

STATE OF MICHIGAN
COURT OF APPEALS

LASHONDA DIXON, Personal Representative of
the Estate of CHARLES DAWSON,

UNPUBLISHED
April 27, 2010

Plaintiff-Appellant,

v

CITY OF TAYLOR and LLOYD EDWARDS,
a/k/a MATTHEW EDWARDS,

No. 290074
Wayne Circuit Court
LC No. 08-101190-NO

Defendants-Appellees.

Before: M.J. KELLY, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

Defendant Edwards, a police officer employed by defendant City of Taylor, shot the decedent, Charles Dawson, while in the line of duty. On the day of the incident, the decedent had been consuming alcohol. He was described as being depressed and acting in a violent manner. The decedent had destroyed several items of personal property and inflicted injuries upon himself and his wife before the police were called to their residence. Specifically, the decedent broke cell phones, struck his wife in the leg with an object, broke both a computer within the home and the windshield of a vehicle, and cut himself and his wife with a 9-inch serrated bread knife.

When the officers arrived at the scene, the decedent's wife approached and warned them that the decedent had a knife, was depressed, and wanted them to shoot him. The decedent exited the house holding a knife in an aggressive manner and advanced toward defendant Edwards. The decedent ignored the officers' verbal warnings to drop his weapon. Defendant Edwards shot the decedent eight times while the decedent continued to advance with the knife toward defendant Edwards. It was not until the decedent fell and dropped the knife that another officer was able to kick the knife away from the decedent's reach.

On appeal, plaintiff contends that the trial court erred in finding that a genuine issue of material fact did not exist with regard to the issue of gross negligence. This Court reviews the grant or denial of a motion for summary disposition de novo. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007). When reviewing a motion brought under MCR 2.116(C)(10),

this Court considers the “pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Id.* at 552. A grant of “summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Id.* In addition, the applicability of governmental immunity comprises a question of law that we also review de novo. *Ballard v Ypsilanti Twp*, 457 Mich 564, 567; 577 NW2d 890 (1998).

MCL 691.1407(2), which delineates the circumstances permitting the invocation of governmental immunity by employees, provides:

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer’s, employee’s, member’s, or volunteer’s conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

In this appeal, we are concerned only with the applicability of MCL 691.1407(2)(c), regarding plaintiff’s assertions that defendant Edwards’ actions constituted gross negligence establishing liability.

For purposes of immunity, gross negligence is statutorily defined as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(7)(a); see also, *Costa v Community Emergency Med Serv, Inc*, 475 Mich 403, 411; 716 NW2d 236 (2006). This definition implies the existence of a “willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks.” *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004).

Plaintiff has failed to demonstrate that the actions of defendant Edwards constituted gross negligence in order to preclude the applicability of governmental immunity. The record establishes that the decedent was violent before the officers arrived at the scene. The decedent had destroyed several items of personal property and inflicted injuries to both himself and his wife. He exited the residence and advanced toward the officers while holding a knife, which was raised in an aggressive or threatening manner. The decedent refused to drop the weapon despite verbal directives from the officers. Given these circumstances, the shots fired by defendant Edwards were in self-defense and do not constitute “conduct so reckless as to demonstrate a

substantial lack of concern for whether an injury results.” MCL 691.1407(7)(a); *Costa*, 475 Mich at 411. Consequently, the trial court did not err in granting summary disposition in favor of defendants. *Brown*, 478 Mich at 552.

In addition, plaintiff asserts that the trial court erred by finding that defendant Edwards’ act of shooting decedent was not the direct proximate cause of the decedent’s injuries. Based on our determination that defendant Edwards’ actions did not constitute gross negligence, plaintiff’s arguments pertaining to proximate causation are rendered moot and need not be addressed by this Court. *Eller v Metro Contracting*, 261 Mich App 569, 571; 683 NW2d 242 (2004).

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder