STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH MARIO RECCHIA,

Plaintiff-Appellant,

v

MARGARET E. KELLY and EASTWOOD OXFORD OUTPATIENT SERVICES,

Defendants-Appellees.

UNPUBLISHED
June 30, 2000

No. 213394
Macomb Circuit Court
LC No. 97-001757-NO

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(7). We affirm.

Plaintiff claims that the trial court erred in granting defendants' motion for summary disposition because there was a question of fact whether defendants were immune under MCL 722.625; MSA 25.248(5). We disagree and conclude that summary disposition was proper under MCR 2.116(C)(7). This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In reviewing a motion for summary disposition under MCR 2.116(C)(7), this Court accepts the allegations in a well-pleaded complaint as true and construes them in the plaintiff's favor. The motion should not be granted unless no factual development could provide a basis for recovery *Huron Potawatomi, Inc v Stinger*, 227 Mich App 127, 130; 574 NW2d 706 (1997).

Plaintiff first argues that his claim is based on defendant Kelly's[1] gross negligence, and not on her report of child abuse. Therefore, according to plaintiff, his complaint was

[1] Although plaintiff alleged in his complaint that both defendants Kelly and Eastwood Oxford Outpatient Services ("Eastwood") committed the complained-of acts, defendant Eastwood is a clinic that employed Kelly and, as such, could not "fail to investigate," "make defamatory statements," "indoctrinate the child," or commit any of the other acts that plaintiff claimed resulted in the torts that gave rise to plaintiff's complaint. Thus, we assume plaintiff intended its complaint against Eastwood to arise from a theory of respondeat superior. *Helsel v Morcom*, 219 Mich App 14, 21; 555 NW2d 852

not subject to dismissal under (C)(7) because the allegations of the complaint did not implicate the immunity provisions of MCL 722.625; MSA 25.248(5).[2] In determining the gravamen of an action, this Court reads the claim as a whole. *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 253; 506 NW2d 562 (1993). Although plaintiff argues that his claim is not based on child abuse reporting, it is clear that plaintiff's claim would not have been filed but for defendant's reporting of the suspected child abuse.

It is important to focus on the acts that Kelly is alleged to have committed. Plaintiff seeks damages for Kelly's alleged improper investigation of child abuse allegations and her alleged incorrect determination that sexual abuse had occurred. However, these allegedly improper acts were significant only in that they triggered independent investigation by child protective service workers – an investigation that ultimately concluded that the allegations of abuse were unsubstantiated. Thus, it was Kelly's *reporting* of her conclusions that resulted in official action; had Kelly arrived at her conclusion – flawed or valid – without reporting her conclusions to the authorities, no further action would have been taken. Plaintiff's attempts to reword his allegation to avoid the immunity limitation imposed by the Child Protection Law must fail. *Id*.

Next, plaintiff argues that even if his claim is based on child abuse reporting, he overcame the presumption that defendants acted in good faith. We disagree. Under the Child Protection Law, one who files a suspected child abuse report is immune from civil liability arising from the report as long as he or she acted in good faith. MCL 722.625; MSA 25.248(5). Good faith means having reasonable cause to believe that a child has been abused. *Warner v Mitts*, 211 Mich App 557, 559; 536 NW2d 564 (1995). Further, there is a presumption that one acted in good faith in filing a suspected abuse report. MCL 722.625; MSA 25.248(5). The purpose of the immunity provision is to encourage reporting of suspected child abuse. *Warner, supra* at 559, citing *Awkerman v Tri-County Orthopedic Group*, 143 Mich App 722, 728; 373 NW2d 204 (1985). This Court rejects arguments that frustrate the purpose of the Child Protection Law. MCL 722.621 *et seq.*; MSA 25.248(1) *et seq*.

In the instant case, plaintiff argues that defendants' bad faith is illustrated by her failure to independently investigate the allegations of child abuse, and by the fact that plaintiff was never charged with any crime. However, we find that plaintiff failed to overcome the presumption that defendants acted in good faith. First, defendant Kelly did not file her suspected abuse report based solely on information from plaintiff's ex-wife. Instead, she filed her report after repeated interviews with plaintiff's daughter, and only after plaintiff's daughter told Kelly twice that plaintiff sexually abused her.

(1996). Accordingly, we review the adequacy of plaintiff's complaint primarily with respect to the alleged acts of Kelly.

[2] MCL 722.625; MSA 25.248(5) provides in relevant part:

> A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith.

Second, reasonable cause to suspect child abuse may arise without ever speaking with the alleged abuser. *Warner, supra* at 559-560.

Moreover, the fact that plaintiff was never charged with criminal sexual conduct is not dispositive. Kelly had no responsibility to confirm her suspicions before filing her report. *Williams v Coleman*, 194 Mich App 606, 617; 488 NW2d 464 (1992), quoting *People v Cavaiani*, 172 Mich App 706, 714-715; 432 NW2d 409 (1988). Indeed, such a requirement would be unduly prohibitive and contrary to the public policy of the Child Protection Law. *Warner, supra* at 559. To the extent that plaintiff claims that Kelly acted with an improper motive, his argument is also without merit because "'good faith' pertains to the existence of a reasonable suspicion, not the motive behind the decision to report." *Id.* at 559. Thus, even taking plaintiff's well-pleaded facts as true, we conclude that he has failed to overcome the statutory presumption that defendants acted in good faith.

Plaintiff relies on several federal cases and one state case to support his argument that Kelly was not entitled to claim immunity under the statute. These cases are inapplicable. In each federal case, the issue before the court was the nature of the immunity – absolute or qualified – that was available to state officials in a civil rights action for damages under 42 USC 1983. *Austin v Borel*, 830 F2d 1356 (CA 5, 1987); *Chalkboard, Inc v Brandt*, 902 F2d 1375 (CA 9, 1990); *Snell v Tunnell*, 920 F2d 673 (CA 10, 1990); *Millspaugh v Wabash Co Dep't of Public Welfare*, 937 F2d 1172 (CA 7, 1991).[3] In *Austin*, the Fifth Circuit concluded that child protection workers in Louisiana were not entitled to absolute immunity, but were entitled to qualified immunity, when they filed allegedly false written verified complaints seeking removal of children from a home on the basis of alleged sexual abuse. In *Chalkboard*, the Ninth Circuit held that state officials who summarily closed a child care facility, after an investigation disclosed that sexual and physical abuse may have occurred therein, were not entitled to either absolute or qualified immunity in a § 1983 action because the showing made by the plaintiffs in response to defendants' summary judgment motion was sufficient to demonstrate the unlawfulness of defendants' actions. In *Snell*, the Tenth Circuit held that the defendant state social workers were not entitled to absolute or qualified immunity where they were alleged to have made knowing and intentional false statements alleging child abuse to a judge in order to secure a search warrant to enter plaintiffs' home with the result that several children were improperly removed from plaintiffs' custody. In *Millspaugh*, the Seventh Circuit concluded that while a defendant county social worker was not entitled to absolute immunity for withholding certain information from a judge when seeking a court order to remove plaintiffs' children from their control, she was entitled to qualified immunity because she had an objectively reasonable basis for her decision to seize the children. Finally, in *Babcock v State*, 116 Wash2d 596; 809 P2d 143 (1991), the Washington Supreme Court concluded that state social workers were not absolutely immune for negligent foster care placement of several young girls with a

[3] We note that plaintiff fails to discuss a Sixth Circuit case, *Kurzawa v Mueller*, 732 F2d 1456 (CA 6, 1984) (cited in *Austin, supra* at 1360 and in *Snell, supra* at 688), that held that social workers in Michigan were entitled to absolute immunity when they were involved in prosecuting neglect and delinquency petitions. Even if the federal cases on which plaintiff relies were applicable, since Michigan is in the Sixth Circuit, the *Kurzawa* decision would undercut plaintiff's reliance on federal authority from other circuits.

relative who subsequently raped them, but that if they reasonably carried out their assigned statutory duties, the social workers would be entitled to qualified immunity. In each of these cases, the courts were concerned with whether immunity ought to be granted to state-employed social workers or case workers who investigated reported or suspected child abuse and took some type of action based on their investigations.

The present case involves the applicability of a state grant of statutory immunity for those who make initial reports of *suspected* child abuse. These initial reports only provide the basis for an official investigation – they do not deprive individuals of their rights with respect to their children – and it is only the official investigation that can ultimately result in the forfeiture of visitation or custody rights. Adoption of plaintiff's position would also be contrary to the policy of the statute because it would discourage those who observe possible child abuse from reporting those allegations unless the observer was willing to undertake lengthy (and possibly intrusive) investigation. Our statute is meant to encourage reporting of suspected child abuse, *Warner, supra* at 559, so that those officials who are tasked with carrying out investigations may perform their jobs. That is precisely what occurred in this case; the official investigation resulted in a determination that the allegations of child sexual abuse were unsubstantiated. Accordingly, plaintiff's reliance on the above federal and state cases is unwarranted. The trial court properly concluded that defendants were entitled to the immunity provisions of MCL 722.625; MSA 25.248(5).

Given our determination that summary disposition was properly granted pursuant to MCR 2.116(C)(7), it is unnecessary to consider plaintiff's other appellate arguments. *City of Bronson v American States Ins Co*, 215 Mich App 612, 621; 546 NW2d 702 (1996); *Turrentine v General Motors Corp*, 198 Mich App 572, 576; 499 NW2d 411 (1993).

Affirmed.

/s/ William B. Murphy
/s/ Jeffrey G. Collins
/s/ Donald S. Owens