

STATE OF MICHIGAN
COURT OF APPEALS

LARRY GETTEL,

Plaintiff-Appellant,

v

CARO REGIONAL CENTER, ROSE
LASKOWSKI, and MADHUMALTI D.
BHAVSAR,

Defendants,

and

DONALD PROUX,

Defendant-Appellee.

UNPUBLISHED
May 24, 2012

No. 300661
Tuscola Circuit Court
LC No. 05-023313-NO

PATRICIA COLBURN SPENCER,

Plaintiff-Appellant,

v

CARO REGIONAL CENTER, ROSE
LASKOWSKI, and MADHUMALTI D.
BHAVSAR,

Defendants,

and

DONALD PROUX,

Defendant-Appellee.

No. 300662
Tuscola Circuit Court
LC No. 05-023312-NO

KRISTIE REH,

Plaintiff-Appellant,

v

DONALD PROUX,

Defendant-Appellee,

and

CARO REGIONAL CENTER, and ROSE
LASKOWSKI,

Defendants.

No. 302596
Tuscola Circuit Court
LC No. 05-023361-NO

Before: K. F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

In this consolidated appeal, plaintiffs Patricia Spencer and Larry Gettel appeal as of right, and plaintiff Kristie Reh appeals by leave granted a September 27, 2010 order granting defendant Donald Proux's¹ motion for summary disposition pursuant to MCR 2.116(C)(7) (governmental immunity), MCR 2.116(C)(8) (failure to state a claim), and MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

This case stems from attacks on plaintiffs perpetrated by Corbin Thomas, a patient at the Caro Regional Center. After having been found not guilty by reason of insanity at a criminal trial, Thomas was admitted to Caro in December 2003. While at Caro, Thomas generally showed progress in treatment and was given a "grounds pass" beginning in March 2004, which gave him unsupervised access to the grounds at Caro for 15 minute periods. On June 22, 2004, defendant, a locum tenens psychiatrist at Caro, evaluated Thomas so that he could provide testimony at an upcoming probate court hearing regarding Thomas's status at Caro. Thomas appeared normal during the evaluation and defendant believed that he posed no risk to himself or others.

At approximately 8:30 p.m., Thomas used his grounds pass and disappeared from Caro. He was missing for approximately three days. On June 25, 2004, Thomas reappeared at the Caro Learning Center nearby. He attacked plaintiffs, all employees of the Learning Center, with a hammer and his fists, severely injuring them. Thomas was apprehended two days later and was eventually found guilty but mentally ill of four counts of assault with intent to commit murder, MCL 750.83.

¹ Donald Proux is the only remaining defendant in this case. Therefore, all references to "defendant" in this opinion are to Proux.

On appeal, plaintiffs argue that the trial court erred in granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) because defendant was not an employee of Caro entitled to governmental immunity. We disagree.

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). When bringing a motion pursuant to MCR 2.116(C)(7), a party is entitled to summary disposition if the opposing party's claims are barred due to immunity granted by law. *Odom v Wayne Co*, 482 Mich 452, 466; 760 NW2d 217 (2008). The motion may be supported by "affidavits, depositions, admissions, or other documentary evidence," and "contents of the complaint are accepted as true unless contradicted." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

Under the governmental immunity act, MCL 691.1407(2),

each officer and employee 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 . . . 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 a prior consolidated appeal, this Court concluded that governmental immunity applies given the facts in this case. *Reh v Laskowski*, unpublished opinion per curiam of the Court of Appeals, issued February 24, 2009 (Docket Nos. 279102, 279103, 279104, 279105, 279106, 279107). Specifically, this Court affirmed the trial court's grant of summary disposition in favor of Caro and other individuals who were employed by Caro. Further, this Court determined, with respect to defendant Proux, that the potential applicability of governmental immunity depended on whether, under the applicable economic reality test, Proux was appropriately considered an "employee" of Caro or an "independent contractor" for purposes of the governmental immunity statute. This Court remanded for factual development on that issue. Therefore, in this appeal, and in conformity with this Court's prior ruling, the issue is whether defendant qualifies as an employee entitled to governmental immunity under the economic reality test.

To determine if an employment relationship exists, this Court utilizes the economic reality test, which requires consideration of four basic factors: "(1) control of a worker's duties, (2) payment of wages, (3) right to hire, fire, and discipline, and (4) performance of the duties as an integral part of the employer's business toward the accomplishment of a common goal." *Mantei v Michigan Pub Sch Employees Retirement Sys*, 256 Mich App 64, 78; 663 NW2d 486 (2003). However, this is a non-exhaustive list of potential factors, and the Court may consider

other factors as a case may require. *Id.* at 79. No single factor controls, and the Court must consider the totality of the circumstances in making its determination. *Id.*

In this case, extensive evidence developed following the first appeal shows that Caro had control of defendant's duties, could discipline him, and generally treated him the same as any directly employed psychiatrist. In support of plaintiffs' position, defendant was not a direct employee of Caro, but rather worked as a locum tenens psychiatrist. Defendant admitted to being a contract employee and averred that he was an independent contractor rather than a direct employee of Caro. However, for purposes of determining governmental immunity, the proper focus of inquiry is not the superficial label given to the relationship, but rather the economic reality behind it. See *Rakowski v Sarb*, 269 Mich App 619, 625-626; 713 NW2d 787 (2006).

Defendant was utilized by Caro as a psychiatrist in evaluating patients and providing testimony in court proceedings. According to the facility's director, defendant's supervisor was able to control defendant's employment duties. Further, Caro had the authority to recommend termination of defendant's contract. Defendant was considered part of the staff at Caro and was required to abide by the bylaws in place for staff members. If he failed to comply with Caro bylaws, defendant would be subject to corrective action. Defendant's supervisor did "not necessarily" make determinations as to work assignments for psychiatrists based on whether they were employees or contract psychiatrists. Further, his supervisor indicated that defendant's duties were "more or less" the same as other staff psychiatrists. Defendant's superiors at Caro also could make the decision to let him go if he did not perform satisfactorily. Considering the totality of the circumstances, the trial court correctly concluded that defendant was an employee entitled to governmental immunity and, therefore, was entitled to summary disposition pursuant to MCR 2.116(C)(7).

Plaintiffs additionally argue that they have set forth viable claims of general negligence and negligent entrustment. However, because defendant is entitled to governmental immunity pursuant to MCL 691.1407(2), we need not address these issues.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Mark T. Boonstra