

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

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GERALD PLANUTIS,

Plaintiff-Appellee,

v

CARL HILLING,

Defendant-Appellant,

and

BRIDGMAN PUBLIC SCHOOLS,

Defendant.

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UNPUBLISHED

August 29, 2000

No. 219972

Berrien Circuit Court

LC No. 98-003904-CZ

Before: White, P.J., and Talbot and R. J. Danhof\*, JJ.

PER CURIAM.

Plaintiff filed this action against defendants Bridgman Public Schools and its superintendent, Carl Hilling, alleging that Hilling committed an assault and battery when he forcibly ejected plaintiff, a school board member, from a personnel meeting involving a school employee. Defendant Hilling<sup>1</sup> appeals by leave granted from the trial court's order denying his motion for summary disposition on the basis of absolute immunity. MCR 2.116(C)(7).

The highest executive officials of all levels of government are absolutely immune from all tort liability whenever they are acting within the scope of their executive authority. MCL 691.1407(5); MSA 3.996(107)(5). As superintendent of the Bridgman Public Schools, defendant qualifies as the

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<sup>1</sup> Defendant Bridgman Public Schools was dismissed as a party by the trial court and therefore is not a party to this appeal. Unless otherwise indicated, the term "defendant" in this opinion will refer to Carl Hilling.

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

highest appointive executive official in the school district, entitling him to absolute immunity under subsection 5. See *Nalepa v Plymouth-Canton Comm School Dist*, 207 Mich App 580, 589; 525 NW2d 897 (1994), *aff'd* as to result only 450 Mich 934 (1995).<sup>2</sup> On appeal, defendant argues that the trial court erred in finding that he was not entitled to absolute immunity under subsection 5 because his physical ejection of plaintiff from the meeting was neither within the scope of his executive authority nor authorized by law. Having reviewed *de novo* the trial court's denial of defendant's motion for summary disposition under MCR 2.116(C)(7), *Glancy v Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998), we agree with defendant and reverse.

No *per se* intentional-tort exception exists to the absolute immunity provided to the highest executive officials of all levels of government. *Marrocco v Randlett*, 431 Mich 700; 433 NW2d 68 (1988). See also *Bischoff v Calhoun County Prosecutor*, 173 Mich App 802, 806-807; 434 NW2d 249 (1988). Instead, our Supreme Court has held that the highest executive officials are not immune from tort liability for acts not within their executive authority. *Marrocco, supra* at 710-711. Thus, properly framed, the question to be determined is whether the official's particular acts are within his or her executive authority.<sup>3</sup> *Id.*; *American Transmissions, Inc v Attorney General*, 454 Mich 135; 560 NW2d 50 (1997). While an individual official's intent or motive is irrelevant to the analysis, *id.* at 143-144, the factors to be considered include "the nature of the specific acts alleged, the position held by the official alleged to have performed the acts, the charter, ordinances, or other local law defining the official's authority, and the structure and allocation of powers in the particular level of government." *Marrocco, supra* at 711.

Here, we find that no genuine issue of fact exists whether defendant Hilling was acting within the scope of his executive authority in ejecting plaintiff from the personnel meeting, and that the manner of ejection in this case did not vitiate Hilling's absolute immunity. We do not wish to be understood as holding that defendant could use any means necessary to control access to a meeting, but only that defendant's particular acts, as alleged by plaintiff, did not constitute an unreasonable use of force in the execution of his duties as superintendent. See *American Transmissions, supra* at 144 (where no genuine issue of material fact exists whether an official's conduct was within his or her executive authority, the court should decide as a matter of law whether the claim is barred by immunity). Accordingly, we conclude that defendant Hilling was

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<sup>2</sup> Although the Supreme Court indicated that its affirmance "should not be construed as indicating our agreement with the reasoning set forth in the Court of Appeals opinion," 450 Mich 934, we note that plaintiff concedes the applicability of MCL 691.1407(5); MSA 3.996(107)(5).

<sup>3</sup> An analysis of immunity for individuals differs from that of governmental agencies, i.e., governmental agency immunity focuses on the general activity involved at the time of the alleged tortious conduct, while individual immunity focuses on the specific conduct involved at the time. *Marrocco, supra* at 708; *Smith v Dep't of Public Health*, 428 Mich 540, 607-608; 410 NW2d 749 (1987) (Brickley, J). See also *Berlin v Superintendent of Public Instruction*, 181 Mich App 154, 163; 448 NW2d 764 (1989).

absolutely immune from tort liability, and that the trial court erred in denying summary disposition on that basis.

Reversed.

/s/ Helene N. White  
/s/ Michael J. Talbot  
/s/ Robert J. Danhof