# STATE OF MICHIGAN

# COURT OF APPEALS

---

WILLIE SHARP,

Plaintiff-Appellee,

v

CITY OF DETROIT and JOHN DOE,

Defendants-Appellants.

---

UNPUBLISHED
September 16, 1997

No. 195543
Wayne Circuit Court
LC No. 94-432025-NO

Before: Wahls, P.J., and Taylor and Hoekstra, JJ.

PER CURIAM.

Defendant City of Detroit appeals as of right from a judgment entered in favor of plaintiff following a jury trial. Defendant claims it was entitled to governmental immunity and plaintiff's case involving the tort of assault and battery should have been dismissed following its motions for summary judgment, directed verdict, or judgment notwithstanding the verdict. We agree and reverse.

Plaintiff originally filed a three-count complaint against defendant alleging assault and battery, negligent supervision, and false arrest. Prior to trial, defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10) on all three counts. The trial court granted defendant's motion for summary disposition with regard to count three, false arrest, on grounds other than governmental immunity, and the case proceeded to trial on the other two counts. At the close of plaintiff's case, defendant moved for directed verdicts on counts one and two, and the trial court granted defendant's motion as to count two because of plaintiff's lack of evidence regarding this count. The court denied defendant's motion for a directed verdict on the basis of governmental immunity on the count alleging assault and battery.

The governmental immunity statute, MCL 691.1407(1); MSA 3.996(107)(1), provides: "Except as otherwise provided in this act, all governmental agencies shall be immune from tort liability in all cases wherein the government agency is engaged in the exercise or discharge of a governmental function."[1] Defendant is a municipal corporation entitled to the protection of the statute, *Summers v Detroit*, 206 Mich App 46, 48; 520 NW2d 356 (1994), and operating a police

department, including a jail or detention facility, is a governmental function. *Isabella Co v Michigan*, 181 Mich App 99, 105; 449 NW2d 111 (1989); *Roberts v City of Troy*, 170 Mich App 567, 575; 429 NW2d 206 (1988). Defendant is therefore entitled to immunity unless plaintiff has pled an exception to governmental immunity.

Here, plaintiff's intentional tort claim of assault and battery involving an alleged assault did not plead an exception to governmental immunity. *Payton v Detroit*, 211 Mich App 375, 393; 536 NW2d 233 (1995). Although plaintiff apparently tried to bootstrap other bases for liability within the count alleging assault and battery, none of these other allegations adequately set forth an exception to governmental immunity either. Accordingly, the trial court's denial of defendant's motion for summary disposition regarding Count I of plaintiff's complaint was improper.

Reversed.

/s/ Myron H. Wahls
/s/ Clifford W. Taylor
/s/ Joel P. Hoekstra

[1] The statute was amended by 1996 PA 143 in a way which does not affect § 7(1).