# STATE OF MICHIGAN

# COURT OF APPEALS

GEORGE WHITFIELD,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee.

UNPUBLISHED
February 26, 2004

No. 242209
Oakland Circuit Court
LC No. 01-029979-CZ

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Plaintiff sued defendant under various theories in connection with an incident of suspected shoplifting at one of defendant's stores. The trial court dismissed each of plaintiff's claims in an opinion and order granting summary disposition for defendant pursuant to MCR 2.116(C)(10). Plaintiff appeals as of right. We affirm.

While shopping at defendant's store, plaintiff, an African-American male, was suspected of concealing merchandise in his clothing without paying for it. Plaintiff had just paid for some other items he had purchased and was about to leave the store when he was stopped by defendant's employees and asked to accompany them to the security office. Plaintiff agreed to go with the guards to the office in order to clear the matter up. While in the security office, plaintiff removed both his pants and his underwear, exposing himself to defendant's employees. No merchandise was found on plaintiff, but he refused to leave the store until defendant's employees called the police.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court granted defendant's motion under MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A party responding to a motion under MCR 2.116(C)(10) is required to present evidentiary proofs showing that there is a genuine issue of material fact for trial. If such proofs are not presented, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456 n 2; 597 NW2d 28 (1999). In reviewing the motion, the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. MCR 2.116(G)(5). The court may not

assess credibility or determine facts when deciding the merits of the motion. *Downey v Charlevoix Co Bd of Co Road Comm'rs*, 227 Mich App 621, 626; 576 NW2d 712 (1998).

Plaintiff argues that he established a genuine issue of material fact sufficient to withstand summary disposition of his claims for false arrest and false imprisonment. We disagree. At his deposition, plaintiff stated that he was not arrested, but rather, defendant's employees were only investigating him. He admittedly agreed to accompany defendant's employees to the security office in order to clear the matter up. In light of plaintiff's admissions, the trial court properly granted defendant summary disposition of plaintiff's claim for false arrest. *Clarke v Kmart Corp*, 197 Mich App 541, 546-547; 495 NW2d 820 (1992); *Bruce v Meijers Supermarkets, Inc*, 34 Mich App 352, 355-356; 191 NW2d 132 (1971). Further, because plaintiff admitted that he was not subject to arrest, and voluntarily agreed to accompany defendant's employees to the security office, he could not establish false imprisonment. *Clarke*, *supra* at 547.

Next, plaintiff argues that there was sufficient evidence to establish a genuine issue regarding whether he was subjected to an assault and battery by defendant's employees. We disagree.

The elements of assault and battery are explained in *Smith v Stolberg*, 231 Mich App 256, 260; 586 NW2d 103 (1998):

> An assault is "any intentional unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under circumstances which create a well-founded apprehension of imminent contact, coupled with the apparent present ability to accomplish the contact." *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991). This Court defined battery as "the wilful and harmful or offensive touching of another person which results from an act intended to cause such contact." *Id*.

We conclude that plaintiff failed to produce sufficient evidence establishing a genuine issue of material fact with regard to whether the alleged touching on the arm amounted to an assault or battery. Plaintiff admitted that he was only touched on the arm as defendant's employees were trying to escort him to the security area to discuss the situation. By plaintiff's own admissions, there was no offer to use force against him. Nor did the evidence show that the touching was harmful or offensive to plaintiff. Plaintiff's claim for assault or battery based upon the touching of his arm was properly dismissed by the trial court.

Regarding the incident in which plaintiff lowered his pants, regardless of whether plaintiff was asked to lower his pants,[1] the submitted evidence did not show that there was any threat of force directed at plaintiff to compel him to do so. Although the trial court dismissed this claim on somewhat different grounds, it reached the correct result. This Court will not

[1] Whether defendant's employees required plaintiff to lower his pants to see if he was concealing merchandise was a disputed issue in the case. Plaintiff admitted, however, that he decided to remove his underwear because he was upset by the situation.

reverse where the trial court reaches the correct result, albeit for the wrong reason. *Lakeside Oakland Development, LC v H & J Beef Co*, 249 Mich App 517, 531 n 6; 644 NW2d 765 (2002).

Plaintiff also argues that the trial court erred by dismissing his claim for intentional infliction of emotional distress. We disagree. The trial court correctly held that the conduct of defendant's employees was not so extreme or outrageous to support a claim for intentional infliction of emotional distress. *Graham v Ford*, 237 Mich App 670, 674-675; 604 NW2d 713 (1999). Even if defendant's employees asked plaintiff to lower his pants, where plaintiff was suspected of concealing stolen merchandise in his pants, that conduct was not so extreme or outrageous to support a claim for intentional infliction of emotional distress. See *Clarke*, *supra* at 548. As the trial court noted, if there was any extreme or outrageous conduct in this case, it was committed by plaintiff who, by his own admission, proceeded to expose his genital area to defendant's employees.

Next, plaintiff argues that the trial court erred in dismissing his claim for racial discrimination. We disagree.

A prima facie case of discrimination can be established by showing disparate treatment. *Reisman v Regents of Wayne State University*, 188 Mich App 526, 538; 470 NW2d 678 (1991). To prove disparate treatment, a plaintiff, like plaintiff here, who is a member of a class entitled to protection must first show "that he was treated differently than persons of a different class for the same or similar conduct." *Id*. The trial court did not err in dismissing this claim because plaintiff failed to present evidence establishing that he was treated differently than other members of different classes for the same conduct. Plaintiff did not offer any evidence indicating that defendant's employees did not investigate or detain other customers who were also suspected of shoplifting. Nor did plaintiff present evidence suggesting that defendant either targeted African-American customers or did not similarly investigate suspected shoplifting by customers of other races.[2]

We affirm.

/s/ Karen M. Fort Hood
/s/ Richard A. Bandstra
/s/ Patrick M. Meter

[2] In light of these determinations, we need not consider whether the trial court properly applied the merchants privilege statutes, MCL 600.2917 and MCL 764.16, to this case. As noted earlier, we will not reverse where the trial court reaches the correct result, albeit for the wrong reason. *Lakeside*, *supra*.