STATE OF MICHIGAN

COURT OF APPEALS

ROBERT M. ROWE,

Plaintiff–Appellee,

v

CHILDREN'S HOSPITAL OF MICHIGAN, RICHARD STINSON, and CHARLES ZARKIS,

Defendants–Appellants.

and

TODD STRUTZ,

Defendant.

UNPUBLISHED
January 10, 1997

No. 185052
Wayne Circuit
LC No. 93325211 AV

Before: Gribbs, P.J., and Saad and J. P. Adair,* JJ.

PER CURIAM.

This matter has been remanded by the Supreme Court for our consideration as on leave granted. Defendants appeal the April 18, 1994, circuit court order affirming a jury verdict and judgment in favor of plaintiff entered in district court in this personal injury case.[1] We affirm.

Defendants first argue that the trial court should have granted their motion for directed verdict or motion for judgment notwithstanding the verdict on plaintiff's negligence claim. Defendants assert that the evidence presented at trial addressed only plaintiff's claim for excessive force, which was rejected by the jury, and there was no separate factual basis for a claim of negligence. We disagree.

The denial of a motion for a directed verdict is reviewed on appeal for an abuse of discretion. In deciding whether the trial court erred in denying a motion for directed verdict, we review all the evidence presented up to the time of the motion in the light most favorable to the plaintiff to determine

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* Circuit judge, sitting on the Court of Appeals by assignment.

whether a question of fact existed; we grant the plaintiff every reasonable inference and resolve any conflict in the evidence in his favor. *Rasmussen v Louisville Ladder Co*, 211 Mich App 541, 545; 536 NW2d 221 (1995). Directed verdicts are disfavored in negligence cases. *Holland v Liedel*, 197 Mich App 60, 64; 494 NW2d 772 (1992). Similarly, in reviewing a trial court's refusal to grant a defendant's motion for judgment notwithstanding the verdict, we examine the testimony and all legitimate inferences that may be drawn in the light most favorable to the plaintiff. If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. *Pakideh v Franklin Commerical Mortgage Group*, 213 Mich App 636, 639; 540 NW2d 777 (1995).

When a person voluntarily assumes the performance of a duty, that person is required to perform it carefully, not omitting to do what an ordinarily prudent person would do in accomplishing the task. Hence, when an organization voluntarily assumes the duty of providing police protection in the form of security guards, it becomes incumbent upon it to provide that protection in a non-negligent manner. If reasonable minds could disagree on the conclusions to be drawn from the evidence, the question of whether a security guard was negligent in the performance of his duties is a question of fact for the jury. *Holland, supra* p 65; *Rhodes v United Jewish Charities*, 184 Mich App 740, 743; 459 NW2d 44 (1990).

Here, plaintiff testified that he was arrested and his hands were handcuffed behind his back. The parties offered alternative theories as to what occurred next. According to plaintiff, his arm was broken when he was either pushed or shoved to the ground by the defendant security guards. Plaintiff further testified that Zarkis and Stinson got up, grabbed him by the arms and dragged him down the hallway to the elevator, even though plaintiff kept telling them that his arm was broken and that they were hurting him. The guards testified that plaintiff was attempting to wrest from their control, and broke his arm when he tripped over a table. Based on this evidence, we conclude that, because the jury could reasonably conclude from this evidence that defendants were negligent, the trial court did not abuse its discretion when it denied defendants' motion for directed verdict and for JNOV. See *Holland, supra,* p 65; *Rhodes, supra,* p 743.

Defendants next argue that they were entitled to a new trial because there is no separate cognizable claim for negligence unless excessive force was used. We disagree.

Plaintiff's assault and battery claim was premised on the use of excessive force by the security guard defendants. Defendants had the authority to arrest plaintiff under MCL 338.1080; MSA 18.185(30). When an arrestee resists a lawful arrest, the peace officer is entitled to use reasonable force. *Tope v Howe*, 179 Mich App 91, 106; 445 NW2d 452 (1989). The jury found that defendants did not use excessive force, thus plaintiff's assault and battery claim failed.

However, plaintiff brought a separate claim for negligence based on defendants' conduct following their handcuffing of plaintiff. According to plaintiff, his arm was broken, he informed defendants of this, and in spite of his cries that his arm was broken and hurt, defendants picked up by both arms, dragging him out of the area. Defendant presented evidence that he sustained injuries from

this conduct. A tort cause of action can exist if a security guard was negligent in the discharge of his voluntarily assumed duties; the question of whether a guard was negligent in the performance of his duties is normally one of fact for the jury. *Holland*, *supra*, p 65; *Rhodes*, *supra*, p 743. Hence, defendants' were not entitled to a new trial. MCR 2.611(A)(1)(e).

Affirmed.

/s/ Roman S. Gribbs
/s/ James P. Adair

[1] Defendant Strutz was dismissed from the case pursuant to a directed verdict motion. Plaintiff does not challenge his dismissal on appeal.