

STATE OF MICHIGAN
COURT OF APPEALS

GARY L. GARLOCK,

Plaintiff-Appellant,

v

DOUGLAS A. WARNER,

Defendant-Appellee.

UNPUBLISHED

July 10, 1998

No. 197781

Clinton Circuit Court

LC No. 95-007694 NI

Before: Holbrook, Jr., P.J., and Gribbs and R.J. Danhof*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition for defendant. We affirm.

In his capacity as a volunteer firefighter, plaintiff was called to help deal with the circumstances surrounding an automobile accident. Plaintiff was instructed to go to the intersection of M-21 and Meridian Road and relieve a fellow firefighter who had been directing traffic. The M-21 and Meridian Road intersection was approximately one and one-half miles away from the accident site. Approximately one hour after arriving at the M-21 and Meridian Road intersection, plaintiff was struck by a vehicle driven by defendant as defendant attempted to turn left from Meridian Road onto M-21. Plaintiff subsequently brought suit against defendant alleging that defendant had been negligent in his operation of his vehicle.

Plaintiff argues that the trial court erred when it applied the fireman's rule to preclude his claim against defendant. We disagree. We review motions for summary disposition de novo in order to determine "whether the moving party was entitled to judgment as a matter of law." *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994). The trial court's grant of summary disposition was based both on MCR 2.116(C)(8) and (C)(10).

MCR 2.116(C)(8) permits summary disposition when the opposing party has failed to state a claim upon which relief can be granted. . . . The court must accept as

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

true all well-pleaded facts. . . . A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Id.*]

The fireman's rule "provides that certain professionals, such as firefighters and police officers, may *not* sue in tort for injuries sustained in the course of their employment." *Miller v Inglis*, 223 Mich App 159, 161; 567 NW2d 253 (1997). ""The scope of the rule . . . includes negligence in causing the incident requiring a safety officer's presence *and* those risks inherent in fulfilling the police or fire fighting duties."" *Gibbons v Caraway*, 455 Mich 314, 323-324; 565 NW2d 663 (1997), quoting *Woods v City of Warren* 439 Mich 186, 195; 482 NW2d 696 (1992), quoting *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347, 372; 415 NW2d 178 (1987) (emphasis added by the *Woods* Court).

In *Harris-Fields v Syze*, ___ Mich App ___, ___; ___ NW2d ___ (1998) (Docket No. 199039, issued 4/7/98), this Court concluded that under *Gibbons*, *supra*, a tort claim based on the alleged ordinary negligence of a independent "third party unconnected to the event to which the [safety] officer was responding," is barred by the fireman's rule. The *Syze* Court noted that the exception to the fireman's rule recognized by a majority of the justices in *Gibbons* is limited to situations where a safety officer has been injured by "the subsequent wanton, reckless, or grossly negligent conduct of an independent third party unconnected to the situation that brought the [safety] officer to the scene." *Id.* Accordingly, because plaintiff neither pled nor demonstrated that his injuries were the result of wanton, reckless, or grossly negligent conduct on the part of defendant, the trial court correctly concluded that the fireman's rule bars plaintiff's claim. *Id.*

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Robert J. Danhof