

STATE OF MICHIGAN
COURT OF APPEALS

JAMES WRIGHT,

Plaintiff-Appellant,

v

MAURICE REGGIE GORE, DECEI R. GORE,
TONY JULIAN'S COCKTAIL LOUNGE, INC.,
d/b/a TONY JULIAN'S COCKTAIL LOUNGE, and
JOHN DOE,

Defendants-Appellees,

and

TONY JULIAN'S COCKTAIL LOUNGE, INC.,
d/b/a TONY JULIAN'S COCKTAIL LOUNGE,

Defendant/Cross-Plaintiff-
Appellee,

v

MAURICE REGGIE GORE,

Defendant/Cross-Defendant-
Appellee.

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo*, JJ.

PER CURIAM.

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

Plaintiff appeals as of right from orders granting summary disposition for defendants Tony Julian's Cocktail Lounge, Maurice Reggie Gore, and Decei R. Gore. We affirm.

Plaintiff, a Detroit police officer, was dispatched to the scene of a homicide to protect evidence. After the evidence technicians arrived, he went to his patrol car which was parked crosswise on John R. Street with its lights activated in order to block traffic. While plaintiff was seated in the patrol car writing a police report, defendant Maurice Gore, who was allegedly intoxicated after drinking at Tony Julian's Cocktail Lounge, drove a car belonging to Decei Gore into the patrol car. Plaintiff was thrown from the patrol car and onto the pavement several yards away. This negligence and dramshop action followed. Defendants subsequently brought motions for summary disposition claiming that the firemen's rule barred plaintiff's claims against them. The trial court agreed and dismissed the action.

On appeal, plaintiff first contends that the trial court erroneously concluded that the firemen's rule, a common-law defense, could be applied to the statutory dramshop action. This Court recently held to the contrary, ruling that the firemen's rule bars a dramshop action by a police officer when the officer's damages are sustained in the course of his duties. *McCaw v T & L Operations, Inc.*, ___ Mich App ___; ___ NW2d ___ (Docket No. 181804, issued 6/11/96). Accordingly, we find no error.

Plaintiff next contends that the trial court erred in applying the firemen's rule on the facts of this case. Again, we find no error. The firemen's rule was discussed in *McCaw, supra*:

The firemen's rule was adopted by the Supreme Court in *Kreski v Modern Wholesale Electric Supply Co.*, 429 Mich 347; 415 NW2d 178 (1987). The firemen's rule provides that a fire fighter or police officer may not recover damages from a private party for negligence in the creation of the reason for the safety officer's presence. *Id.* at 358. In other words, fire fighters and police officers may not recover damages for injuries arising out of risks inherent in their respective professions. *Id.* at 351. [Slip op, p 2.]

The basic policy rationale behind the rule is that "the purpose of safety professions is to confront danger and, therefore, the public should not be liable for damages for injuries occurring in the performance of the very function officers and fire fighters are intended to fulfill." *Kreski, supra*, p 368. Based on this policy, the Court in *Woods v City of Warren*, 439 Mich 186; 482 NW2d 696 (1992), summarized the firemen's rule as barring recovery for two types of injuries: those deriving from the negligence that occasioned the officer's presence, and those stemming from the normal risks of the safety officer's profession. *Woods, supra*, p 196.

Here, the trial court correctly recognized that the controlling issue, as set forth in *Woods, supra*, was whether plaintiff's injury was a result of a risk inherent to his duties as police officer. Because plaintiff's injury stemmed from the normal risk of protecting evidence by blocking traffic in police work, the trial court properly applied the firemen's rule. Furthermore, plaintiff cannot rely on any of the

Kreski Court’s “exceptions” to prevent application of the rule since plaintiff’s injuries stem directly from performing police functions. *Woods, supra*, p 194. Summary disposition was therefore proper.

Plaintiff’s final claim is that the trial court’s application of the firemen’s rule created a subclass of people not entitled to the benefits of the dramshop act and thus was unconstitutional as a denial of equal protection. We reject this claim. Essentially, plaintiff’s argument concludes that the interest in protecting the public from drunk drivers outweighs any interest served by the firemen’s rule such that any distinction based on the firemen’s rule is arbitrary and unconstitutional. However, this argument assumes that police officers need the same protection as the general public and ignores the fact that the nature of police work is to protect the public. Because of their function of protecting society, police officers are hired and specially trained to deal with dangerous situations. Distinguishing the protections available to police officers from those available to the general public therefore does not create an “underclass” as plaintiff argues. See *Kreski, supra*, pp 366-368.

Generally, when an equal protection challenge is raised concerning social and economic legislation, the legislation is reviewed under the rational basis standard. *Doe v Dep’t of Social Services*, 439 Mich 650, 662; 487 NW2d 166 (1992). Although the firemen’s rule is not legislation, this standard of legislative review has been applied in equal protection challenges to judicially-created doctrines. See, e.g., *Goss v Richmond*, 146 Mich App 610; 381 NW2d 776 (1985). Under the rational basis standard, there is a presumption of constitutionality that can be rebutted only by a showing that the differential treatment is not rationally related to a legitimate governmental purpose. *Doe, supra*, p 662. A classification will not violate equal protection guarantees unless it is essentially arbitrary or if a set of facts cannot reasonably be conceived to justify the classification. *Manistee Bank & Trust Co v McGowan*, 394 Mich 655, 668; 232 NW2d 636 (1975). With regard to the firemen’s rule, the Supreme Court has deemed the interest served by the rule to be legitimate and reasonable. *Kreski, supra*, p 368; *Woods, supra*, p 192. The Court has also determined that the rule serves a legitimate purpose. *Id.* Accordingly, it cannot be said that applying the firemen’s rule to plaintiff’s dram shop claim is a violation of his right to equal protection of the laws.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo