

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN A. KYLLONEN,

Plaintiff-Appellant,

v

JOSEPH VANEVERA,

Defendant-Appellee.

UNPUBLISHED
November 8, 1996

No. 189258
LC No. 94-39038-NI

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in defendant's favor pursuant to MCR 2.116(C)(10). We affirm.

On July 18, 1992, defendant, a state policeman, arrested plaintiff for carrying a concealed weapon. While plaintiff was being transported to the police station, the rear door of the patrol car opened and plaintiff fell from the vehicle. Plaintiff sustained minor injuries as a result. Plaintiff was prosecuted and ultimately pleaded guilty to attempted escape from custody. Two years later, plaintiff brought this civil action for damages he sustained when he fell from the patrol car.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) on several grounds, including the failure of plaintiff's injuries to exceed the no-fault tort threshold and the bar of governmental immunity. Defendant presented documentary evidence in support of his motion which included an affidavit of the treating nurse, who testified that plaintiff's injuries were minor and that plaintiff told her that he jumped from the patrol car because he did not want to go to jail. Defendant also submitted the transcript of plaintiff's guilty plea proceeding and the judgment of sentence of plaintiff's attempted escape conviction.

Plaintiff first contends that the trial court erred in using defendant's plea-based conviction as substantive evidence that plaintiff left the car intentionally. Even if we were to agree, summary disposition was nevertheless the correct result.

Summary disposition in favor of defendant was warranted in this case because plaintiff offered no documentary evidence to establish that he suffered the minimal level of damages required to recover under the no-fault act. Tort losses under this act are limited to (1) enumerated economic losses, which include lost wages, and (2) noneconomic losses that result from the injured person's death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135; MSA 24.13135. Summary disposition is appropriate where reasonable minds cannot conclude that a plaintiff's injuries involve death, serious impairment of body function, or permanent serious disfigurement. *Kallio v Fisher*, 180 Mich App 516, 518; 448 NW2d 46 (1989). In the present case, summary disposition was warranted on the ground that plaintiff failed to rebut defendant's documentary evidence that plaintiff's minor injuries failed to exceed the no-fault tort threshold.

Furthermore, plaintiff failed to sustain his burden of showing that recovery was not barred by governmental immunity. MCL 691.1407; MSA 3.996(107), which addresses the issue of governmental immunity, defines "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." See *Brown v Shavers*, 210 Mich App 272, 276; 532 NW2d 856 (1995); *Vermilya v Dunham*, 195 Mich App 79, 82; 489 NW2d 496 (1992). Here, plaintiff's claim of gross negligence was based solely on the allegation that he fell out of the police car. However, plaintiff admitted that he was too intoxicated to remember how he was secured in the vehicle or what caused his alleged fall. Moreover, plaintiff provided no documentary evidence that defendant acted recklessly in securing plaintiff in the vehicle. Accordingly, summary disposition for defendant was proper because plaintiff failed to establish a genuine issue of material fact that defendant was grossly negligent. *Vermilya, supra* at 83.

In view of our disposition, we need not address plaintiff's remaining issues on appeal.

Affirmed.

/s/ Roman S. Gibbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin