CHRISTOFF,

Defendants-Appellees.

Before: Murray, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition. 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).

Plaintiffs' appeal is limited to the dismissal of Alec Nassar's assault and battery claims against defendants. Defendant police officers can be liable for such torts when using excessive force. *Alexander v Riccinto*, 192 Mich App 65, 68; 481 NW2d 6 (1991). Whether a police officer had a reasonable belief of great danger warranting the use of deadly force "is to be

determined by the jury on the basis of all the facts and circumstances as they appeared to the party at the time of the incident.” *Id.* at 69.

The individual defendants, who were assisting federal agents in the execution of a federal search warrant, had reason to believe that plaintiff Alec Nassar was a dangerous person and had access to dangerous weapons, including information from a confidential informant that plaintiff said he would use deadly force in a confrontation with police and that there was a cache of automatic weapons in the house. Defendants presented evidence that when they entered the house, plaintiff exited his bedroom holding an assault rifle, ignored their shouts of “Police, get down!” and pointed the weapon at them, whereupon they opened fire. Plaintiff testified that he was holding an assault rifle, but it was pointed at the ceiling and never lowered, he did not hear defendants say anything, and that they suddenly began shooting at him. Even accepting plaintiff’s version as true, we do not believe that reasonable minds could differ in concluding that the police acted reasonably in opening fire on a suspect armed with an AR-15 semi-automatic assault rifle, particularly in light of the information received from the confidential informant.

Affirmed. Defendants may tax costs.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra