

STATE OF MICHIGAN
COURT OF APPEALS

LOUIS RUEDGER, JR.,

Plaintiff-Appellant,

v

DEPUTY JENNIFER BRUYNEEL, DEPUTY
BRANDON STEFANSKI, LT. DAVE TESKE,
SGT. JACKIE FELIX, AND SGT. DANIELS,

Defendants-Appellees.

UNPUBLISHED
February 19, 2004

No. 243832
Macomb Circuit Court
LC No. 2001-000169-NO

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition, pursuant to MCR 2.116(C)(7), (8) and (10), in defendants' favor in this case of alleged police misconduct. We affirm.

On January 13, 1999, plaintiff was a pretrial detainee at the Macomb County Jail following his arrest and arraignment on a drug charge. At dinner time, while housed in a detoxification cell, two sheriff deputies, defendants Stefanski and Bruyneel, attempted to deliver plaintiff's food. Plaintiff then charged toward the deputies in the direction of the open cell door. The deputies pushed plaintiff back into his cell, at which time plaintiff fell onto the concrete floor or bench and allegedly suffered a fractured hip.

On January 11, 2001, plaintiff filed his two-count complaint. In count one, plaintiff alleged that Deputies Stefanski and Bruyneel used excessive force which constituted gross negligence because the force was unnecessary in light of plaintiff's condition. And, in count two, plaintiff alleged that Deputies Stefanski and Bruyneel, as well as their supervising or superior officers, defendants Teske, Felix, and Daniels, violated his civil rights through their indifference to his safety and medical needs since plaintiff was not offered immediate medical care for his injury.

On June 10, 2002, defendants filed their motion for summary disposition under MCR 2.116(C)(7), (8), and (10). Defendants argued that plaintiff's gross negligence/intentional tort claim was not a cognizable claim but instead was an attempt to transform an intentional tort assault and battery action into a negligence claim. The trial court agreed, holding that "[t]his claim does not include the necessary element of specific intent, therefore, even by inference, the court is not convinced that Plaintiff's claim lies in intentional tort, therefore precluding Defendants from liability." Defendants also argued that plaintiff's gross negligence claim must fail because there was no genuine issue of material fact that the defensive measure utilized to prevent plaintiff from escaping from his jail cell was not grossly negligent. The trial court agreed, holding that reasonable jurors could not find that defendants were grossly negligent in their effort to prevent plaintiff from leaving his cell.

Next, defendants argued in their motion for summary dismissal that plaintiff's constitutional claim premised on the Fourteenth Amendment, which is applicable to pretrial detainees, should be dismissed because (1) defendants' use of force did not "shock the conscience" of the court, as required under *Johnson v Glick*, 481 F2d 1028, 1032-1033 (CA 2, 1973), and (2) was not the product of an intent to inflict unnecessary and wanton pain. The trial court agreed, holding that plaintiff admitted he attempted to leave his cell, although plaintiff thought he was permitted to, and that defendants' actions constituted a good faith effort to maintain discipline and were not the product of an unlawful intent.

Defendants also argued that plaintiff's constitutional claim premised on defendants' alleged indifference to his need for medical attention was unsupported by the record which established that plaintiff did not notify defendants of his pain or need for medical attention and that as soon as defendants were made aware that plaintiff required medical attention, via the nurse who was dispensing his detoxification medication, plaintiff was immediately transported to the hospital. The trial court agreed, holding that plaintiff admitted he did not notify defendants that he was in pain and that defendants had no such knowledge to disregard. Finally, defendants argued that they were entitled to qualified immunity because they could not have realized that their conduct of preventing plaintiff from escaping by pushing him back into his cell would result in a constitutional violation, if it was a violation. The trial court agreed, holding that defendants' actions constituted a good faith effort to maintain discipline and did not violate plaintiff's rights. Accordingly, after dismissing all of plaintiff's individual claims, the trial court dismissed the case in its entirety. This appeal followed.

First, plaintiff argues that the trial court erred in granting summary disposition on his intentional tort claim. We disagree. It appears that this claim was dismissed by the trial court pursuant to MCR 2.116(C)(8) for failure to state a claim because plaintiff did not plead the requisite intent to establish his intentional tort claim. We review the decision de novo, and consider the legal sufficiency of the claim by the pleadings alone. See *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

Here, plaintiff averred in his complaint as follows, in pertinent part:

26. That the Defendants, STEFANSKI and BRUYNEEL, owed a duty to the Plaintiff not to injure him while in his care and not to use excessive force upon his person.

27. That the actions of the Defendants Stefanski and Bruyneel, constituted gross negligence under the circumstances in that force was not necessary in order to keep the plaintiff from leaving the floor and that he could have easily been maintained and guarded by the personnel on duty without causing injury or harm to the plaintiff.

We agree with the trial court that plaintiff's intentional tort claim must fail. An essential element of the intentional tort of assault and battery is intent and/or willfulness. See *Young v Morrall*, 359 Mich 180, 187; 101 NW2d 358 (1960); *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991). No such intent was pleaded; thus, plaintiff failed to state an intentional tort claim and dismissal was proper under MCR 2.116(C)(8).

Next, plaintiff claims that the trial court erred in dismissing his gross negligence claim. Because it is clear that the trial court relied on evidence outside the record in considering this claim, we do the same under MCR 2.116(C)(10) to determine whether defendants were entitled to judgment as a matter of law because plaintiff failed to establish a genuine issue of any material fact. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Just as governmental employees are not immune from liability for intentional torts, they are not immune for conduct that is grossly negligent. MCL 691.1407(2); *Beaudrie v Henderson*, 465 Mich 124, 138-139; 631 NW2d 308 (2001). Grossly negligent conduct is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c); *Beaudrie, supra* at 138. Here, plaintiff claimed that Deputies Stefanski and Bruyneel used more force than necessary to prevent him from leaving his jail cell. We disagree. The record reveals that plaintiff was told to sit on a concrete bench in his cell while his cell door was being opened for the purpose of delivering his dinner. Once the cell door was opened, plaintiff smiled and said "you opened the door, bitch," stood up, and charged at Deputy Bruyneel. Deputies Stefanski and Bruyneel pushed plaintiff back into his cell and shut the cell door. Plaintiff admitted that he attempted to leave his jail cell when the door was opened. We agree with the trial court that, based on the evidence, reasonable jurors could not conclude that the actions of these defendants constituted gross negligence in light of plaintiff's threatening and dangerous conduct; thus, summary disposition of this claim was proper.

Next, plaintiff argues that all of the defendants violated his Fourteenth and Eighth Amendment rights through the use of force which caused him injury that defendants regarded with deliberate indifference. We disagree. First, as a pretrial detainee, plaintiff was protected by the Due Process Clause from the use of excessive force that amounted to punishment. See *Bell v Wolfish*, 441 US 520, 535-539; 99 S Ct 1861; 60 L Ed 2d 447 (1979). For the reasons discussed above, as well as those detailed by the trial court, which are fully supported by the record evidence, we conclude that plaintiff was not subjected to the excessive use of force which amounted to punishment and that no reasonable juror could find otherwise. Second, plaintiff's Eighth Amendment violation claim premised on his alleged deprivation of medical care is without merit. As noted by the trial court, plaintiff admitted that he did not indicate to defendants that he was in need of medical attention and did not request medical care; therefore defendants did not "refuse" or "withhold" medical care and did not display "deliberate indifference" to his alleged injury arising from his thwarted escape attempt. As soon as injury was suspected, plaintiff was transported to the hospital. Accordingly, we agree with the trial

court that this claim is without merit. In sum, the trial court properly dismissed this case in its entirety.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Brian K. Zahra