

STATE OF MICHIGAN
COURT OF APPEALS

RHONDA RENEE GREEN,

Plaintiff-Appellee,

v

OFFICER JILL KULHANEK, OFFICER
ANNETTE M. COPPOCK, OFFICER BRENT
YUCHASZ, OFFICER LEON FORYSTEK, and
SERGEANT AMY F. WALKER,

Defendants-Appellants,

and

OFFICER MICHAEL ARNTZ and SERGEANT
STACY CAIN,

Defendants.

RHONDA RENEE GREEN,

Plaintiff-Appellee/Cross-Appellee,

v

OFFICER MICHAEL ARNTZ and SERGEANT
STACY CAIN,

Defendants-Appellants,

and

SERGEANT AMY F. WALKER,

Defendant-Cross-Appellant,

and

UNPUBLISHED

October 1, 2009

No. 285882

Washtenaw Circuit Court

LC No. 06-001404-NZ

No. 285918

Washtenaw Circuit Court

LC No. 06-001404-NZ

OFFICER JILL KULHANEK, OFFICER
ANNETTE M. COPPOCK, OFFICER BRENT
YUCHASZ, and OFFICER LEON FORYSTEK,

Defendants.

Before: Meter, P.J., and Murray and Beckering, JJ.

MURRAY, J. (*concurring*).

I fully concur in the lead opinion's analysis and conclusion that reverses the trial court's order which denied defendants' motion for summary disposition. I write separately to address Judge Beckering's concurrence. In particular, Judge Beckering takes the position that the majority opinion "evaluates governmental immunity as if plaintiff bears the burden of proof" which she (correctly) opines would be contrary to the mandates of *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008). However, the lead opinion does not in any manner place on plaintiff the burden of proving that defendants' actions were excepted from governmental immunity. Instead, the lead opinion correctly concludes that plaintiff failed to submit any evidence to contradict defendants' documented assertion that there is no evidence that these defendants engaged in conduct that could amount to statutory gross negligence. A conclusion that the plaintiff has failed to bring forward sufficient evidence to rebut or dispute defendants' properly supported motion for summary disposition is a far cry from placing the burden of proof on plaintiff that an exception exists to governmental immunity. The lead opinion's resolution of these issues was procedurally and substantively proper, and that is why I fully join in that opinion.

/s/ Christopher M. Murray