STATE OF MICHIGAN

COURT OF APPEALS

ROBERT GUSKOVICT and DEBORAH GUSKOVICT,

Plaintiffs–Appellants,

v

LAWRENCE WHITE, CATHY WHITE AND JAMIES ENTERPRISES, INC.,

Defendants–Appellees,

and

DAVILLA ENTERPRISES, INC. and CHARLIES TOO LOUNGE,

Defendants.

UNPUBLISHED

August 16, 1996

No. 176903
LC No. 93-311835-NI

ROBERT GUSKOVICT and DEBORAH GUSKOVICT,

Plaintiffs-Appellees,

v

LAWRENCE WHITE and CATHY WHITE,

Defendants-Appellants,

and

No. 178973
LC No. 93-311835-NI

JAMIES ENTERPRISES, INC., d/b/a
JAMIE'S ON "7",

Defendant-Appellee,

and

DAVILLA ENTERPRISES, INC., d/b/a
CHARLIES TOO LOUNGE,

Defendant.

Before: Wahls, P.J., and Corrigan and H.A. Beach,* JJ.

PER CURIAM.

In this consolidated dram shop and automobile negligence action, plaintiff[1] appeals as of right from an order granting summary disposition to defendant Jamies Enterprises, Inc. ("Jamies"). Defendants Lawrence and Cathy White appeal by leave granted from an order denying their motion for summary disposition. We affirm in part and reverse in part.

Plaintiff, a Wayne County deputy sheriff, stopped a car being driven by defendant Lawrence White after observing Lawrence driving in an erratic fashion. The car was owned by defendant Cathy White. Plaintiff approached the car and asked Lawrence for his driver's license. Plaintiff detected a strong odor of alcohol, and believed Lawrence to be intoxicated. Plaintiff asked Lawrence to shut off his vehicle, but instead Lawrence pushed the stick shift forward from neutral into first gear. Plaintiff reached into the vehicle and attempted to turn off the ignition. He was injured when Lawrence drove off, causing plaintiff to fall. Lawrence admitted that he had consumed a substantial amount of alcohol at a bar operated by defendant Jamies prior to the traffic stop.

Jamies sought and obtained summary disposition of plaintiff's dram shop claim pursuant to MCR 2.116(C)(10) on the basis that plaintiff's claim was barred by the fireman's rule. In docket number 176903, plaintiff contends that the trial court erred in granting defendant Jamies' motion for summary disposition. We disagree.

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion.

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* Circuit Court, sitting on the Court of Appeals by assignment.

Quinto v Cross & Peters Co, 451 Mich 358, 362; ___ NW2d ___ (1996). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

The fireman's rule bars a dramshop action by a police officer when the officer's damages are sustained in the course of his or her duties. *McCaw v T & L Operations, Inc*, ___ Mich App ___; ___ NW2d ___ (No. 181804, issued 6/11/96) slip op p 4. Police officers are not infrequently required to deal with drunk and disorderly persons. *Id.* An injury acquired by a police officer in such a circumstance flows directly from the performance of his police duties. *Id.* Here, plaintiff was on duty and assigned to the alcohol enforcement unit when he was injured. Compare *Mariin v Fleur, Inc*, 208 Mich App 631, 636; 528 NW2d 218 (1995), lv gtd 450 Mich 961 (1996). Because there is no dispute that plaintiff's injuries stemmed directly from his duties, the trial court correctly concluded that the fireman's rule applies generally to plaintiff's dramshop claim against defendant Jamies. *McCaw*, *supra*, slip op p 4; *Mariin*, *supra*, p 636.

Plaintiff correctly notes that the fireman's rule does not control where a defendant has engaged in intentional, willful or wanton conduct. *Wilde v Gilland*, 189 Mich App 553, 555-556; 473 NW2d 718 (1991). However, willful and wanton misconduct is not simply "a high degree of carelessness." *Jennings v Southwood*, 446 Mich 125, 138; 521 NW2d 230 (1994). Here, viewing the evidence in a light most favorable to plaintiff, defendant Jamies continued to serve alcohol to Lawrence, a visibly intoxicated person. However, no reasonable juror could find that defendant Jamies acted with "an intent to harm [plaintiff] or, if not that, such indifference to whether harm will result as to be the equivalent of a willingness that it does." *Id.*

Plaintiff further contends that even if defendant Jamies' conduct was not willful and wanton, the conduct of Lawrence can be imputed to Jamies under the dramshop statute. We disagree. In *Mariin*, *supra*, p 208, this Court stated that it is an inherent danger of law enforcement that an arrestee may harbor ill will against the arresting officer and, at some point thereafter, attack the officer. Although the fireman's rule did not apply in that dramshop case, it was because the plaintiff was socializing at the bar while off duty when the injury occurred. *Id.* However, in *McCaw*, *supra*, the plaintiff police officer's injuries were caused when the individual defendant attacked the plaintiff and struck him in the jaw. This Court held that the plaintiff's suit against the dramshop defendant was barred by the fireman's rule. *Id.*, slip op p 4. We concur with that result and hold explicitly that the willful or wanton act of a third party cannot be imputed to a dramshop defendant to preclude application of the fireman's rule. Rather, the intentional conduct exception to the fireman's rule only applies if the dramshop defendant itself acted with the requisite intent. See *McCaw*, *supra*; *Mariin*, *supra*. Here, the trial court did not err in holding that the fireman's rule barred plaintiff's dramshop claim against defendant Jamies. Because we conclude that the trial court's grant of summary disposition was proper, we need not address defendant Jamies' alternative arguments.

In docket number 178973, the Whites argue that the trial court erred in denying their motion for summary disposition, which was also brought on the basis of the fireman's rule. As previously

discussed, the fireman's rule does not apply to willful and wanton misconduct. *Wilde, supra*, pp 555-556. Plaintiff testified that he was reaching into the car and had his left hand near enough to the steering column to grab the keys when Lawrence drove off. A reasonable trier of fact could conclude from this evidence that Lawrence's conduct was willful and wanton. See *Jennings, supra*, p 138. The trial court properly denied summary disposition to Lawrence White. *Quinto, supra*, p 362.

Cathy White is named as a defendant solely because she owned the car Lawrence was driving. Plaintiff did not offer any evidence that Cathy wantonly or willfully injured him. A motor vehicle owner's liability is limited to acts of negligence by the driver. *Berry v Kipf*, 160 Mich App 326, 329; 407 NW2d 648 (1987). As stated *supra*, willful and wanton misconduct is not simply "a high degree of carelessness." *Jennings, supra*, p 138. If Lawrence is determined to have acted willfully or wantonly, plaintiff cannot recover against Cathy. *Berry, supra*, p 329. In addition, if Lawrence is found to have been merely negligent, then the fireman's rule would bar plaintiff' claims against both Lawrence and Cathy. *Stehlik v Johnson (On Reh)*, 206 Mich App 85-86; 520 NW2d 633 (1994); *Wilde*, *supra*, p 554. Accordingly, the trial court erred in denying summary disposition to Cathy White. *Quinto, supra*, p 362.

We affirm the grant of summary disposition for Jamies, affirm the denial of summary disposition for Lawrence White, and reverse the denial of summary disposition for Cathy White.

Affirmed in part and reversed in part.

/s/ Myron H. Wahls
/s/ Maura D. Corrigan
/s/ Harry A. Beach

[1] Because Deborah Guskovict's claims are derivative, "plaintiff" in this opinion refers to Robert Guskovict.