

STATE OF MICHIGAN
COURT OF APPEALS

BARRY O'BRYAN,

Plaintiff-Appellant,

v

TERRY COLWELL, DAVID QUASHNIE, SGT.
LATARSKI, WILBERT REID, and CHARLES
HINES,

Defendants-Appellees.

UNPUBLISHED
October 29, 1999

No. 210926
Wayne Circuit Court
LC No. 97-716691 NO

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff Barry O'Bryan appeals as of right the trial court's grant of defendants' motion for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(8). We affirm.

Plaintiff, a former Inkster police officer and union representative, was the subject of two disciplinary actions, the last of which resulted in his termination. Claiming that plaintiff had used unnecessary force against him, a citizen filed a complaint against plaintiff in 1992. Defendant Terry Colwell, the chief of police, referred the claim to the state police for investigation when an internal investigation showed that the claim may have merit. Plaintiff was charged with felonious assault, but later was acquitted of the charge. Following an internal investigation, plaintiff's employer suspended him for thirty days and then reduced the suspension to three days after arbitration. The employer reinstated plaintiff on June 3, 1993. On May 24, 1996, plaintiff responded to a report of a shooting. When he arrived at the site of the shooting, he found that two officers had shot an individual. The police department later commenced disciplinary proceedings against plaintiff for his role in the investigation because plaintiff allegedly had participated in a cover-up of the incident and assisted another officer's filing of a fraudulent worker's compensation claim. Plaintiff was terminated in early 1997. On May 30, 1997, plaintiff filed suit against defendants for malicious prosecution, intentional infliction of emotional distress, retaliatory discharge, and tortious interference with contract. In his complaint, plaintiff alleges that Colwell, the chief of police, and the remaining defendants, who were also Inkster police officers, acted in concert to terminate plaintiff. Defendants moved for summary disposition under MCR

2.116(C)(7), on the grounds that (a) defendants were immune from suit under the doctrine of governmental immunity, (b) plaintiff failed to arbitrate his claim, and (c) plaintiff's claims, insofar as they related to the 1992 disciplinary proceedings, were barred by the statute of limitations. Also, defendants moved for summary disposition under MCR 2.116(C)(8) because plaintiff's claim for intentional infliction of emotional distress failed to state a cause of action. Following a hearing, the court granted summary disposition.

Plaintiff contends, incorrectly, that the trial court improperly granted summary disposition on the ground that defendants were immune from suit. In deciding a motion for summary disposition based on governmental immunity, a court must consider all documentary evidence submitted by the parties. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992); *Terry v Detroit*, 226 Mich App 418, 428; 573 NW2d 348 (1997). All well-pleaded allegations are accepted as true and construed most favorably to the nonmoving party in determining whether the defendant is entitled to judgment as a matter of law. *Wade, supra*, 162-163; *Terry, supra*, 428. To defeat the motion for summary disposition, the plaintiff must allege facts giving rise to an exception to governmental immunity. *Wade, supra*, 163; *Terry, supra*, 428-429.

Colwell was the Inkster chief of police. As the highest appointive executive official of the police department, Colwell was entitled to absolute immunity when acting within the scope of his executive authority. MCL 691.1407(5); MSA 3.996(107)(5). Pointing to the admission in Colwell's deposition that he worked for the city manager, plaintiff argues that Colwell was not the highest appointive official. However, though Colwell ultimately may answer to an official in the city hierarchy, this is irrelevant to the dispositive fact that he is the highest appointive official in the police department. The police chief is generally recognized as the highest appointive official in the police department. See *Payton v Detroit*, 211 Mich App 375, 394; 536 NW2d 233 (1995); *Washington v Starke*, 173 Mich App 230, 241; 433 NW2d 834 (1988). Here, the alleged wrongful conduct is Colwell's referral of the citizen complaint to the state police and ultimately Colwell's firing of plaintiff. This conduct is clearly within the scope of Colwell's executive authority. *Id.* Colwell was immune from suit for the conduct alleged by plaintiff.

Further, the remaining four defendants are immune. With the exception of intentional torts,¹ governmental employees are immune from tort liability when acting on behalf of a government agency if (a) the employee is acting or reasonably believes that he is acting within the scope of his authority, (b) the governmental agency is engaged in the exercise or discharge of a governmental function, and (c) the employee's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. MCL 691.1407(2); MSA 3.996(107)(2).

Plaintiff simply fails to make a claim against Quashnie and Reid because he offers no factual or legal support for his conclusory allegations. Although we infer from defendants' motion for summary disposition that the two defendants are police officers, plaintiff alleged no conduct by either officer, much less conduct that would avoid the bar of governmental immunity. Plaintiff alleged two acts by Hines: (1) he read *Miranda* warnings to the officers involved in the 1996 shooting incident; and (2) he told someone that the department had to "get rid of" plaintiff. We fail to see how either allegation avoids a claim that Hines is immune from liability for his conduct in investigating a shooting by officers.

Finally, plaintiff alleges that Latarski threatened a citizen after the citizen decided not to pursue a complaint against plaintiff. There is nothing in the complaint to show the context in which the alleged threat occurred, or to suggest that Latarski committed an intentional tort or that he acted recklessly. Plaintiff failed to meet his obligation to allege facts or introduce evidence to avoid the bar of governmental immunity. Accordingly, the court properly granted summary disposition as to all defendants.

Given our disposition of this claim, it is unnecessary to address plaintiff's remaining three claims. Nonetheless, we have examined plaintiff's remaining claims and find them to be meritless.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage

¹ *Sudul v City of Hamtramck*, 211 Mich App 455, 458; 562 NW2d 478 (1997).