

STATE OF MICHIGAN
COURT OF APPEALS

JOHNNY JACKSON,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 182564

LC No. 93-55703-CZ-1

COUNTY OF SAGINAW, a Municipal Corporation, THOMAS McINTYRE, Individually and in his capacity as Sheriff of Saginaw County, RICHARD ROE and JANE DOE, jointly and severally,

Defendant-Appellees.

Before: Holbrook, Jr., and Judge White and L.F. Simmons,* JJ

WHITE, J. (concurring in part, dissenting in part).

While I concur with the majority's discussion of the law, I conclude that plaintiff presented sufficient facts to create a genuine issue concerning deliberate indifference. In an affidavit submitted in support of his opposition to defendant's motion for summary disposition, plaintiff averred that throughout January 1991, and until his release in July 1991, he complained continually, requested medical attention and, specifically, to see a doctor, and requested to be taken to a hospital. These assertions are supported by Payne's deposition testimony,¹ which included that plaintiff complained continually during the two months they were in the same cell, December 1990 and January 1991, repeatedly shook the cell's bars screaming to get a nurse, doctor, and go to the hospital, lost his voice for nearly a week, and had to send a number of medical "kites" to be seen by a nurse in the infirmary. Payne also testified one had to send at least five "kites" to get the nurse's attention, implying there was a practice of ignoring prisoner requests for medical attention.

As to the individual defendants, I concur in the majority opinion as to Dr. Uy.² I further conclude as to plaintiff's gross negligence claims that while the above evidence, if believed, could

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

support a finding of gross negligence as to defendants other than Dr. Uy, plaintiff does not identify the persons who ignored his complaints or assert that these persons are individually named defendants.

/s/ Helene N. White

¹ The trial court's opinion seems to have ignored plaintiff's affidavit and Payne's supporting testimony.

² The opinion addresses only the gross negligence/immunity issue and does not otherwise address the sufficiency of plaintiff's proofs in support of his claim, e.g., concerning issues related to proximate cause. These matters may be addressed by the trial court on remand.