

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WALTER A. KURZ,

Plaintiff–Appellant,

v

THE CITY OF GROSSE POINTE FARMS, a  
municipal corporation, ROBERT FERBER, Director of  
Public Safety thereof, RONALD (RON) WOOTEN,  
ROBERT IRELAND, MATTHEW WEBER, Police  
Officers thereof and LYNN MACKENZIE, Court  
Administrator,

Defendants–Appellees.

---

UNPUBLISHED

March 28, 1997

No. 176327

Wayne Circuit Court

LC No. 93-334820

Before: Marilyn Kelly, P.J., and MacKenzie and J.R. Ernst,\* JJ.

PER CURIAM.

In this police misconduct/abuse case, plaintiff appeals as of right from the trial court’s grant of summary disposition to defendants on the basis that plaintiff’s claim was time barred and that defendants were immune from liability under the Governmental Immunity Act, MCL 691.1401 *et seq.*; MSA 3.996(101) *et seq.* We affirm.

First, plaintiff argues that the lower court erred in dismissing his complaint because defendants’ pleadings and motion were defective and/or deficient. However, because plaintiff did not raise the issue below, it is not properly before this Court. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

Next, plaintiff asserts that the lower court erred in granting defendants’ motion for summary disposition on the ground that plaintiff’s claims were barred by the statute of limitations. Plaintiff specifically argues that the lower court made no mention of the applicable accrual dates and wrongfully applied a two-year statute of limitations when many of his claims were subject to a three-year statute of limitations. We disagree. On appeal, a grant of summary disposition under MCR 2.116(C)(7) is

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

reviewed de novo. *Michigan Mutual Insurance Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). In deciding a motion for summary disposition on the basis that a claim is time barred, the trial court must accept as true all the plaintiff's well pleaded allegations and construe them most favorably to the plaintiff. *Coleman v Dowd*, 185 Mich App 662, 665; 462 NW2d 809 (1990).

Here, plaintiff's claims accrued either at the time he was stopped and the tickets were issued to him on December 16, 1990, or within several months of that date, the latest time being April of 1991, when the Department of State assessed points against plaintiff's license as a result of the traffic violations. MCL 600.5805; MSA 27A.5805 (action accrues at the time the wrong is committed against the party). Plaintiff did not commence his action against defendants until December 13, 1993, two years and eight months after the last possible accrual date, when he filed his five count complaint against them. As a result, his claims for assault and battery, false imprisonment, malicious prosecution and libel and slander, which are subject to one and two year limitations periods, MCL 600.5805(2), (3) and (7); MSA 27A.5805(2), (3) and (7), are time barred.

Plaintiff's § 1983 claim is also barred by the statute of limitations. Because 42 USC 1983 does not contain a limitations period, Michigan's analogous statute of limitations must be applied. *Mulligan v Schlachter*, 389 F2d 231 (CA 6, 1968); *People v Leithauser*, 577 F Supp 994, 995-996 (ED Mich, 1984); *Evans v Hebert*, 203 Mich App 392, 395; 513 NW2d 164 (1994). Since plaintiff's underlying cause of action for the § 1983 claim asserted malicious prosecution and abuse of process, it was subject to a two-year limitations period. Accordingly, the lower court properly dismissed the claim as time barred. *Evans, supra* at 395.

Plaintiff's remaining claims, even though they might not necessarily be time barred, were properly dismissed, as defendants were immune from liability under the Governmental Immunity Act, MCL 691.1401 *et seq.*; MSA 3.996(101) *et seq.*

However, plaintiff argues that not all of the defendants were entitled to governmental immunity, because several committed intentional torts and/or ultra vires acts. We disagree. On appeal, a grant of summary disposition under MCR 2.116(C)(7) is reviewed de novo. *Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995). When reviewing a grant of summary disposition based on a finding that the claim is barred by governmental immunity, we accept as true all the plaintiff's well pleaded allegations and construe them most favorably to the plaintiff. *Summers v City of Detroit*, 206 Mich App 46, 38; 520 NW2d 356 (1994).

The management, operation and control of a police department is a governmental function. Tort actions against a municipality based on the negligence of its police officers, which occurred when the officers were engaged in the discharge of their duty as officers, are barred by the doctrine of governmental immunity. *Moore v City of Detroit*, 128 Mich App 491, 497; 340 NW2d 640 (1983); *Lee v City of Utica*, 83 Mich App 679, 680; 269 NW2d 267 (1978). As well, a municipality cannot be vicariously liable for the torts of its police officers committed during the course of an arrest, because the officers are engaged in police activity, a governmental function entitled to immunity. *Sherbutte v Marine City*, 374 Mich 48, 50; 130 NW2d 920 (1964); *Blackman v Cooper*, 89 Mich App 639, 642-643; 280 NW2d 620 (1979). Therefore, because the complained of tortious conduct allegedly

committed by the defendant officers and court administrator occurred during their performance of a governmental function, the lower court properly granted summary disposition to defendant City of Grosse Pointe Farms. It was immune from liability for any actions taken by defendants in this incident. *Id.*

Furthermore, defendant Ferber, the Director of Public Safety, and defendant MacKenzie, the Court Administrator, are entitled to immunity for any torts committed while acting within the scope of their authority. They are the highest appointed officials in their level of government. MCL 691.1407(5); MSA 3.996(107)(5); *Nalepa v Plymouth-Canton Community Sch Dist*, 207 Mich App 580, 584-591; 525 NW2d 897 (1994); *Washington v Starke*, 173 Mich App 230, 240-241; 433 NW2d 834 (1988).

As to the defendant police officers, effectuating an arrest or valid stop is an activity in the exercise of a governmental function. Therefore, the defendant officers are immune from any liability for injury occurring during the arrest or stop unless their actions constituted gross negligence. *Fiser v City of Ann Arbor*, 417 Mich 461, 471-473; 339 NW2d 413 (1983); *Graves v Wayne County*, 124 Mich App 36, 40-43; 333 NW2d 740 (1983). Moreover, plaintiff's allegations of police brutality and abuse are unsubstantiated. The defendant officers involved apparently made a valid stop in this instance and issued the appropriate citations. There was no evidence that they acted in a grossly negligent manner. They were properly granted summary disposition under the Governmental Immunity Act, MCL 691.1407(2); MSA 3.996(107)(2). *Fiser, supra* at 471-473.

Finally, as plaintiff did not pursue a claim of disqualification before the trial court nor make a referral to the chief judge, plaintiff's claims that the lower court judge "summarily" dismissed his claim and was prejudiced toward plaintiff are not properly before this Court. *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989); *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 23; 436 NW2d 70 (1989). Contrary to plaintiff's assertion that the lower court judge summarily dismissed his claims, it is evident from the record that the judge reviewed the motions and briefs of the parties, gave plaintiff an opportunity to be heard and carefully explained on the record why he was granting defendants' motion. Disqualification on the basis of bias or prejudice cannot be established merely because a judge rules against a litigant. *Wayne County Prosecutor v Parole Board*, 210 Mich App 148, 155; 532 NW2d 899 (1995). Accordingly, the lower court did not err in concluding that defendants were entitled to judgment as a matter of law.

Affirmed.

/s/ Marilyn Kelly  
/s/ Barbara B. MacKenzie  
/s/ J. Richard Ernst