

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH F. OLIVARES,

Plaintiff-Appellant,

v

ANN ARBOR HOUSING COMMISSION and
BETH YAROCH,

Defendants-Appellees.

UNPUBLISHED
October 22, 2015

No. 322232
Washtenaw Circuit Court
LC No. 14-000155-AW

Before: M. J. KELLY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants summary disposition pursuant to MCR 2.116(I)(2) (judgment in favor of opposing party). We affirm.

This appeal arises out of what appears to be two distinct claims by plaintiff. The first, against defendant Ann Arbor Housing Commission (AAHC), is a breach of contract action. The second, against defendant Beth Yaroch, is a false imprisonment action. Aside from the fact that Yaroch is employed by defendant AAHC, these claims have little in common. Plaintiff claims that the court erred in dismissing the case. "This Court . . . reviews de novo the trial court's grant of summary disposition." *Klein v HP Pelzer Auto Sys, Inc*, 306 Mich App 67, 75; 854 NW2d 521 (2014).

MCR 2.116(I)(2) provides, "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." "MCR 2.116(I)(1) provides that '[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.' " *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009), quoting MCR 2.116(I)(1) (alteration by *Al-Maliki* Court). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue on which reasonable minds could differ." *CD Barnes Assoc, Inc v Star Heaven, LLC*, 300 Mich App 389, 407; 834 NW2d 878 (2013). "[I]f no factual dispute exists, a trial court is required to dismiss an action when a party is entitled to a judgment as a matter of law, and a motion for summary disposition is unnecessary." *In re Duane v Baldwin Trust*, 274 Mich App 387, 398-399; 733 NW2d 419 (2007), aff'd 480 Mich 915 (2007) (emphasis added).

With regard to his claim against defendant AAHC, plaintiff seems to take issue with the fact that defendant AAHC apparently provides him Section 8 vouchers for \$460 instead of \$700 each month. “The goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties.” *Greenville Lafayette, LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012). Clear and unambiguous language must be enforced as written. *Id.* “[C]ourts must give ‘effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory.’ ” *Woodington v Shokoohi*, 288 Mich App 352, 374; 792 NW2d 63 (2010), quoting *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

The agreement between plaintiff and defendant AAHC indicates that defendant AAHC will provide plaintiff “with up to \$700/month rent for [part of September,] October, November and December 2013.” (Emphasis added.) The fact that the parties used the phrase “up to \$700/month” plainly indicates that they contemplated the possibility that defendant AAHC would provide less than \$700. *Greenville Lafayette, LLC*, 296 Mich App at 291. The “up to” language designates a ceiling, not a floor, a fact plaintiff acknowledges in his brief on appeal.

Moreover, the contract provides that defendant AAHC was required to provide plaintiff up to \$700 per month for September, October, November, and December of 2013. Plaintiff originally took issue with being allegedly threatened on February 17, 2014 and sought “damages in the amount of the life of the voucher by consent.” As the contract, according to its plain language, does not apply in 2014, much less for life; plaintiff’s reliance on its purported terms is without merit. *Woodington*, 288 Mich App at 374.

With regard to his claim against Yaroch, plaintiff contends that she unlawfully detained him by filing a petition for hospitalization. In order to prove false imprisonment, plaintiff must show “an act committed with the intention of confining another, the act directly or indirectly results in such confinement, and the person confined is conscious of his confinement.” *Adams v Nat’l Bank of Detroit*, 444 Mich 329, 341; 508 NW2d 464 (1993) (footnote omitted). However, pursuant to MCL 330.1439, “[a] cause of action shall not be cognizable in a court of this state against a person who in good faith files a petition . . . unless the petition is filed as the result of an act or omission amounting to gross negligence or willful and wanton misconduct.” “Willful means intentional.” *Pavlov v Community Emergency Med Serv, Inc*, 195 Mich App 711, 716; 491 NW2d 874 (1992). “ ‘Wanton’ conduct is ‘reckless,’ conduct that ‘amounts to’ willful injury, but without intent.” *Id.* (citation omitted).

Plaintiff has not provided any evidence to demonstrate gross negligence or willful or wanton misconduct on the part of Yaroch. The petition stated that Yaroch had observed plaintiff be verbally abusive, hostile, and aggressive during the eviction process and that others were aware that plaintiff “has been running down the hallway in his underwear,” harassing people, and threatening to use deadly force against others. Plaintiff offers no factual support challenging these assertions. Moreover, it seems that defendant voluntarily went to the hospital upon learning from “fellow residents” that a petition had been filed. It was only upon voluntarily going to the hospital that police and medical staff allegedly “unlawfully restrained and imprisoned,” examined, and tested him. Yaroch has no legal responsibility for the acts of third parties.

Affirmed.

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro