

STATE OF MICHIGAN
COURT OF APPEALS

ARCHIE LEE LLOYD,

Plaintiff-Appellee,

and

MICHIGAN DEPARTMENT OF COMMUNITY
HEALTH,

Intervening-Plaintiff

v

DETROIT MEDICAL CENTER, ROBERT
GILMORE and JAMES GRAY,

Defendants-Appellants.

UNPUBLISHED

August 16, 2002

No. 230722

Wayne Circuit Court

LC No. 98-835804-NO

Before: Neff, P.J., and Griffin and Talbot, JJ.

NEFF, P.J. (*dissenting*).

I respectfully dissent and would affirm the trial court's order striking the wrongful-conduct rule as an affirmative defense.

The issue in this case is narrow: whether the wrongful-conduct rule is available as a separate, distinct defense to an assault and battery claim. The majority opinion relies primarily on case law which applied the defense to theories of recovery not involving claims of assault and battery and in which self-defense is not applicable as an affirmative defense. The majority also cites a number of old, one might say ancient, cases to support its conclusion that the defense applies, but acknowledges that those cases do not expressly refer to the wrongful-conduct rule. In addition, these cases all involved mutual fights, and, in my view, they are distinguishable and inapplicable to the issue before us.

The trial court's decision on plaintiff's motion to strike the wrongful-conduct defense states the obvious in a clear, straightforward, common sense ruling. That is, the only defense to a claim of assault and battery is self-defense or its derivative, defense of others. The court held:

To use some general wrongful conduct rule to say if you acted wrongfully and you wound up being shot and paralyzed, you can't recover, is just inconsistent with the law with respect to assault and battery. . . .

* * *

The Court: The alleged wrongful conduct, a principal part that is, is involved in this case is the plaintiff's driving of his vehicle at one or more of the security officers and the officers responding by shooting. Their position would be we were justified in shooting this person, we were acting lawfully because we were acting in self-defense; in other words, defending ourselves or one security guard might reasonable [sic] say: I was acting in defense of my colleague and I thought he was in danger of great bodily [harm] or death and that's why I shot. And what I'm ruling is that that whole theory of wrongful conduct is included in the law, whether you are talking civilly or criminally, regarding assault and battery and the defenses thereto. Therefore, there is no reason to allege some separate, generalized wrongful conduct rule,

It is clear that the majority opinion extends the application of the wrongful-conduct rule into a realm where it has not previously been applied in Michigan for good reason; it is unnecessary in light of the availability of the defense of self-defense. If defendant acted in self-defense or defense of others, plaintiff is not entitled to recover, that is, the law of self-defense is the test of liability. In addition, inserting the wrongful-conduct rule can only tend to be confusing to the jury and, as pointed out by plaintiff, it will encourage court-sanctioned vigilante justice.

I would affirm. I invite our Supreme Court to take up and review this case because the majority opinion represents a significant departure from current assault and battery law.

/s/ Janet T. Neff