

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE GEORGE,

Plaintiff-Appellant,

v

WAYNE COUNTY, WAYNE COUNTY
SHERIFF'S DEPARTMENT, SERGEANT JANICE
McCLELLAN, CELESTE ROBERTS CORNISH,
SERGEANT ROSELYN BROCK, COMMANDER
KENT BOOTH, LIEUTENANT BENNIE
RAGLAND and SHERIFF ROBERT A. FICANO,

Defendants-Appellees.

UNPUBLISHED

April 18, 1997

No. 187076

LC No. 94-418318

Before: Reilly, P.J., and Wahls and N.O. Holowka,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order of summary disposition entered pursuant to MCR 2.116(C)(10) in favor of defendants in this wrongful discharge and gender discrimination action. We affirm.

Plaintiff argues that governmental immunity did not bar her sexual discrimination claim. However, because the trial court correctly held that there was no genuine issue of material fact as to this claim, it is unnecessary to address the merits of this issue.¹ Reversal is not required where the trial court reaches the correct result for the wrong reason. *Welch v District Ct*, 215 Mich App 253, 256; 545 NW2d 15 (1996). Summary disposition may be granted where, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10).

To establish a prima facie case under the disparate treatment theory of sexual discrimination, a plaintiff must show: (1) that she was a member of a protected class; and (2) that she was treated differently than persons of a different class for the same or similar conduct. *Schultes v Naylor*, 195

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

Mich App 640, 645; 491 NW2d 240 (1992). Where, in response to a prima facie case of discrimination, the defendant provides a legitimate, non-discriminatory reason for its actions, the plaintiff has the burden of showing that the proffered reason is mere pretext. *York v 50th District Court*, 212 Mich App 345, 350; 536 NW2d 891 (1995).

Plaintiff failed to show that defendants treated her differently than male employees in factually similar circumstances. Plaintiff's only allegation of disparate treatment was predicated upon an incident during which two male employees of the sheriff's department engaged in a physical altercation and were thereafter permitted to retain employment. However, engaging in an altercation with a fellow employee is dissimilar to engaging in an altercation with a county inmate. Evidence of dissimilar treatment in such incidences does not establish disparate treatment. *Schultes, supra* at 645. In light of the fact that plaintiff provided the trial court with no additional documentary evidence of disparate treatment, the trial court did not err in granting defendants' motion for summary disposition as to plaintiff's claim of sexual discrimination. *Id.*

Plaintiff next argues that her intentional tort claims of defamation, tortious interference with a contractual relationship, tortious interference with an advantageous business relationship, and intentional infliction of emotional distress were not barred by governmental immunity. We disagree except to the extent that plaintiff's claim of intentional infliction of emotional distress was predicated upon an allegation of "harassment."

Generally, there is no intentional tort exception to governmental immunity. *Harrison v Director of Dep't of Corrections*, 194 Mich App 446, 450; 487 NW2d 799 (1992). However, MCL 691.1407(2); MSA 3.996(107)(2), provides for individual immunity for government employees for tort claims if:

- (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Plaintiff's claim of defamation alleged that an unnamed agent of the Wayne County Sheriff's Department made defamatory statements in response to a Detroit Police Department recruiter's inquiry regarding plaintiff's suitability for employment. First, the agent of the sheriff's department acted within the scope of his or her authority. An employer has a qualified privilege to divulge information regarding a former employee to a prospective employer. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 79; 480 NW2d 297 (1991). Second, the statements were made in the exercise or discharge of a governmental function. A governmental function is any activity expressly or impliedly

mandated or authorized by constitution, statute, local charter or ordinance, or other law. MCL 691.1401(f); MSA 3.996(101)(1)(f); *Peterman v Dep't of Natural Resources*, 446 Mich 177, 203; 521 NW2d 499 (1994). The hiring and discharge of a sheriff's department employee is regulated by statute. MCL 51.351 *et seq.*; MSA 5.1191(101) *et seq.* Implied in the power to hire and discharge employees is the power to engage in recruitment activities, including responding to inquiries by prospective employers regarding past employees. Third, no evidence was presented to the trial court indicating that the making of the allegedly defamatory statements was reckless or demonstrated a substantial lack of concern for whether injury would result. Although plaintiff alleged that the statements were made "in bad faith and with ill-will toward the plaintiff," she failed to support this allegation with documentary evidence. Accordingly, the trial court did not err in granting defendants' motion for summary disposition as to plaintiff's defamation claim. MCL 691.1407(2); MSA 3.996(107)(2).

Plaintiff's claims of tortious interference with a contractual relationship and tortious interference with an advantageous business relationship were similarly subject to governmental immunity. First, it is axiomatic that as an employer, the Wayne County Sheriff's Department hires and fires employees. Therefore, it acted within the scope of its authority in terminating plaintiff's employment. Second, the discharge of a government employee is the exercise of a governmental function. See MCL 51.362; MSA 5.1191(112). Finally, plaintiff's discharge was preceded both by a written performance evaluation and an administrative hearing at which a representative of plaintiff's labor union was present. Therefore, plaintiff's discharge was neither reckless nor demonstrated a substantial lack of concern for whether injury would result. The trial court did not err in granting defendants' motion for summary disposition as to plaintiff's claims of tortious interference with a contractual relationship and tortious interference with an advantageous business relationship. MCL 691.1407(2); MSA 3.996(107)(2).

However, the harassment of an employee was neither within the scope of the Wayne County Sheriff's Department's authority, nor a governmental function. Therefore, plaintiff's claim of intentional infliction of emotional distress, insofar as it was based upon allegations of harassment, was not barred by governmental immunity. MCL 691.1407(2); MSA 3.996(107)(2).

Plaintiff next argues that, because there were genuine issues of material fact as to each of her intentional tort claims, the trial court erred in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We disagree as to plaintiff's claim of intentional infliction of emotional distress. Because of our disposition on the issue of governmental immunity, we need not address plaintiff's argument as it relates to her claims of defamation, tortious interference with a contractual relationship, and tortious interference with an advantageous business relationship.

The elements of intentional infliction of emotional distress are: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Duran v Detroit News, Inc*, 200 Mich App 622, 629-630; 504 NW2d 715 (1993). Liability for intentional infliction of emotional distress requires that the conduct complained of has been so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 342; 497 NW2d 585 (1993). Liability does not extend to mere insults, threats, indignities,

annoyances, petty oppressions and other trivialities. *Id.* Here, because plaintiff failed to provide the trial court with evidence of conduct by any defendant so extreme and outrageous as to go beyond all possible bounds of decency and to be regarded as intolerable by a civilized community, she did not establish a prima facie case with regard to this claim. *Duran, supra* at 629-630.

Plaintiff's argument that Sheriff Ficano should be held liable for his deputies' actions under the Civil Rights Act is moot in light of our disposition. Similarly, because plaintiff had no actionable claim under any theory, the trial court properly granted summary disposition as to each defendant.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Myron H. Wahls

/s/ Nick O. Holowka

¹ In any case, it is not clear from the record that governmental immunity was the basis of the trial court's ruling on plaintiff's sexual discrimination claim.