STATE OF MICHIGAN

COURT OF APPEALS

JULIUS WARD,

Plaintiff-Appellee,

v

TONY SQUIREWELL,

Defendant-Appellant,

and

TERRANCE WEST, ALICE CARRUTH, and THIRTY SIXTH DISTRICT COURT,

Defendants.

UNPUBLISHED
June 7, 2011

No. 296231
Wayne Circuit Court
LC No. 09-007532-CZ

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendant Tony Squirewell ("defendant") appeals as of right from a circuit court order denying his motion for summary disposition under MCR 2.116(C)(7) (claim barred by governmental immunity) with respect to plaintiff's claim for gross negligence.[1] Because the trial court did not err in concluding that questions of fact precluded defendant's motion for summary disposition with respect to plaintiff's claims for gross negligence, we affirm.

[1] Plaintiff's argument that this Court lacks jurisdiction to consider this appeal is without merit. Although plaintiff is correct that the order appealed from does not qualify as a "final order" under MCR 7.202(6)(a)(*i*) (an order that disposes of all claims and adjudicates the rights and liabilities of all parties), it qualifies as a "final order" under MCR 7.202(6)(a)(*v*) because it is an order denying a motion for summary disposition based on a claim of governmental immunity. This Court has jurisdiction of an appeal of right from a final order as defined in MCR 7.202(6). See MCR 7.203(A)(1).

Plaintiff filed this action to recover damages arising from the erroneous execution of an order of eviction. Plaintiff is the owner of 19459 Santa Rosa in the city of Detroit. The 36th District Court entered an order for eviction with respect to neighboring property at 19467 Santa Rosa. On April 29, 2008, court officers entered plaintiff's property, put all of his personal property into a dumpster, and hauled it away. The officers damaged the property and placed lock boxes on the door. Plaintiff's complaint included a claim against defendant, a court officer, for gross negligence. Defendant filed a motion for summary disposition, arguing that reasonable minds could not disagree that his conduct did not amount to gross negligence. The trial court disagreed and denied defendant's motion.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted pursuant to MCR 2.116(C)(7) when a claim is barred because of "immunity granted by law." The following standards apply to a motion under MCR 2.116(C)(7):

> A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. If such material is submitted, it must be considered. MCR 2.116(G)(5). Moreover, the substance or content of the supporting proofs must be admissible in evidence. . . . Unlike a motion under subsection (C)(10), a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant. [*Maiden*, 461 Mich at 118-119 (citations omitted).]

An employee of a governmental agency is immune from tort liability for an injury caused by the employee while in the course of employment if (1) the employee is acting or reasonably believes he or she is acting within the scope of his or her authority, (2) the governmental agency is engaged in the exercise or discharge of a governmental function, and (3) the employee's conduct does not amount to gross negligence that is the proximate cause of the injury. MCL 691.1407(2). At issue in this case is whether defendant's conduct amounted to gross negligence. 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). "Though the issue whether a governmental employee's conduct constituted gross negligence under MCL 691.1407 is generally a question of fact, a court may grant summary disposition under MCR 2.116(C)(7) if, on the basis of the evidence presented, reasonable minds could not differ." *Tarlea v Crabtree*, 263 Mich App 80, 88; 687 NW2d 333 (2004) (citations and internal quotation marks omitted).

After reviewing the record, we conclude that questions of fact precluded granting defendant's motion for summary disposition with respect to plaintiff's gross negligence claim. The facts surrounding the eviction of plaintiff's property are disputed and in fact, unclear to us on the current record. Plaintiff alleged and presented evidence that defendant improperly evicted his property at 19459 Santa Rosa because the order of eviction bore the address of his neighbor 19467 Santa Rosa. Quizzically, in defendant's affidavit, he does not even acknowledge that he entered plaintiff's property at 19459 Santa Rosa. Defendant indicates that the order of eviction bore the address "19467 Santa Rosa, Detroit, Michigan ('premises')." The parenthetical indicates that "premises" in the affidavit refers to that address. He then indicates that he arrived

at "the premises" and "verified that the address on the Order of Eviction matched the premises before entering." Defendant states that a dumpster "was placed in front of the premises before my arrival." Defendant averred that he knocked, contacted the police, and proceeded to enter "the premises." The facts presented by defendant do not demonstrate that he acted prudently in entering plaintiff's property and certainly do not address defendant's actions with respect to removing and damaging plaintiff's house full of property.

Moreover, although defendant's affidavit indicates that he "verified that the address on the Order of Eviction matched the premises before entering," he does not indicate *how* he "verified" the "match[.]" Defendant's brief implies that he checked an address plaque. Defendant asserts in his brief on appeal, that plaintiff "does not address or even dispute the fact that on the date of the eviction the address plaque affixed to the premises at which the eviction was executed read '19467' and not '19459.'" However, defendant did not present any evidence that there was an address plaque affixed to either house or what they read.

Defendant also refers to the placement of the dumpster, but is inconsistent in his contentions. In his brief, defendant states that his affidavit stated that he "observed that the dumpster required by Detroit city ordinance had been placed directly in front of 19467 Santa Rosa . . . ." But confusingly, defendant goes on in his brief on appeal to state that, "In addition, the Plaintiff fails to dispute that a dumpster had been placed immediately in front of his alleged premises . . . ." Defendant's statements are in direct contravention to each other because one states that the dumpster was in front of the actual target of the eviction, 19467 Santa Rosa, and the other states that the dumpster was in front of plaintiff's property at 19459 Santa Rosa.

Plaintiff's brief also includes unsupported factual assertions that, without more, do not shed light on the situation. In his brief on appeal, plaintiff refers to the house number for his address being stenciled on the curb. He also indicates that the dumpster "had been placed in front of the wrong house because there was a car in the way of the actual property on the day it was delivered." Though, we found no evidentiary support in the record for these factual assertions.

Again, the issue whether a governmental employee's conduct constituted gross negligence under MCL 691.1407(7)(a) is generally a question of fact, unless on the basis of the evidence presented, reasonable minds could not differ. *Tarlea*, 263 Mich App 88. Because the submitted evidence in this case established that the material facts were in dispute, the trial court properly denied defendant's motion for summary disposition with respect to plaintiff's gross negligence claim.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens