

STATE OF MICHIGAN
COURT OF APPEALS

BEVERLY WHITE, individually and as personal
representative of the ESTATE OF EARL WHITE,
Deceased,

Plaintiff-Appellant,

v

CRAIG STEWART and CITY OF DETROIT,

Defendants-Appellees.

UNPUBLISHED
January 25, 2002

No. 224487
Wayne Circuit Court
LC No. 97-724381-NI

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to the City of Detroit. Plaintiff argues that the trial court erroneously dismissed her substantive due process claim against the City under 42 USC 1983.¹ We affirm.

I. Factual Background

This case arises from an automobile collision that occurred on August 26, 1995. Decedent Earl White, a City of Detroit police officer, initiated a high-speed pursuit of an unknown vehicle. It appears that fellow Detroit police officer Craig Stewart may have joined in the pursuit that White began. In any event, the two patrol cars collided at an intersection. The collision killed White and his two passengers, while seriously injuring Stewart. Officer White's widow sued the City of Detroit and Officer Stewart, under a number of different theories. The only claim at issue here is plaintiff's allegation that the City failed to adequately train its police

¹ 42 USC 1983 provides, in relevant part:

[E]very person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

officers to properly conduct high-speed pursuits. Plaintiff alleged that this failure violated the decedent's substantive due process rights, and she sued for damages under 42 USC 1983.

In the trial court, the parties produced copies of the City's police pursuit policy. During the relevant time period, that policy provided, in pertinent part:

The Detroit Police Department places the highest value on the lives and safety of its officers and the public at large. The department also recognizes its responsibility to apprehend persons who endanger the public by fleeing to avoid prosecution. Officers shall make every reasonable effort to apprehend an escaping vehicle. However, vehicle pursuits shall not be conducted in such a manner as to recklessly endanger the lives of other innocent citizens or the officers themselves.

Under the policy, an individual officer who initiates a high-speed pursuit bears a responsibility to terminate the pursuit if it will place the lives of others at undue risk:

Officers must keep in mind that a vehicle pursuit has the same potential for serious injury or death as the use of fatal force. The danger to the public inherent in any vehicle pursuit must be carefully considered. Officers must place the protection of human life over all other considerations. Therefore, the decision to terminate a pursuit may be the wisest course of action. A member will not be criticized for terminating a pursuit when, in the member's opinion, the lives of others would have been at undue risk had the pursuit continued.

The policy also provides for supervisory control over an individual officer's decision to initiate a high-speed pursuit. The policy mandates that the police dispatcher is responsible for "assigning a patrol supervisor from the precinct of the occurrence to monitor the pursuit." Furthermore, the City's policy provides that:

The monitoring supervisor shall constantly assess the circumstances surrounding the pursuit. Location, traffic density, weather/road conditions, driver training and experience, seriousness of the crime, length and speed of the pursuit, as well as the possibility of identifying the suspect at a later time, are all factors which must be considered when deciding to continue or terminate a pursuit. The monitoring supervisor shall immediately terminate the pursuit when the circumstances warrant such action. The pursuit may also be terminated by a communications supervisor or other ranking member of the department.

Plaintiff alleged that Officer Stewart failed to comply with the City's pursuit policy, in several respects. Plaintiff also alleged that the City had failed to adequately train Officer Stewart regarding how to properly conduct a high speed chase. Plaintiff presented evidence that the City trained its police officers regarding high-speed pursuits through the "precision driving" course at the police academy. That training included approximately ten hours of lecture and twenty-four to thirty-two hours of hands-on driving instruction on the police range. Plaintiff also presented evidence that Officer Stewart received this training during his time at the police academy. Plaintiff argues that the City should have provided its officers, particularly Officer Stewart, with additional training regarding the proper conduct of high-speed pursuits.

II. Procedural Background

Plaintiff's first amended complaint pleaded claims for vehicle owner's liability, negligent operation of a motor vehicle, battery, intentional infliction of emotional distress, and deprivation of federal civil rights under 42 USC 1983. The parties stipulated to entry of an order dismissing the first three counts, leaving only the intentional infliction of emotional distress and the § 1983 claims remaining.

Defendants moved for summary disposition of the remaining claims under MCR 2.116(C)(7) and (C)(10). The trial court granted summary disposition on plaintiff's claim for intentional infliction of emotional distress, as against both the City and Officer Stewart. Furthermore, the trial court granted summary disposition on plaintiff's § 1983 claim against Officer Stewart. The trial court based its order as to those claims on the ground that plaintiff had abandoned them. Plaintiff does not appeal from that portion of the trial court's decision.²

The trial court also granted summary disposition in favor of the City on plaintiff's § 1983 claim for "failure to train" its police officers regarding how to properly conduct high-speed pursuits. The trial court applied *County of Sacramento v Lewis*, 523 US 833; 118 S Ct 1708; 140 L Ed 2d 1043 (1998), to the § 1983 claim and read that opinion to require a showing of "conduct intended to injure in some way unjustifiable by any government interest," in order to reach the level of conduct that shocks the judicial conscience. The trial court applied that standard, concluded that the City's conduct was not egregious enough to shock the conscience, and held that the City was not liable to plaintiff for damages under § 1983.

Plaintiff moved for reconsideration of the trial court's decision. The trial court issued an opinion and order denying plaintiff's motion, but relied on a different ground than that supporting its original decision. On reconsideration, the trial court concluded that the "intent to injure" standard that it drew from the *County of Sacramento* opinion was inapplicable to plaintiff's claim against the City. The trial court then analyzed *Collins v City of Harker Heights*, 503 US 115; 112 S Ct 1061; 117 L Ed 2d 261 (1992), and applied that holding to plaintiff's claim. The trial court concluded that plaintiff's claim was precisely the type of tort claim that the *Collins* Court had refused to recognize under § 1983. Accordingly, the trial court denied plaintiff's motion for reconsideration. Plaintiff appeals as of right. We affirm.

III. Standard of Review

Appellate courts review 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, this Court must review the entire record to determine whether defendant was entitled to summary disposition. *Id.* A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 120. In evaluating a motion under this subsection, we consider affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the

² Because all of plaintiff's claims against Officer Stewart have been dismissed and were not appealed, plaintiff's claims against Officer Stewart are not at issue in this case.

motion. *Id.* Where the above evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.*

IV. Constitutional Violation

Plaintiff first argues that the trial court erroneously granted the City's motion for summary disposition because she adequately demonstrated the occurrence of a constitutional violation on the part of the City. The trial court relied on *Collins, supra*, in granting the City's motion. Because the trial court viewed plaintiff's claim against the City as "precisely the sort of tort claim that the *Collins* Court had refused to read into the Due Process Clause," it granted the City's motion for summary disposition on plaintiff's § 1983 claim.

In *Collins, supra* at 120, the United States Supreme Court ruled that a substantive due process claim brought against a municipality under 42 USC 1983 must be analyzed under a two-prong test: "(1) whether plaintiff's harm was caused by a constitutional violation, and (2) if so, whether the city is responsible for that violation." These two inquiries are separate and involve different standards. *Id.* at 122. Plaintiff's argument addresses the first prong of the above test, e.g., whether the City's alleged failure to adequately train its police officers rose to the level of a constitutional violation.

In *Collins*, a municipal sanitation employee died of asphyxia after entering a manhole to unstop a sewer line. *Id.* at 117. The employee's widow brought a § 1983 claim, alleging that the city had failed to adequately train its employees regarding the dangers of working in sewers. *Id.* The federal district court dismissed the plaintiff's complaint on the ground that it did not allege a constitutional violation. *Id.* at 118. The Fifth Circuit affirmed that decision on other grounds. *Id.* A unanimous Supreme Court affirmed, but returned to the district court's reasoning that the plaintiff's complaint had not alleged a constitutional violation. *Id.* at 130.

Before the Supreme Court, one of the plaintiff's theories under § 1983 was that the city's "deliberate indifference" to the deceased employee's safety qualified as arbitrary government action that must "shock the conscience" of federal judges. *Id.* at 126. The Court rejected the plaintiff's theory because it was not persuaded that either the city's alleged failure to train its employees or its alleged failure to warn them about known risks of harm could be properly characterized as a "conscience shocking" omission, in a constitutional sense. *Id.* at 128. Rather, the Court believed that the plaintiff's theory was "analogous to a fairly typical state-law tort claim." *Id.*

The *Collins* Court explained that the federal due process clause should not be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law:

Our refusal to characterize the city's alleged omission in this case as arbitrary in a constitutional sense rests on the presumption that the administration of government programs is based on a rational decisionmaking process that takes account of competing social, political, and economic forces. Decisions concerning the allocation of resources to individual programs, such as sewer maintenance, and to particular aspects of those programs, such as the training and compensation of employees, involve a host of policy choices that must be made by locally elected representatives, rather than by federal judges interpreting the

basic charter of Government for the entire country. The Due Process Clause “is not a guarantee against incorrect or ill-advised personnel decisions.” Nor does it guarantee municipal employees a workplace that is free of unreasonable risks of harm. [*Id.* at 128-129, citations omitted.]

The *Collins* Court also looked to the plaintiff’s specific allegations regarding the city’s actions. The Court noted that the plaintiff did not allege that the city or any of its agents deliberately harmed her husband. *Id.* at 125. Further, the plaintiff did not allege that the decedent’s supervisor instructed him to enter the sewer with either actual or implied knowledge of a significant risk of injury. *Id.* Instead, the plaintiff made the general allegation that the city’s “deliberate indifference” to the decedent’s safety qualified as arbitrary government action that must “shock the conscience” of the judiciary. *Id.* at 125-126. The Court disagreed that the city’s actions or omissions rose to the “conscience shocking” level, and held that the plaintiff’s § 1983 claim had been properly dismissed.

Applying *Collins* to the present case, we likewise hold that plaintiff has failed to demonstrate a constitutional violation on the part of the City. As in *Collins*, we conclude that the City’s alleged failure to adequately train its police officers regarding how to properly conduct high-speed police chases cannot be properly characterized as a “conscience shocking” omission, in the federal constitutional sense. Furthermore, as in *Collins*, the instant plaintiff did not allege that the City or any of its agents deliberately harmed her husband, or that supervisory personnel instructed him to engage in life-endangering conduct with the actual or implied knowledge of a significant risk that he would be injured. Accordingly, we conclude that the trial court properly dismissed plaintiff’s § 1983 claim for failure to demonstrate a constitutional violation perpetrated by the City.³

V. Individual Officer Liability

Finally, plaintiff argues that this Court should resolve a split amongst the federal circuit courts, regarding whether municipalities may be held independently liable under 42 USC 1983 even when no individual officer violated the constitution. Given our conclusion that plaintiff failed to demonstrate a constitutional violation on the part of the City, we decline to address this issue.⁴

Affirmed.

/s/ Brian K. Zahra
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

³ Plaintiff also argues that the trial court erroneously granted the City’s motion for summary disposition because she satisfied the second prong of the *Collins* test, e.g., she demonstrated that City acted with “deliberate indifference.” However, because we conclude that plaintiff has failed to demonstrate a constitutional injury, we need not reach this issue.

⁴ Furthermore, we note that this issue was never decided by the trial court.