

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2009

Marilyn Kelly,
Chief Justice

136636

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

ERIC C. FROHRIEP, and all others
similarly situated,
Plaintiffs-Appellants,

v

SC: 136636
COA: 273426
Ingham CC: 06-000430-NZ

MICHAEL P. FLANAGAN, JEREMY M.
HUGHES, and FRANK P. CILOSKI,
Defendants-Appellees.

By order of October 27, 2008, the application for leave to appeal the April 29, 2008 judgment of the Court of Appeals was held in abeyance pending the decision in *Odom v Wayne Co* (Docket No. 133433). On order of the Court, the case having been decided on December 30, 2008, 482 Mich 459 (2008), the application is again considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals, and we REMAND this case to the Ingham Circuit Court for further proceedings in light of the *Odom* decision. We agree with the Court of Appeals that the plaintiffs failed to state a claim for intentional infliction of emotional distress, but do not agree that the plaintiffs failed to state claims for the remaining intentional torts. The Court of Appeals erred in concluding that the burden of proof with regard to the qualified governmental immunity applicable to the defendants Hughes and Ciloski under *Ross v Consumers Power (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984), lay with the plaintiffs, rather than with the defendants. See *Odom, supra*.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 1, 2009

Corbin R. Davis

Clerk