STATE OF MICHIGAN

COURT OF APPEALS

IRENE SOFFIN and LORI NORTHEY,

Plaintiffs-Appellants,

and

SELECTCARE,

Intervening Plaintiff,

v

CITY OF LIVONIA FIRE AND RESCUE DEPARTMENT, DANIEL LEE, LAWRENCE MOSIER, HURON VALLEY AMBULANCE, INC., SHERRI BOWMAN and STEVEN HILL,

Defendants-Appellees.

UNPUBLISHED
July 3, 2001

No. 219880
Wayne Circuit Court
LC No. 97-714614-NI

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's orders granting defendants' motions for summary disposition.[1] We affirm in part and reverse in part.

I. Factual Background

In late September and early October 1996, plaintiff Irene Soffin was hospitalized for an angioplasty procedure at Providence Hospital. That procedure involved an incision in Soffin's upper right leg, near the groin area. On October 2, 1996, Soffin's physicians discharged her from Providence. Soffin's daughter, plaintiff Lori Northey, picked up Soffin from the hospital, arriving home some time between 2:00 p.m. and 3:30 p.m.[2] As Soffin attempted to exit

[1] The trial court allowed Selectcare to intervene as a plaintiff shortly before it entertained defendants' motions for summary disposition. Because Selectcare did not appeal from the trial court's orders, this opinion will refer to Irene Soffin and Lori Northey as plaintiffs.

[2] The record provided on appeal does not reveal the exact time when plaintiffs arrived home.

Northey's vehicle, she experienced a popping sensation in her right groin area.[3] Northey inspected the incision site in Soffin's groin area and discovered a large black and blue swelling that she estimated to be the size of a grapefruit. Northey testified that she called 911 for medical assistance, within five or ten minutes after discovering the swelling. She also testified that she informed the 911 operator that Soffin had recently undergone angioplasty, that there was a black and blue swelling in Soffin's groin area, and that Soffin was pale, sweating, and in pain.

Records indicate that Northey called 911 at approximately 3:34 p.m. In response, the City of Livonia Fire and Rescue Department ("LF&R") dispatched an ambulance staffed by Daniel Lee and Lawrence Mosier, firefighters and emergency medical technicians (EMTs). Lee was the senior EMT on the call, responsible for making final decisions regarding patient care and for completing the ambulance report. Mosier was responsible for monitoring the patient's vital signs. Under LF&R policy, Lee and Mosier were authorized to transport patients to one of three hospitals: Botsford, St. Mary's, and Garden City.[4] Apparently, LF&R developed this policy in order to permit the Livonia firefighters / EMTs to remain close to their service area in case of a fire emergency.

Lee and Mosier arrived at plaintiffs' home at approximately 3:35 p.m. When they arrived, plaintiffs reported Soffin's recent angioplasty procedure, painful swelling near the incision in Soffin's right groin area, and a feeling of general weakness. At 3:37 p.m., Mosier took Soffin's vital signs and discovered that her pulse rate was 120, her blood pressure was 182/90, and her skin felt warm to the touch. Further, Mosier recalled that Soffin was flush (not pale) and that she was diaphoretic (very sweaty) when they arrived at the scene. Lee did not remember the size or color of the swelling in Soffin's groin area, but Mosier recalled that it was about the size of a grapefruit, and appeared mostly red with a slight bruising. Neither Lee nor Mosier believed that Soffin was displaying signs of shock when they assessed her condition.

The witnesses dispute what happened next. According to Lee, he offered to transport Soffin to Botsford, the closest medical facility, but Soffin refused that offer several times. Instead, Soffin expressed a desire to return to Providence Hospital, the facility from which she had just been discharged. According to Mosier, Lee asked Soffin whether she had a hospital preference. Soffin responded that she desired transport to Providence because her doctor practiced there. Lee told her that LF&R firefighters were not authorized to transport patients to Providence. In response, Soffin and Northey specifically refused transport to Botsford, St. Mary's, or Garden City, insisting on transport to Providence. In fact, Mosier testified that Northey was "very adamant" about not going anywhere but Providence. Northey stated that if Lee and Mosier would not take Soffin to Providence, she would do so herself. As a result, Lee

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[3] Due to her medical condition, Soffin does not recall the facts surrounding this incident. Therefore, plaintiffs' testimony was supplied solely by Northey.

[4] Lee testified that Botsford was approximately two minutes from plaintiffs' home, St. Mary's was between five and seven minutes away, and Garden City was between seven and fifteen minutes away. Lee further testified that Providence was approximately twenty minutes from plaintiffs' home, depending on traffic conditions. Northey testified that she was aware, at the time of the incident, that Botsford and St. Mary's were both closer to her home than Providence.

called the Livonia dispatcher to request a private ambulance that could transport Soffin to Providence.

Northey disputes Lee and Mosier's version of events and denies that she insisted on Soffin's transport to Providence. Rather, she testified that Lee informed her that both Botsford and St. Mary's were full and accepting emergencies only. In response, Northey asked Lee and Mosier to transport Soffin to Providence, where the angioplasty had been performed. Lee responded that Providence was outside his jurisdiction. Northey testified that she then offered to pay Lee and Mosier if they would transport Soffin to Providence. They informed her that they could not do so. Northey then asked Lee and Mosier to place Soffin into her vehicle so that she could transport Soffin to Providence herself. Lee and Mosier refused to do so. Northey testified that she then gave Lee and Mosier consent to transport Soffin to any hospital that was appropriate. She denied that she insisted on Soffin's transport to Providence Hospital. Rather, she testified that she wanted Soffin transported "to whatever hospital she needed to go to." According to Northey, Lee and Mosier responded by stating that they would call a private ambulance to transport Soffin to Providence.

In any event, Lee contacted the Livonia dispatcher, who in turn contacted Huron Valley Ambulance, Inc. ("HVA"), requesting transport for Soffin to Providence. When Lee called the dispatcher, he classified Soffin as a priority three patient, meaning that she was in stable condition and that she was not in shock. Although Mosier played no role in that classification, he agreed with Lee's decision that Soffin was a priority three patient. Lee further testified that he waited for the HVA ambulance only because he believed that Soffin's condition was stable.

While waiting for the second ambulance, Mosier took Soffin's vital signs a second time and discovered that they remained unchanged. Both Lee and Mosier denied that they observed any change in Soffin's condition while waiting for the HVA ambulance to arrive. Further, Mosier testified that the swelling in Soffin's groin area did not increase during the wait for the HVA ambulance. Lee testified that, if he had noticed a change in Soffin's condition, he would have canceled the private ambulance and would have transported Soffin to one of the three closest hospitals, whether or not plaintiffs agreed.

HVA's records reveal that it received the call at 3:43 p.m., approximately eight minutes after the LF&S firefighters first arrived at plaintiffs' home. HVA paramedics Sherri Bowman and Steven Hill arrived at the scene at 3:56 p.m., thirteen minutes after receiving the call from the Livonia dispatcher and twenty-one minutes after the LF&S firefighters arrived at the scene. Upon their arrival, Bowman and Hill assessed Soffin's condition and observed the following symptoms: pale and sweaty skin, hematoma (collection of blood under the skin), and oriented but groggy. Soffin also complained that she was cold and dizzy. Bowman took Soffin's vital signs and discovered a pulse rate of 140, but was unable to obtain a blood pressure reading. Bowman recorded that the swelling in Soffin's groin area was eight inches wide, eight inches long, two inches high off the skin, and purple in color.

Plaintiffs adamantly conveyed their hospital preference to Bowman and Hill. Soffin specifically stated that she was treated at Providence and that's where she wanted to return. Northey stated that she wanted Soffin to go to Providence because that's where her doctor was and that she would take Soffin there herself if HVA didn't take her to Providence. Bowman also

testified that Northey was "very anxious, very upset, and determined to get her way." Due to plaintiffs' insistence, Bowman and Hill decided to transport Soffin to Providence.

Bowman and Hill elevated Soffin's legs and applied pressure to the hematoma, in an attempt to move some of the collected blood back toward the heart and other organs. They also attempted to establish an intravenous line in order to replace some of the fluids in Soffin's system, but were unsuccessful. With the help of the LF&S firefighters, Bowman and Hill then transported Soffin to the ambulance. Bowman tried twice more to place an intravenous line, but was unsuccessful. At 4:14 p.m., after approximately eighteen minutes on the scene, Bowman and Hill left plaintiffs' residence, arriving at Providence at 4:25 p.m. Upon arrival at the hospital, it was discovered that Soffin had suffered a hemorrhage in her groin area that caused permanent injuries.

II. Procedural Background

Plaintiffs filed suit alleging gross negligence, willful misconduct, and negligent infliction of emotional distress. For purposes of plaintiffs' suit, defendants fell within two separate categories: the LF&R defendants (LF&R, Lee, and Mosier) and the HVA defendants (HVA, Bowman, and Hill). Plaintiffs alleged that the LF&S defendants were grossly negligent because Lee and Mosier: (1) failed to treat Soffin's condition, (2) failed to transport Soffin to Providence, as requested, (3) failed to transport Soffin to any hospital, and (4) failed to inform HVA of Soffin's life-threatening condition. Plaintiffs alleged that the HVA defendants were grossly negligent because Bowman and Hill spent too much time treating Soffin on the scene, instead of immediately transporting Soffin to a hospital. In essence, plaintiffs argue that Bowman and Hill should not have attempted to insert an intravenous line while on the scene. Instead, plaintiffs insist that Bowman and Hill should have made those attempts while en route to the hospital.

Defendants moved for summary disposition under to MCR 2.116(C)(7), (8), and (10). All defendants claimed immunity from liability under the Emergency Medical Services Act (EMSA), MCL 333.20901 *et seq.* Further, all defendants argued that their conduct did not proximately cause Soffin's injuries and that plaintiffs had failed to state a claim for negligent infliction of emotional distress. Finally, the LF&R defendants claimed immunity from liability under the public duty doctrine. While the trial court granted summary disposition to all defendants, it did not specify whether it granted the motions under MCR 2.116(C)(7), (8), or (10). Our review of the record reveals that the trial court granted summary disposition to all defendants based on the EMSA's grant of immunity. Accordingly, we will review the trial court's grant of summary disposition under MCR 2.116(C)(7).

III. Standard of Review

This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In making this determination, we review the entire record to determine whether defendant was entitled to summary disposition. *Id.* Unlike a movant under subsection (C)(10), a movant under subsection (C)(7) is not required to file supportive material and the opposing party need not reply with supportive material. *Id.* at 119. If a party does support a

motion under MCR 2.116(C)(7) by filing affidavits, depositions, admissions, or other documentary evidence, we must consider those materials. *Id*. Further, we must accept the contents of the complaint as true, unless contradicted by documentation submitted by the movant. *Id*.

Summary disposition under MCR 2.116(C)(7) is proper for a claim that is barred because of immunity granted by law. *Smith v Kowalski*, 223 Mich App 610, 616; 567 NW2d 463 (1997). In regard to a claim of gross negligence, summary disposition for the defendant is appropriate only where reasonable minds could not have reached different conclusions regarding whether the defendant's conduct amounted to gross negligence. *Haberl v Rose*, 225 Mich App 254, 265; 570 NW2d 664 (1997). Generally, once a standard of conduct is established, the reasonableness of an actor's conduct under the standard is a question for the factfinder, not the court. *Jackson v Saginaw Co*, 458 Mich 141, 146; 580 NW2d 870 (1998), citing *Tallsman v Markstrom*, 180 Mich App 141, 144; 446 NW2d 618 (1989). However, if reasonable minds could not differ based on the evidence presented, then the trial court should grant the motion for summary disposition. *Jackson*, *supra* at 146, citing *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992).

IV. Emergency Medical Services Act

On the date in question, the EMSA provided:[5]

> Unless an act or omission is the result of gross negligence or willful misconduct, the acts or omissions of a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or medical director of a medical control authority or his or her designee while providing services to a patient outside a hospital, or in a hospital before transferring patient care to hospital personnel, that are consistent with the individual's licensure or additional training required by the local medical control authority do not impose liability in the treatment of a patient on those individuals or any of the following persons:
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> * * *
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> (d) The life support agency or an officer, member of the staff, or other employee of the life support agency.
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> (f) The authoritative governmental unit or units. [MCL 333.20965(1).]

The parties do not dispute that the EMSA applies to all defendants in this matter. Therefore, in order to survive defendants' motion for summary disposition under MCR

[5] Although the Legislature subsequently amended the EMSA, those amendments do not apply in the present case. See 1997 PA 78; 1999 PA 199; 2000 PA 375.

2.116(C)(7), plaintiffs were required to allege either "gross negligence" or "willful misconduct" on the part of defendants.

V. Willful Misconduct

The trial court granted summary disposition to all defendants based on a finding that none of the defendants' actions amounted to "willful misconduct" under the EMSA. In *Jennings v Southwood*, 446 Mich 125, 142; 521 NW2d 230 (1994), our Supreme Court held that a plaintiff alleging "willful misconduct" under the EMSA must allege that the defendant intended to harm the plaintiff. Plaintiffs alleged "willful misconduct" in their amended complaint. However, they alleged no facts that could support a finding that defendants actually intended to harm plaintiffs. Further, plaintiffs do not pursue the "willful misconduct" issue on appeal. Therefore, we affirm the trial court's grant of summary disposition to all defendants on the issue of "willful misconduct."

VI. Gross Negligence

The trial court also granted summary disposition to all defendants based on a finding that none of the defendants' actions amounted to "gross negligence." In *Jennings*, *supra* at 136-137, our Supreme Court defined the EMSA's "gross negligence" language to require evidence of "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." On appeal, plaintiffs argue that the trial court committed error requiring reversal because reasonable minds could reach different conclusions regarding whether defendants demonstrated a substantial lack of concern for plaintiffs' welfare.

A. The LF&R Defendants

First, plaintiffs argue that a question of fact exists regarding whether the LF&R defendants were grossly negligent. Plaintiffs argue that Lee and Mosier failed to recognize, upon arrival at plaintiffs' home, that Soffin was in a state of shock. Plaintiffs argue that Lee and Mosier failed to recognize the serious nature of Soffin's medical condition and her need for immediate hospitalization. Plaintiffs also argue that Lee and Mosier inappropriately classified Soffin as a priority three patient, when she was not in stable condition. Finally, plaintiffs argue that Lee and Mosier refused to transport Soffin to any hospital, essentially sitting by and doing nothing while waiting for another ambulance to arrive.

We agree with plaintiffs that reasonable minds could reach different conclusions regarding the LF&S defendants' evaluation of Soffin's medical condition. Lee and Mosier contend that Soffin was not in a state of shock when they arrived, even though she exhibited some symptoms typically associated with shock. Lee and Mosier contend that Soffin's condition was stable enough to wait for a second ambulance. Further, they contend that Soffin's condition did not change between the time of their arrival and the arrival of the HVA defendants. However, the HVA defendants immediately recognized that Soffin was in shock. They obtained different readings on Soffin's vital signs, determined that Soffin was not in stable condition, and concluded that she required immediate transport to an emergency room. Given this divergent testimony, reasonable minds could reach different conclusions regarding whether Lee and Mosier

demonstrated a substantial lack of concern for whether the delay in treating Soffin's condition would result in injury. *Jennings*, *supra* at 136-137.

Further, the parties presented conflicting testimony regarding the reason why Lee and Mosier did not transport Soffin to a hospital. Lee and Mosier testified that plaintiffs refused transport to any hospital other than Providence, and that they were not authorized to transport her there. Bowman and Hill likewise testified that Northey was particularly adamant that Soffin be transported only to Providence, to the point where she threatened to take Soffin there in her own vehicle if the EMTs would not do so. However, Northey denied that she insisted on transport to Providence. Instead, she testified that she authorized Soffin's transport to any hospital and that she wanted Soffin to be taken to wherever she needed to go. While the weight of this testimony certainly favors defendants, reasonable minds could differ over which testimony was the most credible. Although we might not do so, a reasonable jury could disbelieve the testimony of all four EMTs and accept Northey's testimony. If a jury did so, then it could also determine that Lee and Mosier's failure to transport Soffin to a hospital demonstrated a substantial lack of concern for whether serious injury would result.

Accordingly, we reverse the trial court's grant of summary disposition to the LF&S defendants on the issue of gross negligence.

B. The HVA Defendants

Next, plaintiffs argue that a question of fact exists regarding whether the HVA defendants were grossly negligent. Plaintiffs argue that Bowman and Hill should have immediately transported Soffin to the closest hospital. Plaintiffs presented evidence that Bowman and Hill recognized that Soffin was in a state of shock and understood that Soffin had an abnormally high heart rate, a history of coronary heart disease, and a large hematoma. Therefore, plaintiffs argue that Bowman and Hill should have recognized the immediate need to transport Soffin to a hospital.

However, there is no evidence in the record that Bowman and Hill demonstrated a substantial lack of concern for Soffin's well-being. In contrast, they attempted to provide proper medical care. The entire time they spent on the scene before transport to the hospital was spent attempting to stabilize Soffin's condition. Plaintiffs presented no facts from which reasonable minds could conclude that the HVA defendants were grossly negligent. We conclude that the trial court properly granted summary disposition to the HVA defendants because reasonable jurors could not find that the conduct of these defendants amounted to gross negligence. *Haberl*, *supra* at 265.

VII. Proximate Cause and Public Duty Doctrine

All defendants argue that the trial court properly granted their motions for summary disposition because their conduct did not proximately cause Soffin's injuries. Additionally, the LF&R defendants argue that the trial court properly granted their motion for summary disposition because, under the public duty doctrine, they owed no duty to plaintiffs. Although defendants raised these issues below, the trial court did not resolve them. Therefore, there is no lower court

ruling on these issues for this Court to review. On remand to the trial court, the LF&R defendants may again present these issues to the trial court for resolution.

VIII. Conclusion

Affirmed in part and reversed in part. Plaintiffs, being the prevailing parties as against the LF&R defendants, may tax costs pursuant to MCR 7.219, to the extent that those costs relate to the appeal involving the LF&R defendants. The HVA defendants, being the prevailing parties as against plaintiffs, may tax costs pursuant to MCR 7.219.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald