STATE OF MICHIGAN

COURT OF APPEALS

JOHN C. BAYSINGER,

Plaintiff-Appellant,

v

CITY OF ROYAL OAK, BILL BRIGGS, JOHN DOE and MARY ROW,

Defendants-Appellees.

UNPUBLISHED
March 4, 1997

No. 187996
Oakland Circuit Court
LC No. 93-458982-CZ

Before: O'Connell, P.J., and Markman and M. J. Talbot,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition for defendant city pursuant to MCR 2.116(C)(8) and for the individual police officer defendants pursuant to MCR 2.116(C)(10). We affirm.

First, we note that plaintiff's complaint was defective and violated MCR 2.111, which requires that a pleading be concise and direct. A pleading must state causes of action with specificity so as to "reasonably inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B)(1). Here, plaintiff never set forth any specific causes of action against defendants. Indeed, the trial court had to guess at what causes of action plaintiff was attempting to plead. The trial court was more than generous in analyzing plaintiff's complaint as if a federal civil rights claim had been pleaded against the city and a gross negligence claim had been pleaded against the individuals.

On appeal, plaintiff concedes that he did not properly plead a cause of action against the city pursuant to the federal civil rights act, 42 USC 1983. However, plaintiff contends that he properly pleaded causes of action against the city pursuant to the Michigan Handicapper's Civil Rights Act, MCL 37.1101 *et seq.;* MSA 3.550(101), *et seq.*, and the Michigan Civil Rights Act, MCL 37.2101, *et seq.;* MSA 3.548(101), *et seq*. Upon reviewing plaintiff's complaint, we find that he has not alleged

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

that he was discriminated against because of a handicap in "employment, public accommodation, educational opportunity" or with regard to the "acquiring, renting or maintaining of property." Those are the rights safeguarded by the handicapper's act. See *Gazette v City of Pontiac*, 212 Mich App 162, 168; 536 NW2d 854, lv pending (1995); *Merillat v MSU*, 207 Mich App 240, 244; 523 NW2d 802 (1994); *Crancer v Bd of Regents, University of Michigan*, 156 Mich App 790; 402 NW2d 90 (1987); MCL 37.1103; MSA 3.550(103). In addition, plaintiff did not allege that he was discriminated against because of his "age, religion, race, color, national origin, sex, height, weight or marital status," which are protected by the civil rights act. MCL 37.2202; MSA 3.548(202); MCL 37.2303; MSA 3.548(303); MCL 37.2402; MSA 3.548(402); and MCL 37.2502; MSA 3.548(502). Therefore, summary disposition was properly granted to the city because plaintiff failed to state any valid claims against it.

Next, plaintiff argues that the individual defendants should not have been granted summary disposition because they violated numerous constitutional rights to which plaintiff was entitled. Plaintiff argues that his pleading contained a viable federal civil rights claim against the individuals pursuant to 42 USC 1983. Because plaintiff did not raise this argument in the lower court, we will not consider this argument on appeal. *Graham v Firestone Tire & Rubber Co*, 137 Mich App 215, 220; 357 NW2d 666 (1984). We note, however, that the individual defendants had qualified immunity to act and therefore, there was no viable action pursuant to 42 USC 1983. See *Guider v Smith*, 431 Mich 559, 565, 568; 431 NW2d 810 (1988).

The trial court granted summary disposition to the individual defendants because it inferred that plaintiff was attempting to allege a gross negligence cause of action against them and where, there were no facts to support gross negligence, summary disposition was appropriate. The inference was based on MCL 330.1427; MSA 14.800(427), which provides:

> If a peace officer observes an individual conducting himself or herself in a manner which causes the peace officer to reasonably believe that the individual is a person requiring treatment as defined in section 401, the peace officer may take the individual into protective custody and transport the individual to a hospital for examination . . . the peace officer is not constrained from exercising his or her reasonable judgment. . . . Upon arrival at the hospital, the peace officer shall execute an application for hospitalization of the individual.

Section 401 defines "person requiring treatment" and includes:

> (a) A person who is mentally ill, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injury himself or another person, and who has engage in an act or acts or made significant threats that are substantially supportive of the expectation. [MCL 330.1401; MSA 14.800(401).]

An officer who acts in compliance with these statutes is considered to be acting in the course of official duty and is not civilly liable for the action unless the officer behaves in a grossly negligent, wilful or wanton manner. MCL 330.1427b(1); MSA 14.800(427b)(1); MCL 330.1427b(2); MSA 14.800(427b)(2). Assuming plaintiff was attempting to plead such a cause of action, we find that plaintiff offered no facts to support a claim of gross negligence. Therefore, summary disposition for the individual defendants was appropriate.

Finally, plaintiff's argument that he should have been allowed to amend is without merit. Plaintiff never moved to amend his complaint at any time. Because plaintiff never moved to amend, this Court has no decision regarding amendment to review. *Fuga v Comerica Bank-Detroit*, 202 Mich App 380, 383; 509 NW2d 778 (1994).

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen J. Markman
/s/ Michael J. Talbot