

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT DANSBY, JR.,

Plaintiff-Appellant,

v

WILBERT MCADAMS and CITY OF PONTIAC,

Defendants-Appellees.

UNPUBLISHED

June 1, 2006

No. 265715

Oakland Circuit Court

LC No. 2004-060024-NO

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition to defendants under MCR 2.116(C)(7). The court concluded that plaintiff's defamation action was barred by governmental immunity because defendant Wilbert McAdams was acting within the scope of his executive authority as Fire Chief for the City of Pontiac when he made the challenged statements and, therefore, he was absolutely immune under MCL 691.1407(5). We affirm.

I. FACTS

This action arises from statements made by defendant McAdams after a rental property owned by plaintiff caught fire and caused the death of Guillermina Carrasco and five children. After the fire, defendant McAdams made several statements, including that there were no smoke detectors in the house, that plaintiff had been cited for code violations and did not have a required certificate of occupancy to have tenants on the property, and that plaintiff was criminally negligent. A police investigation was conducted afterward and plaintiff was not charged with any crime. Additionally, a fire marshall admitted that he had no evidence that plaintiff was criminally negligent.

II. STANDARD OF REVIEW

This Court reviews the trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "The applicability of governmental immunity is a question of law that is reviewed de novo on appeal." *Herman v City of Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004).

III. ANALYSIS

Our analysis begins with Michigan’s governmental immunity statute. MCL 691.1407(5) provides that

[a] judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

Plaintiff does not dispute that McAdams, as the City of Pontiac Fire Chief, is the highest appointive executive official of a level of government for purposes of MCL 691.1407(5). See *Davis v City of Detroit*, ___ Mich App ___, 711 NW2d 462 (2005) (Detroit fire commissioner entitled to absolute immunity as the highest executive official of a level of government). Instead, plaintiff argues that McAdams did not make the challenged statements within the scope of his executive authority.

In *Smith v Dep’t of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987), the Court explained:

The determination whether particular acts are within their authority depends on a number of factors, including 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.

Although plaintiff argues that talking to the media was not within the scope of McAdams’s authority as fire chief, under the “structure and allocation” of powers, he was the “public face” of the fire department and his job as fire chief included disseminating information to the public and responding to inquiries. The trial court properly concluded that responding to the media’s questions about a fire that caused the deaths of six people was within the scope of McAdams’s authority. Further, because there is no “malevolent-heart exception to governmental immunity,” motive need not be considered in determining whether an executive official was acting within the scope of his executive authority. *American Transmissions, Inc v Attorney Gen*, 454 Mich 135, 143; 560 NW2d 50 (1997).

The trial court did not err in determining that McAdams was entitled to absolute immunity under MCL 691.1407(5). In light of our decision, we need not address plaintiff’s remaining issues on appeal.

Affirmed.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper