STATE OF MICHIGAN

COURT OF APPEALS

THOMAS HUNT, Plaintiff-Appellee, v SERGEANT GREG HUNT, Defendant-Appellant.	UNPUBLISHED May 5, 2009 No. 284485 Lenawee Circuit Court LC No. 07-002552-CZ

THOMAS HUNT, Plaintiff-Appellee, v SERGEANT GREG HUNT, Defendant-Appellant.	 No. 284540 Lenawee Circuit Court LC No. 07-002552-CZ

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

PER CURIAM.

In these consolidated cases, defendant appeals the trial court's order denying defendant's motion for summary disposition. In Docket No. 284485, this Court granted defendant leave to appeal the trial court's denial of his motion for summary disposition brought pursuant to MCR 2.116(C)(8); in Docket No. 284540, defendant appeals as of right from the trial court's order denying him governmental immunity. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The undisputed facts are as follows. Plaintiff owns a classic automobile, and he entered it in a show at Michigan International Speedway. For an extra fee, drivers were allowed to take a few laps on the racetrack. Drivers on the track had to comply with clearly posted rules, including no passing and adhering to a speed limit of 70 miles per hour. Cambridge Township Police cars, including one driven by defendant, were stationed around the track to ensure compliance. Plaintiff chose to participate in this activity, and took his vehicle out on the track. At this point, the parties' versions of what happened diverge.

According to defendant, plaintiff passed several vehicles and was driving about 90 miles per hour. Defendant drove in front of plaintiff's vehicle and escorted him off the track. According to defendant, he managed to stop plaintiff on the apron of the track, then went over to plaintiff's window and told him that because of his reckless driving, he had to leave the track. As defendant was heading back to his squad car, plaintiff squealed his tires, leaving marks on the apron. Defendant returned, pulled plaintiff out of his vehicle, handcuffed him, and gave him a ticket for reckless driving and failure to obey a police officer.[1]

According to plaintiff he never exceeded 60 miles per hour, and according to plaintiff and several other witnesses, plaintiff did not pass any other vehicles on the track. He did not see defendant signal him, but when defendant pulled up next to him and yelled at him to get off the track, he looked for an exit. Before he could find one, defendant forced him off the track. Defendant jerked plaintiff out of his vehicle and pushed him into it, causing the handcuffs to scratch the paint of his "classic" car.

Plaintiff then sued defendant for false arrest and false imprisonment. Defendant moved for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10). He argued that probable cause existed for plaintiff's arrest, so the false arrest count must fail. He also argued that plaintiff was collaterally estopped from arguing there was no probable cause because the district court had already adjudicated that issue when it denied the directed verdict motion. Plaintiff's false imprisonment count depended on there being a false arrest, so that, too, must fail. Finally, defendant argued that under the Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq*., he could be held liable only for gross negligence, not intentional torts, and even if he could be liable for an intentional tort, he was shielded when performing discretionary acts with good faith during the course of his employment.

Plaintiff responded that governmental immunity does not bar claims for intentional torts committed by individuals when they act without legal authority. Defendant could not arrest plaintiff unless he had legal authority to do so. Plaintiff provided not only his own testimony but also that of his wife and other drivers on the track that day, stating that plaintiff was not speeding and did not pass anyone. Moreover, plaintiff provided evidence that defendant had an improper motive for arresting him: the day before the race, plaintiff's wife had insulted defendant in the presence of defendant's wife, and plaintiff embarrassed defendant when defendant had to be told by plaintiff how to check license plate records.[2]

The trial court held that collateral estoppel did not bar plaintiff's claim. The trial court found that a triable question of fact existed regarding defendant's reason for stopping plaintiff, and denied the motion for summary disposition.

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[1] Plaintiff fought the traffic ticket and went to trial. He moved for a directed verdict but the trial court denied it, stating, "[C]learly, there's enough to get to the jury at this point." The jury acquitted plaintiff of both charges.

[2] Plaintiff has "authentic" plates on his vehicle that, according to plaintiff, cannot be searched through the registration system by plate number. MCL 257.803p.

"The applicability of governmental immunity is a question of law that is reviewed de novo on appeal." *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004). Immunity for a governmental employee is an affirmative defense that the employee must raise and prove. *Odom v Wayne County*, 482 Mich 459, 479; 760 NW2d 217 (2008). If reasonable jurors could honestly reach different conclusions as to whether conduct constitutes gross negligence, the issue is a factual question for the jury. *Jackson v Saginaw County*, 458 Mich 141, 146-147; 580 NW2d 870 (1998).

Under MCL 691.1407, the GTLA protects governmental employees from suits for ordinary negligence. However, claims of false arrest and false imprisonment sound in intentional tort, not negligence. *Odom, supra* at 480. When a plaintiff has alleged intentional tort claims against a lower-level governmental employee, the employee is entitled to immunity only if he shows that the acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority; the acts were undertaken in good faith, or were not undertaken with malice; and the acts were discretionary, as opposed to ministerial. *Id*. The question of probable cause, however, is not the proper inquiry. *Id.* at 481. A police officer is entitled to immunity if he acted in good faith and honestly believed that he had probable cause to arrest, even if in fact he lacked probable cause. Conversely, if he acted with "malicious intent, capricious action or corrupt conduct" or "willful and corrupt misconduct" when making an arrest, governmental immunity will not protect him even if probable cause is found. *Id*. at 474, quoting *Veldman v Grand Rapids*, 275 Mich 100, 113; 265 NW 790 (1936), and *Amperse v Winslow*, 75 Mich 234, 245; 42 NW 823 (1889).

In view of this law, the trial court correctly found that a question of fact existed concerning defendant's motivation for arresting plaintiff. To succeed in his motion, defendant had to show, amongst other things, that he acted in good faith. *Odom, supra* at 461. While he testified that he had a valid reason for the arrest, plaintiff countered with evidence not only that he was not speeding or driving recklessly, but also that defendant had reasons to dislike plaintiff. Even though defendant provided statements that his wife never reported the insult to him, conflicting evidence must be viewed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Thus, the trial court correctly decided that genuine issues of material fact remained and defendant was not entitled to immunity as a matter of law. Because the existence of probable cause alone is not dispositive of whether defendant is protected from suit, the trial court properly denied defendant's (C)(8) motion as well.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens