STATE OF MICHIGAN

COURT OF APPEALS

EDWARD S. HARTKE and MARGARET W. HARTKE, Co-Independent Personal Representatives of the Estate of ANDREW WILLIAM HARTKE, Deceased, Plaintiffs-Appellants,	UNPUBLISHED January 17, 2006
v COUNTY OF OAKLAND and OAKLAND COUNTY SHERIFF, Defendants-Appellees.	No. 255182 Oakland Circuit Court LC No. 00-023612-NO
EDWARD S. HARTKE and MARGARET W. HARTKE, Co-Independent Personal Representatives of the Estate of ANDREW WILLIAM HARTKE, Deceased, Plaintiffs-Appellants,	
v GREGORY GLOVER, Defendant-Appellee.	No. 255183 Oakland Circuit Court LC No. 01-032200-NO

Before: Murray, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right, challenging the trial court's order granting defendants' motion for summary disposition of plaintiffs' claims under 42 USC 1983, pursuant to MCR 2.116(C)(10). We affirm.

I. Introduction

Plaintiffs' decedent, Andrew Hartke, was killed when a vehicle driven by Joseph Weeder struck the vehicle which Hartke was driving. At the time of the accident, Weeder was fleeing

from Oakland County Sheriff's Deputy Gregory Glover. The trial court dismissed plaintiffs' § 1983 claims against Glover (LC No. 2001-032200-NO) and the County of Oakland and the Oakland County Sheriff (LC No. 2000-023612-NO), concluding that there was no genuine issue of material fact that Deputy Glover had not acted with an intent to harm Weeder, and that because plaintiffs could not establish a constitutional violation by Deputy Glover, plaintiffs' derivative claims against Oakland County and the Oakland County Sheriff must also be dismissed.

II. Analysis

When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). If the nonmoving party fails to establish that a material fact is at issue, and that judgment should be entered for the moving party as a matter of law, the motion is properly granted. *Id.* at 363.

A. Deputy Glover

Plaintiffs first argue that the trial court erred by applying an "intent-to-harm" standard to evaluate Deputy Glover's conduct with respect to their § 1983 claim alleging a violation of substantive due process rights. We disagree.

State courts are bound by United States Supreme Court decisions on federal questions. See *Betty v Brooks & Perkins*, 446 Mich 270, 276; 521 NW2d 518 (1994). The scope of liability under 42 USC 1983 is one such federal question. Additionally, decisions of other federal courts are binding on questions of federal law where there is no conflict among the federal appellate courts. *Etefia v Credit Techs, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).

In *County of Sacramento v Lewis*, 523 US 833, 836; 118 S Ct 1708; 140 L Ed 2d 1043 (1998), the United States Supreme Court resolved a conflict among the circuits and held that a police officer does *not* "violate[] the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender." Rather, "in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." *Id*. at 836.

The substantive due process prong of the Fourteenth Amendment prohibits certain government actions regardless of the fairness of the procedures used to implement them. *Id*. at 840. Thus, a substantive due process claim arising from a death resulting from a police pursuit amounts to a claim that the police officer's actions "were an abuse of executive power so clearly unjustified by any legitimate objective of law enforcement as to be barred by the Fourteenth Amendment." *Id*. But the Fourteenth Amendment is not a source of tort law, and "does not guarantee due care on the part of state officials." *Id*. at 848-849. Rather, "the substantive component of the Due Process Clause is violated by executive action only when it 'can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense.'" *Id*. at 847, quoting *Collins v Harker Heights*, 503 US 115, 128; 112 S Ct 1061; 117 L Ed 2d 261 (1992).

However, the *Lewis* Court explained that conduct that shocks the conscience in one context does not necessarily shock the conscience in another context. *Lewis*, *supra* at 849-851. In cases involving the conditions of prisoners and detainees, for example, the deliberate indifference standard applies. *Id*. By contrast, in cases involving prison riots, "a much higher standard of fault than deliberate indifference has to be shown . . . ." *Id*. at 852-853.

The *Lewis* Court found it "hard to avoid" the analogy of police pursuits to prison riots. *Id.* at 853. The Court stated:

> Like prison officials facing a riot, the police on an occasion calling for fast action have obligations that tend to tug against each other. Their duty is to restore and maintain lawful order, while not exacerbating disorder more than necessary to do their jobs. They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made "in haste, under pressure, and frequently without the luxury of a second chance." . . . A police officer deciding whether to give chase must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to all those within stopping range, be they suspects, their passengers, other drivers, or bystanders. [*Id*., quoting *Whitley v Albers*, 475 US 312, 320; 106 S Ct 1078; 89 L Ed 2d 251 (1986) (citations omitted).]

Thus, "when unforeseen circumstances demand an officer's instant judgment, even precipitate recklessness fails to inch close enough to harmful purpose to spark the shock that implicates 'the large concerns of the governors and the governed.'" *Lewis*, *supra* at 853, quoting *Daniels v Williams*, 474 US 327, 332; 106 S Ct 662; 88 L Ed 2d 662 (1986). Accordingly, the Court held that "high-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressible by an action under § 1983." *Lewis*, *supra* at 854.

Accordingly, where the evidence fails to create a question of material fact concerning whether the pursuing officer had the requisite intent to injure the suspect unrelated to the legitimate purpose of arrest, summary disposition is proper. See *Onossian v Block*, 175 F3d 1169, 1171-1172 (CA 9, 1999); *Helseth v Burch*, 258 F3d 867, 872 (CA 8, 2001); *Bublitz v Cottey*, 327 F3d 485, 491 (CA 7, 2003); *Davis v Hillside*, 190 F3d 167, 170-171 (CA 3, 1999); *Jackson v Detroit*, 156 F Supp 2d 788, 791 (ED Mich, 2001); *Scott v Michigan*, 173 F Supp 2d 708, 710, 712-715 (ED Mich, 2001). We therefore conclude that the trial court in this case correctly followed *Lewis* and properly applied an intent-to-harm standard to plaintiffs' claims against Deputy Glover.

Plaintiffs nonetheless argue that there was sufficient evidence to establish a question of material fact concerning whether Deputy Glover intended to harm Weeder. We disagree.

Much of plaintiffs' argument is focused on Deputy Glover's testimony that he considered numerous relevant factors both at the time the chase commenced, and during the approximately two-minute chase. But this evidence in no way establishes an intent to harm on the part of Deputy Glover. Instead, as numerous federal courts have noted, the pursuit of a lawless individual fleeing from a police investigation is an instantaneous decision whose purpose is to

apprehend the suspect, not injure somebody. See *Helseth, supra* at 872; *Onossian, supra* at 1172. As the Third Circuit aptly put it:

> Here then, as in *Lewis*, the officers were faced with lawless behavior – the flight from their investigation - for which they were not to blame. They had done nothing to cause Cook's high-speed driving or his flouting of their law-enforcement authority. Cook's action was instantaneous and so, by necessity, was the officers' response. Their intent was to do their job as law enforcement officers, not to cause injury. If they acted recklessly or imprudently, there is no evidence that their actions "were tainted by an improper or malicious motive." *Id.* at 1721. Because their actions did not shock the conscience, they were entitled to summary judgment. [*Davis, supra* at 171.]

None of the evidence put forth by plaintiffs suggest to the contrary. Although Deputy Glover certainly could have discontinued the pursuit, his failure to do so exhibited no intent to harm, and therefore no violation of decedent's constitutional rights.

Plaintiffs also argue that Deputy Glover may have held Weeder's passenger at gunpoint, swore at him, threatened to hit him, and perhaps dragged him out of Weeder's car and onto the ground. However, a proper formulation of the applicable intent-to-harm standard is whether the officer acted with "a purpose to cause harm *unrelated to the legitimate object of arrest*." *Lewis, supra* at 836 (emphasis added). Thus, even assuming that Deputy Glover held Weeder's passenger at gunpoint, swore at him, threatened to hit him, and dragged him to the ground, those actions were clearly related to "the legitimate object of arrest" and therefore, cannot give rise to liability. Further, there is no evidence to support plaintiffs' speculation that the presence of a civilian in Deputy Glover's patrol car had any effect on his actions. We therefore conclude that the trial court properly dismissed plaintiffs' § 1983 claim against Deputy Glover.

B. The County and Sheriff

We also disagree with plaintiffs' next argument that the trial court erred in granting summary disposition to the county and the county sheriff, as these defendants may not be held liable under a failure-to-train theory when plaintiffs cannot establish a constitutional violation by Deputy Glover.

Plaintiffs urge this Court to follow *Fagan v City of Vineland*, 22 F3d 1283, 1287 (CA 3, 1994), where the court reversed a trial court's grant of summary judgment to the defendants, and held that, in a failure-to-train case, "the City may be held independently liable for violating the plaintiffs' constitutional rights, even if no individual police officer is liable."[1] Relying on *Monell*

[1] On rehearing en banc, *Fagan v City of Vineland*, 22 F3d 1296 (CA 3, 1994), the full court held that "the standard for liability under section 1983 and the Due Process Clause in a police pursuit case is whether the conduct of the defendant police officers 'shocks the conscience.'" See *Fagan, supra* at 1287 n 1. However, while the en banc court anticipated the Supreme Court's holding in *Lewis, supra*, the parties agree that it did not reconsider the holding that failure to train can give rise to an independent cause of action.

v New York City Dep't of Social Services, 436 US 658; 98 S Ct 2018; 56 L Ed 2d 611 (1978), and *Canton v Harris*, 489 US 378; 109 S Ct 1197; 103 L Ed 2d 412 (1989), the *Fagan* Court found that "a municipality can be liable for a policy of failing to train police officers only if that policy causes a violation of the plaintiff's constitutional rights." *Fagan*, *supra* at 1291.

In reaching the holding, the *Fagan* Court believed that the Supreme Court had "not address[ed] whether municipal liability is possible if none of the inadequately trained police officers individually violates the Constitution." *Id*. at 1291. The court distinguished *Los Angeles v Heller*, 475 US 796, 797-799; 106 S Ct 1571; 89 L Ed 2d 806 (1986), and held that, "in a substantive due process case arising out of a police pursuit, an underlying constitutional tort can still exist even if no individual police officer violated the Constitution." *Fagan*, *supra* at 1291-1292.

Two years before *Fagan* was decided, however, the United States Supreme Court held in *Collins* that there are "two different issues when a § 1983 claim is asserted against a municipality: (1) whether plaintiff's harm was caused by a constitutional violation, *and* (2) *if so*, whether the city is responsible for that violation." *Collins*, *supra* at 120 (emphasis added). Municipalities may not be held liable on a respondeat superior theory. *Id*. at 115, 122. Rather, "municipalities may not be held liable 'unless action pursuant to official municipal policy of some nature *caused* a constitutional tort.'" *Id*. at 120-121 (emphasis added), quoting *Monell*, *supra* at 691. The Court stated that "the question whether a constitutional violation occurred" is "separate" from "the question of municipal responsibility." *Collins*, *supra* at 122.

As noted by plaintiffs, in *Canton*, *supra* at 380, the Supreme Court "held that a municipality can, in some circumstances, be held liable under § 1983 'for constitutional violations resulting from its failure to train municipal employees.'" *Collins*, *supra* at 122. In *Canton*, however, as in other cases involving municipal liability, the Court *assumed* that a constitutional violation could be shown. *Canton*, *supra* at 392. Accordingly, the Court addressed only the question whether the constitutional deprivation was attributable to a municipal policy or custom. *Id.* at 385; see also *Collins*, *supra* at 123.

The *Canton* Court "did not suggest that all harm-causing municipal policies are actionable under § 1983 or that all such policies are unconstitutional." *Collins*, *supra* at 123. "Instead, [the Court] concluded that *if a city employee violates another's constitutional rights*, the city may be liable if it had a policy or custom of failing to train its employees *and* that failure to train caused the constitutional violation." *Id*. (emphasis added). Thus, the Court concluded that § 1983 does *not* "provide[] a remedy for a municipal employee who is fatally injured in the course of his employment because the city customarily failed to train or warn its employees about known hazards in the workplace . . . . because such conduct does not violate the Due Process Clause." *Id*. at 117. In other words, § 1983 "does not provide a remedy for abuses that do not violate federal law." *Id*. at 119.

Similarly, in *Heller*, *supra* at 797-799, the Court held that where a jury determined that the arresting police officer had not violated the plaintiff's constitutional rights, the plaintiff could not maintain an action against the city and the police commission. See also *Evans v Avery*, 100 F3d 1033, 1039 (CA 1, 1996); *Jackson*, *supra* at 791. The Court in *Heller* noted that none "of our cases authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no

constitutional harm." *Heller*, *supra* at 799. "If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have *authorized* the use of constitutionally excessive force is quite beside the point." *Id*. (emphasis in the original). Thus, a court's "conclusion that no officer-defendant had deprived the plaintiff of any constitutional right a fortiori defeats the claim against the County as well." *Scott v Clay Co*, 205 F3d 867, 879 (CA 6, 2000).

Accordingly, as the court observed in *Evans*, *supra* at 1040, the deliberate indifference test in failure-to-train cases "is not an independent theory at all." "Rather, deliberate indifference is merely an articulation of the second prong of the *Collins* framework, adapted to 'policy and custom' cases." *Id*. "In treating it as a separate theory, the *Fagan* panel ignored the first segment of the framework: the requirement that the plaintiff's harm be caused by a constitutional violation." *Id*.

Thus, the trial court in this case correctly concluded that, because there was no genuine issue of material fact concerning whether Deputy Glover committed a constitutional violation, plaintiffs' claims against the county and the county sheriff must also be dismissed.

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly