

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

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AMANDA JEAN ODOM,

Plaintiff-Appellee,

v

WAYNE COUNTY and CITY OF DETROIT,

Defendants,

and

CHRISTINE KELLY,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2007

No. 270501

Wayne Circuit Court

LC No. 05-503671-NI

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Defendant, Christine Kelly, appeals as of right from the trial court's order partially denying defendants' motion for summary disposition. We affirm.

Initially, plaintiff sued defendants, Kelly, the city of Detroit and the county of Wayne, for false imprisonment and malicious prosecution. The parties stipulated to the dismissal of the city of Detroit. The remaining defendants, Kelly and the county of Wayne, collectively, moved for summary disposition. The trial court granted the portion of the motion concerning the county of Wayne. The trial court denied the portion of the motion regarding defendant Kelly's governmental immunity from tort liability under MCL 691.1407(2).

On appeal, defendant Kelly argues that the trial court erred by failing to grant this portion of defendants' motion for summary disposition because she acted within the scope of her governmental function and the objective facts show that her probable cause determination was reasonable. We disagree.

This Court reviews de novo the trial court's decision on a motion for summary disposition based on governmental immunity pursuant to MCR 2.116(C)(7). *Davis v Detroit*, 269 Mich App 376, 378; 711 NW2d 462 (2006). To survive a motion raised under MCR 2.116(C)(7), the plaintiff must allege specific facts warranting the application of an exception to governmental immunity. *Renny v Dep't of Transportation*, 270 Mich App 318, 322; 716 NW2d

1 (2006). Under MCR 2.116(C)(7), unless the contents of plaintiff's complaint are contradicted by documentary evidence submitted by the moving party, the trial court must accept them as true. *Davis, supra*. The trial court may consider the parties' pleadings, affidavits, depositions, admissions, and other documentary evidence filed to determine whether a plaintiff's suit is barred by governmental immunity. *Renny, supra* at 321.

Summary disposition on a factual issue is improper under MCR 2.116(C)(7) where, based on the evidence presented, reasonable minds could differ. See *Tarlea v Crabtree*, 263 Mich App 80, 87-88; 687 NW2d 333 (2004). Probable cause is a question of law for the court to decide only where there are no material facts in dispute. *Matthews v Blue Cross & Blue Shield*, 456 Mich 365, 381-382; 572 NW2d 603 (1998).

Employees of a governmental agency acting within the scope of their authority and in furtherance of a governmental function are immune from tort liability unless their conduct constitutes gross negligence that is the proximate cause of the injury. MCL 691.1407(2); *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Gross negligence is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a); *Xu v Gay*, 257 Mich App 263, 269; 668 NW2d 166 (2003). The issue of gross negligence may be determined by summary disposition only where reasonable minds could not differ. *Jackson v Saginaw County*, 458 Mich 141, 146-147; 580 NW2d 870 (1998). Proximate cause is satisfied where gross negligence is the one most efficient and direct cause preceding the injury. *Rakowski v Sarb*, 269 Mich App 619, 636; 713 NW2d 787 (2006).

With respect to whether a police officer is acting within the scope of her authority and in furtherance of a governmental function, "[t]here are few functions more clearly governmental in nature than the arrest, detention, and prosecution of persons suspected of having committed a crime and the decisions involved in determining which suspects should be prosecuted and which should be released." *Payton v Detroit*, 211 Mich App 375, 392; 536 NW2d 233 (1995). Accordingly, where a police officer acts reasonably in arresting a plaintiff and is not grossly negligent, she will be immune from suit. *Bell v Fox*, 206 Mich App 522, 525; 522 NW2d 869 (1994). Generally, police officers are not protected from liability for their intentional torts, but where the acts alleged to be intentional torts are "justified," i.e., objectively reasonable under the circumstances, the officer will be shielded by governmental immunity. *VanVorous v Burmeister*, 262 Mich App 467, 480; 687 NW2d 132 (2004); *Sudul v Hamtramck*, 221 Mich App 455, 458; 562 NW2d 478 (1997); *Brewer v Perrin*, 132 Mich App 520, 528; 349 NW2d 198 (1984).

Defendant Kelly contends that she had probable cause to arrest plaintiff because her behavior was consistent with that of known prostitutes. Defendant Kelly enumerated certain factors that led her to this belief, but most notably, defendant Kelly claimed that plaintiff's specific actions of walking back and forth and making eye contact with passing vehicles typified the conduct of known prostitutes. However, plaintiff denied that she made eye contact with motorists or that she was walking up and down Woodward.

The trial court properly concluded that, based on the record, it could not determine, as a matter of law, whether probable cause existed, as reasonable minds could differ over plaintiff's precise conduct on Woodward. The trial court may not determine the existence of probable cause, as a matter of law, unless there is no genuine issue of material fact. *Matthews, supra*. The trial court further reasoned that defendant Kelly had not committed an "intentional act" and she

would be shielded from liability for her alleged intentional torts of false imprisonment and malicious prosecution as long as she had not been grossly negligent in arresting plaintiff. As the trial court had determined that plaintiff's conduct was susceptible to more than one construction, it did not analyze the issue of gross negligence and properly denied the portion of defendants' motion for summary disposition based on governmental immunity.

The trial court reached the correct result, albeit for the wrong reason. The trial court denied the portion of defendants' motion based on governmental immunity because it could not determine whether probable cause existed, and thus, if plaintiff acted with gross negligence. But, where a plaintiff alleges that an officer committed intentional torts, the officer shall be shielded by governmental immunity where the officer acts objectively reasonable under the circumstances. *VanVorous, supra*.

We conclude that the trial court could not have determined whether defendant Kelly's behavior in arresting and issuing a citation to plaintiff was objectively reasonable. As the trial court could not properly determine plaintiff's conduct, it could not determine whether defendant Kelly acted reasonably in arresting and issuing a citation to plaintiff. Therefore, had the trial court analyzed the governmental immunity issue under the objectively reasonable standard, it could have properly concluded that it must deny the portion of defendants' motion for summary disposition based on governmental immunity. This Court need not reverse the trial court's order where such order reached the proper result albeit for the wrong reason. *Tipton v William Beaumont Hospital*, 266 Mich App 27, 37-38; 697 NW2d 552 (2005).

Plaintiff contends that *Klein v Pollard*, 149 Mich 200; 112 NW 717 (1907), is controlling with respect to the trial court's probable cause determination. Plaintiff argues that *Klein* has facts "strikingly similar" to the instant case because it involved the lack of probable cause for an arrest of a woman accused of being a prostitute. However, in *Klein* there is no indication that the facts regarding the plaintiff's actions were in dispute. Here, the trial court determined that, based on the record, it could not make a definitive interpretation of the facts. Thus, *Klein* is inapplicable to this case.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Deborah A. Servitto