

STATE OF MICHIGAN
COURT OF APPEALS

JORDAN JONES and LAWRENCE LEE HUNT,
Plaintiffs-Appellants,

UNPUBLISHED
November 14, 2013

v

GREGORY SAFFADY,
Defendant-Appellee.

No. 311048
Wayne Circuit Court
LC No. 11-004559-CD

Before: OWENS, P.J., and JANSEN and HOEKSTRA, JJ.

PER CURIAM.

In this action alleging wrongful seizure of a boat to satisfy a judgment, plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendant under MCR 2.116(C)(7) on the basis of governmental immunity. Because we conclude that the trial court correctly determined defendant was entitled to governmental immunity as a matter of law, we affirm.

In April 2008, defendant, acting as an officer of the Oakland Circuit Court, seized a Rinker Captiva Model 192 boat to satisfy a judgment against Janis Jones in Oakland Circuit Court. The seizure was made pursuant to a court order in that case. In April 2011, plaintiffs filed this action in Wayne Circuit Court, alleging that the seizure was wrongful because the boat was owned by them, not by Janis Jones. Plaintiffs' complaint alleged (1) that they were entitled to recovery against defendant's "surety bond," and (2) that defendant was negligent in failing to check the Secretary of State records to determine the owner of the boat before seizing it.

Defendant moved for summary disposition under MCR 2.116(C)(7), (8), and (10). The trial court granted summary disposition in favor of defendant on the basis of governmental immunity under MCR 2.116(C)(7).

On appeal, plaintiffs argue that the trial court erred when it granted defendant's motion for summary disposition on the basis of governmental immunity because defendant's failure to check the Secretary of State records to determine the owner of the boat amounted to gross negligence.

We review a trial court's decision regarding a motion for summary disposition de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Summary disposition is properly granted under MCR 2.116(C)(7) when a claim is barred by "immunity granted by law."

A party may submit affidavits, depositions, or other documentary evidence to support a motion for summary disposition under MCR 2.116(C)(7). *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). When considering a motion for summary disposition under MCR 2.116(C)(7), the court must accept the allegations in the complaint as true, unless they are contradicted by documentary evidence submitted by the moving party. *Id.*

An officer or employee of a governmental agency is entitled to governmental immunity if (1) the officer or employee was acting or reasonably believed that he or she was acting within the scope of his or her authority, (2) the governmental agency was engaged in the exercise of a governmental function, and (3) the officer's or employee's conduct did not amount to gross negligence that was the proximate cause of the injury or damage. MCL 691.1407(2); *Odom v Wayne Co*, 482 Mich 459, 479-480; 760 NW2d 217 (2008). "Gross negligence" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a); *Costa v Community Emergency Med Servs, Inc*, 475 Mich 403, 411; 716 NW2d 236 (2006). "Gross negligence" is conduct that is "substantially more than negligent." *Costa*, 475 Mich at 411. A motion for summary disposition on the basis of governmental immunity should be granted where the evidence shows that the conduct at issue only amounts to ordinary negligence. *Maiden*, 461 Mich at 122-123.

While defendant's failure to check the Secretary of State records may have constituted ordinary negligence, it did not rise to the level of gross negligence. Defendant seized the boat as a court officer and pursuant to a court order. In addition, plaintiffs admitted in their brief on appeal that defendant "had been told" that the boat was the property of Janis Jones, who was the judgment debtor. While the reasonableness of conduct is generally a question for the factfinder rather than the court, when reasonable minds could not differ with respect to whether conduct constitutes gross negligence, the court should grant summary disposition. *Jackson v Co of Saginaw*, 458 Mich 141, 146; 580 NW2d 870 (1998). Here, where defendant acted pursuant to a court order to seize the boat, failing to check the Secretary of State records before seizing the boat was not "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Plaintiffs have not shown that the trial court erred in granting summary disposition of their claims on the basis of governmental immunity.

Because we conclude that the trial court properly granted summary disposition in favor of defendant under MCR 2.116(C)(7) on the basis of governmental immunity, we need not address the remaining issues raised by plaintiffs on appeal.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra