

STATE OF MICHIGAN
COURT OF APPEALS

FRANKLIN SMITH,

Plaintiff-Appellant,

v

CAMERON PRIEBE,

Defendant-Appellee.

UNPUBLISHED
December 2, 2010

No. 292709
Wayne Circuit Court
LC No. 07-732219-NO

BRANDON PANNELL,

Plaintiff-Appellant,

v

CAMERON PRIEBE,

Defendant-Appellee.

No. 292921
Wayne Circuit Court
LC No. 08-121766-NO

CLIFFORD COLLINS III, by his Next Friend
CLIFFORD COLLINS, JR.,

Plaintiff-Appellant,

v

CAMERON PRIEBE,

Defendant-Appellee.

No. 292922
Wayne Circuit Court
LC No. 08-121767-NO

DEVIN PLUMMER,

Plaintiff-Appellant,

v

No. 292923
Wayne Circuit Court

Defendant-Appellee.

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

PER CURIAM.

In these consolidated cases, all four plaintiffs appeal by right the trial court's order granting defendant's motion for summary disposition with respect to their defamation claims. We affirm.

These consolidated actions arise from statements that defendant, the mayor of the city of Taylor, made to a television news reporter concerning plaintiffs' connection to a fatal shooting at an apartment complex in Taylor. It is undisputed that all four plaintiffs were present at the apartment complex on the night of the shooting. After the police arrived, a witness apparently identified plaintiff Devin Plummer as being involved in the shooting. Plummer and the other three plaintiffs were all arrested by the police. Plaintiff Plummer allegedly confessed to the shooting and was charged with first-degree murder. Plaintiff Franklin Smith was also charged in the matter. The other two plaintiffs, Brandon Pannell and Clifford Collins, were released. The police continued their investigation and later discovered that none of the plaintiffs was actually involved in the shooting. After the charges against Plummer and Smith were dismissed, their families attended a city council meeting and demanded an apology from the city. Following the meeting, defendant was asked by a television news reporter to comment on the requests for an apology. Defendant stated:

It is my understanding that . . . those kids were in the wrong place doing the wrong thing with the wrong people at the wrong time and the wrongs all involve guns and gangs and so we[']re not going to apologize for that. If anybody deserves an apology, it's the victim's family, not the kids, again, whether they did the shooting or not, they had no business being in that place at that time hanging out with kids that are carrying guns and doing things.

Defendant stated further:

They [the police] had information that someone was the shooter, they acted on that information that someone allegedly confessed, um that someone was charged, that someone was subsequently cleared because the police department came to conclude on their own that two plus two plus two did not add up to six, they continued to investigate and they dropped the charges against the young man.

Defendant's statements were subsequently aired during a television news broadcast.

Plaintiffs thereafter brought separate actions, each alleging that defendant's statements to the television news reporter were defamatory. The four actions were consolidated below. Defendant moved for summary disposition under MCR 2.116(C)(7), (8), and (10). The trial

court granted defendant's motion under MCR 2.116(C)(7), concluding that defendant was absolutely immune from liability pursuant to MCL 691.1407(5) because the statements were made within the scope of his executive authority as mayor.

Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by immunity granted by law. *Downs v Saperstein Assoc Corp*, 265 Mich App 696, 698; 697 NW2d 190 (2005). In reviewing a motion under (C)(7), a court must consider any documentary evidence submitted by the parties and construe the plaintiff's pleadings in his favor, unless contradicted by the documentary evidence. *Id.* We review a trial court's summary disposition decision de novo. *Carr v Lansing*, 259 Mich App 376, 379; 674 NW2d 168 (2003).

The governmental tort liability act, MCL 691.1401 *et seq.*, provides for absolute immunity for specified government officials acting within the scope of their governmental authority. Specifically, MCL 691.1407(5) provides:

A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

The parties agree that the mayor of a city is the highest elective official at the city government level and therefore qualifies for absolute immunity as prescribed by this statute. Plaintiffs argue, however, that defendant was not acting within the scope of his executive authority when he made the challenged statements to the television news reporter. They contend that the statements were made in defendant's capacity as a private citizen, not as mayor of the city. They assert that the city council's refusal to address the requests for an apology indicates that the requests were not viewed as a concern of city government, and thus not a concern of defendant in his capacity as mayor. We disagree.

The statements were made in an interview following a city council meeting. They were made in response to questions that were directed at defendant, the mayor of the city. The questions concerned the Taylor Police Department's investigation of a crime and its treatment of suspects. Defendant was responding to accusations that the police department unjustly pursued charges against innocent persons. Defendant was clearly acting within the scope of his executive authority as mayor in responding to questions about the integrity and motives of the police investigation, and whether plaintiffs were entitled to an apology from the city. See *American Transmissions, Inc v Attorney General*, 454 Mich 135, 143-144; 560 NW2d 50 (1997); see also *Marrocco v Randlett*, 431 Mich 700, 711; 433 NW2d 68 (1988). Although plaintiffs question defendant's motives in making the statements, there is no motivation or intent exception to the absolute immunity conferred by § 1407(5). *American Transmissions*, 454 Mich at 143; *Brown v Mayor of Detroit*, 271 Mich App 692, 723; 723 NW2d 464 (2006), rev'd in part on other grounds 478 Mich 589 (2007).

Plaintiffs argue that MCL 691.1407(5) does not provide immunity for defendant's statements because the statements impute the commission of a criminal offense, thereby violating MCL 600.2911. Plaintiffs rely on *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 633-634; 363 NW2d 641 (1984), in which the Court held that individual immunity does not exist for ultra vires activities. Plaintiffs contend that because defendant's comments

violated MCL 600.2911, they necessarily constituted an ultra vires act falling outside the scope of his executive authority. We disagree.

In *Richardson v Jackson Co*, 432 Mich 377, 386-387; 443 NW2d 105 (1989), our Supreme Court rejected the argument that the failure to comply with certain statutory requirements precluded an application of governmental immunity. The Court made clear that the immunity afforded by MCL 691.1407(1) extends “to *all* governmental agencies for *all* tort liability *whenever* they are engaged in the exercise or discharge of a governmental function.” *Id.* at 386, quoting *Ross*, 420 Mich at 618 (emphasis in the original). The Court explained that “ultra vires activity is not activity that a governmental agency performs in an unauthorized manner. Instead, it is activity that the governmental agency lacks legal authority to perform in any manner.” *Richardson*, 432 Mich at 387. Moreover, as this Court has noted, allegations that an official has acted with an improper or unlawful motive or purpose are “meaningless” when the complained-of conduct is otherwise within the official’s authority. *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 594; 640 NW2d 321 (2001).

Similarly, the pertinent inquiry in this case is whether defendant was acting within the scope of his executive authority when he made the challenged statements. As previously explained, the statements concerned the city police department’s investigation of a criminal matter and defendant’s reasons for why the city did not intend to issue an apology to plaintiffs’ families, matters that were clearly within defendant’s executive authority as mayor. Accordingly, regardless of how defendant’s statements may be characterized or why defendant decided to make the challenged remarks, defendant was absolutely immune from tort liability pursuant to MCL 691.1407(5). The trial court did not err by granting defendant’s motion for summary disposition.

In light of our decision, it is unnecessary to address plaintiffs’ remaining arguments on appeal.

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering

/s/ Kathleen Jansen

/s/ Michael J. Talbot