

STATE OF MICHIGAN
COURT OF APPEALS

CATHERINE SIMMONS,

Plaintiff-Appellee,

v

GREEKTOWN CASINO LLC,

Defendant,

and

STEVEN FORD,

Defendant-Appellant.

UNPUBLISHED

September 24, 2009

No. 286845

Wayne Circuit Court

LC No. 06-604544-CZ

Before: Murphy, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Defendant Steven Ford¹ appeals as of right from the trial court's order denying his motion for summary disposition based on governmental immunity. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's cause of action arose out of an incident occurring in August 2005 at the Greektown Casino. Casino staff members found plaintiff's conduct suspiciously indicative of money laundering and summoned defendant, a state police officer. After observing plaintiff by means of surveillance cameras, defendant decided to investigate further. He approached plaintiff, identified himself, and asked her to come with him off of the gaming floor for questioning. Plaintiff was detained for approximately three and one-half hours, during which time defendant took the substantial amount of cash plaintiff possessed (around \$29,000) and told her that she could have it back if she brought documentation to defendant's Cadillac Place office

¹ Defendant Greektown Casino LLC settled with plaintiff. "Defendant" in this report refers to Ford.

substantiating her story that she obtained the cash by refinancing a mortgage. Plaintiff did so two days after defendant questioned her. Plaintiff's cash was returned, and she was never charged with any offense.

In February 2006, plaintiff sued defendant and the Greektown Casino, alleging false arrest, false imprisonment, intentional infliction of emotional distress, defamation, and civil rights violations. Eventually, only the false arrest and imprisonment claims against defendant remained. Relevant to those claims, plaintiff alleged that she was not given anything to drink during her detention, nor was she offered an opportunity to use the bathroom. According to the complaint, defendant "with show of force and against Plaintiff's will, falsely, unlawfully, wrongfully, and without just cause, arrested and imprisoned Plaintiff." Plaintiff further alleged that her arrest and imprisonment were done "without right or authority." Defendant moved for summary disposition, arguing that, because he was a governmental employee acting within the scope of his duties, plaintiff bore the burden of pleading in avoidance of governmental immunity. He asserted that summary disposition was appropriate because the facts established both articulable suspicion to detain plaintiff as well as probable cause to arrest her for money laundering. Defendant argued that nothing in the record gave rise to gross negligence. In response, plaintiff argued that, at a minimum, she had raised a question of fact regarding the legality of her arrest. The trial court agreed, stating in its order that defendant's motion was denied because he arrested plaintiff without probable cause.

On appeal, defendant reiterates his argument that plaintiff bears the burden of proof in governmental immunity cases, and asserts that his actions were objectively reasonable. Plaintiff points out that after defendant filed his brief, our Supreme Court explained the law regarding immunity for individual governmental employees in *Odom v Wayne Co*, 482 Mich 459; 760 NW2d 217 (2008), and she contends that defendant fails to argue as required by *Odom*. We agree.

We review de novo the trial court's decision to deny defendant's motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "Under MCR 2.116(C)(7), the moving party is entitled to summary disposition if the plaintiff's claims are barred because of immunity granted by law." *Odom, supra* at 466 (quotations and citation omitted). The contents of the complaint are accepted as true unless contradicted by admissible evidence. *Id.*

The governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, provides in relevant part at MCL 691.1407:

(1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or

statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

- (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

(3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

Although a plaintiff must plead in avoidance of governmental immunity when suing an agency, an individual defendant must affirmatively plead the defense. *Odom, supra* at 479. When an intentional tort is claimed, the court must determine whether the defendant established that he is entitled to individual governmental immunity by showing the following:

- (a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,
- (b) the acts were undertaken in good faith, or were not undertaken with malice, and
- (c) the acts were discretionary, as opposed to ministerial. [*Id.* at 480, citing *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984).²]

Under MCL 691.1407, the GTLA protects governmental employees from suits for ordinary negligence. However, claims of false arrest and false imprisonment sound in intentional tort, not negligence. *Odom, supra* at 480. When a plaintiff has alleged intentional tort claims against a police officer, the officer is entitled to immunity only if he or she shows that the acts were undertaken during the course of employment and the officer was acting, or reasonably believed that he or she was acting, within the scope of his or her authority; the acts were undertaken in good faith, or were not undertaken with malice; and the acts were discretionary, as opposed to ministerial. *Id.* The question of probable cause, however, is not the proper inquiry. *Id.* at 481.

² *Odom* did not identify a new test; it clarified what test applies under MCL 691.1407(3). *Odom, supra* at 473.

A police officer is entitled to immunity if he or she acted in good faith and honestly believed that there was probable cause to arrest, even if he or she actually lacked probable cause. *Id.* Conversely, if the officer acted with “‘malicious intent, capricious action or corrupt conduct’ or ‘willful and corrupt misconduct’” when making an arrest, governmental immunity will not protect the officer even if probable cause is found. *Id.* at 474, quoting *Veldman v Grand Rapids*, 275 Mich 100, 113; 265 NW 790 (1936), and *Amperse v Winslow*, 75 Mich 234, 245; 42 NW 823 (1889).

In this case, the trial court proceedings focused on whether defendant had probable cause to arrest, which is not the correct inquiry, as *Odom* explains. Nonetheless, the trial court reached the correct outcome because the burden was on *defendant* to support his defense of immunity, not on plaintiff to prove it. Plaintiff alleged the arrest was unlawful and wrongful, and clearly identified her claim as one for false arrest and imprisonment. Once plaintiff pleaded an intentional tort, the burden fell on defendant to show he acted in good faith. *Id.* at 480. This defendant did not do. His argument both in the trial court and in this Court focuses only on whether his actions were objectively reasonable. That is not the test outlined in *Odom*. Defendant’s argument utterly fails to address the element of good faith. Thus, the trial court correctly denied his motion for summary disposition.

Affirmed.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Jane M. Beckering