STATE OF MICHIGAN

COURT OF APPEALS

TRENT PASSINAULT,

Plaintiff-Appellant,

v

MARK STOESSNER and NORTHERN MICHIGAN UNIVERSITY BOARD OF CONTROL,

Defendants-Appellees.

UNPUBLISHED
November 22, 2002

No. 237526
Marquette Circuit Court
LC No. 99-036053-NO

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant Mark Stoessner. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was a student at Northern Michigan University (NMU) and was enrolled in the athletic training/sports medicine program. Stoessner, the head athletic trainer, was plaintiff's immediate supervisor. Plaintiff also worked with Jim Winkler, a graduate student athletic trainer. Plaintiff attended an intra-squad hockey game as part of his training. Stoessner instructed plaintiff to stand with him beside the players' bench. The spectator area of the arena was fronted with plexiglass; however, the bench area was not so protected. During the game a hockey puck flew into the bench area and struck plaintiff, causing serious injuries and permanently impaired vision in plaintiff's right eye.

Plaintiff filed suit in circuit court alleging that Stoessner was grossly negligent in instructing him to stand in an unprotected area, in failing to warn him of the dangers of standing in such an area, and in failing to provide him with protective equipment. He filed suit against NMU in the Court of Claims alleging liability under MCL 691.1406, the public building exception to governmental immunity, on the ground that the players' bench was a defective classroom because it was not protected by plexiglass. The cases were consolidated.

Stoessner moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no reasonable jury could find that he acted in a grossly negligent manner in instructing and

supervising plaintiff. Initially the trial court denied the motion on the basis that issues of fact existed.[1] However, after granting Stoessner's motion for reconsideration, the trial court granted the motion for summary disposition, finding that reasonable minds could not differ as to whether his conduct was grossly negligent. The court noted that even if his conduct was negligent, a question of fact did not exist as to whether the conduct was grossly negligent.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c). To be the proximate cause of an injury, the gross negligence must be "the one most immediate, efficient, and direct cause" preceding the injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

Plaintiff argues the trial court erred by granting Stoessner's motion for summary disposition. We disagree and affirm. Plaintiff's training program required him to work in actual practice/game locations. Stoessner maintained that he specifically warned plaintiff of the dangers associated with flying pucks in the bench area. Plaintiff did not deny that Stoessner gave him such warnings; rather, he stated only that he did not recall him doing so.

Jim Winkler stated that he had several discussions with plaintiff regarding the need to be vigilant in the bench area and to be aware of the location of the hockey puck at all times. In addition, Stoessner indicated that in order to perform his duties in the most efficient manner, he had to stand in the bench area. He stated that plaintiff could have been positioned in an area protected by plexiglass, but that had plaintiff been in such an area he would have been removed from the bench and the training environment.

Stoessner and Winkler maintained that they warned plaintiff of the dangers associated with standing in the bench area. Plaintiff's testimony established only that he could not recall if such warnings were given. Furthermore, Stoessner asserted that in order to do his job and to teach plaintiff, he and plaintiff needed to be in the bench area. The trial court correctly found that reasonable minds could not differ as to whether Stoessner's conduct was so reckless as to demonstrate a substantial lack of concern for whether plaintiff would be injured. MCL 691.1407(2)(c); *Maiden, supra*. Summary disposition was proper.

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[1] The trial court, sitting as the Court of Claims, granted NMU's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). Plaintiff sought leave to appeal the trial court's decision granting NMU's motion (Docket No. 236055). Another panel of this Court denied the application for failure to persuade of the need for immediate appellate review, and denied plaintiff's motion for rehearing.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski