

STATE OF MICHIGAN
COURT OF APPEALS

CATHERINE SIMMONS,

Plaintiff-Appellant,

v

GREEKTOWN CASINO, L.L.C.,¹

Defendant,

and

STEVEN FORD,

Defendant-Appellee.

UNPUBLISHED

June 14, 2012

No. 300023

Wayne Circuit Court

LC No. 06-604544-CZ

Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Federal law requires casinos to report each currency transaction exceeding \$10,000 to the Internal Revenue Service. 31 CFR § 1021.311. Cashing in chips or slot-machine tickets in multiple transactions, each involving less than \$10,000, subverts the \$10,000 threshold. Intentionally structuring a financial transaction to avoid federal reporting requirements is a form of money laundering punishable under Michigan and federal law.

Surveillance personnel at the Greektown Casino suspected that plaintiff Catherine Simmons was laundering money by structuring transactions under the \$10,000 limit and reported this suspicion to the Michigan State Police (MSP). Defendant Stephen Ford, an MSP detective, observed Simmons engaging in behavior he thought consistent with deliberate avoidance of the federal reporting requirement. Ford detained Simmons in a casino investigation room, seized her money, interrogated her, and eventually allowed her to leave. A few days later, Simmons presented proof that she had obtained the money legally and no charges were brought. Simmons then filed suit against Ford asserting several intentional tort claims. The circuit court granted summary disposition to Ford, finding that he enjoyed qualified immunity from suit. We affirm.

¹ Greektown Casino was dismissed from the lawsuit on September 5, 2007.

I.

As Simmons opposed Ford's motion for summary disposition and presented a very different view of the situation, we recount the facts in the light most favorable to her. The MSP maintains a "gaming unit" to enforce the law at Michigan's casinos. On August 21, 2005, Sandra Black, surveillance supervisor at the Greektown Casino, informed the gaming unit "of a possible money laundering in progress." Black advised that a patron was "cashing out an unusual amount of slot cashout tickets" at a kiosk. Tickets are generated by a slot machine when a gambler fails to bet all the money she inserted into the machine. The ticket reflects the balance available for additional gambling. Alternatively, a casino patron may convert the ticket into cash at a teller's window ("cage") or at an automated machine ("kiosk").

After receiving Black's call, Ford traveled to the casino and monitored Simmons from a surveillance point. He observed her standing at an automated kiosk holding "a wad of tickets" that she slowly inserted, one-by-one, into the machine. When other people approached the kiosk, Simmons stood aside to allow them to cash out. She then resumed feeding her tickets into the machine. Simmons' purse had fallen open, and Ford observed "a bulge or two of currency" inside. As Ford scrutinized Simmons, Black advised that a "cage supervisor" reported that Simmons had cashed out approximately \$8,600 in slot-machine tickets before she proceeded to the kiosk. Ford believed that Simmons was engaged in money laundering. He explained:

[A] wad of tickets cashing out at the kiosk is suspect of money laundering, because the normal gambler or the average gambler will not take a large amount of slot-generated cashout tickets to a kiosk to stand there for a long period of time to convert these tickets into cash, large bills typically.

He further surmised that she elected to cash out at the machine rather than with a person to avoid the risk of a report, particularly since she had already cashed out \$8,600 in tickets with a teller.

Ford approached Simmons, identified himself as a police officer, and directed Simmons to follow him. He led her up several flights of stairs to an interrogation room where he detained her, searched her purse, counted her money, and photocopied her remaining slot-machine tickets. Simmons remained in the room for three-and-a-half to four hours. She was not permitted to exit the room, use a restroom, or to eat or drink. Simmons' cash totaled just under \$30,000, mostly consisting of \$100 bills. Her 42 remaining tickets held a total value of \$4,135.² After Ford conducted a preliminary investigation, he allowed Simmons to leave, but retained her cash. A few days later Simmons presented the MSP with documentation supporting that she had recently

² Ford believed that Simmons was feeding "smaller denominations" into the slot machine as part of a scheme to convert small denominations into larger ones. He claimed that when he counted her money, he found that small bills predominated. Simmons adamantly denied that most of her cash was in the form of small bills. She averred in an affidavit that her purse contained "mostly" \$100 bills, and that she had been wagering \$100 bills in the slot machines.

refinanced a mortgage, generating a large sum. The MSP released her money and Simmons was never prosecuted.³

In February 2006, Simmons filed a complaint naming Ford and the Greektown Casino as defendants, asserting claims for false arrest, false imprisonment, intentional infliction of emotional distress, defamation, and violation of civil rights pursuant to 42 USC § 1983. Greektown and Ford removed the matter to federal court, invoking federal-question jurisdiction. After Simmons dismissed all her claims except for false arrest and false imprisonment, the federal district court remanded the case to the Wayne Circuit Court. *Simmons v Greektown Casino, LLC*, unpublished order of the United States District Court for the Eastern District of Michigan, entered June 20, 2007 (Docket No. 06-11266)

In August 2007, Ford moved for summary disposition on the basis of governmental immunity under MCL 600.1407(2). Ford's legal argument focused on his contention that he possessed probable cause to detain and question Simmons. Wayne Circuit Judge Warfield Moore denied Ford's motion, reasoning that Ford "had nothing more than a lady there with a pocket full of money," and "[y]ou've got to have something more" to effectuate an arrest. Ford claimed an appeal, and this Court affirmed on alternate grounds. *Simmons v Greektown Casino, LLC*, unpublished opinion per curiam of the Court of Appeals, issued September 24, 2009 (Docket No. 286845). This Court pointed out that Ford filed his summary disposition motion before the Supreme Court issued its opinion in *Odom v Wayne Co*, 482 Mich 459; 760 NW2d 217 (2008). Pursuant to *Odom*, we explained, the circuit court incorrectly rested its ruling on probable cause rather than analyzing whether Ford "acted in good faith and honestly believed that there was probable cause to arrest, even if he . . . actually lacked probable cause." *Simmons*, slip op at 4. This Court held that Judge Moore nevertheless "reached the correct outcome because the burden was on defendant to support his defense of immunity," which "[t]his defendant did not do." *Id.*

Ford filed a second summary disposition motion contending that his actions satisfied the requirements for qualified immunity set forth in *Odom*. The circuit court agreed, concluding in a bench opinion:

[T]here's nothing to say that [Ford] was acting in bad faith when he suspected laundering. And it was [plaintiff's] method of . . . play. And it's really, to me the significant issue is the way she was cashing in her money at the end. And then the fact that it took so long to count all of the money, there were small denominations involved. And she was stopped after she had already gone to the cashier's window where she would have obtained some of these hundred dollar bills, okay.

³ Simmons has been investigated by the MSP gaming unit since the onset of this case. On June 7, 2009, Greektown Casino security observed Simmons in the act of amassing a large number of low-value slot-machine tickets. Even without attempting to cash those tickets in, Simmons' conduct sparked suspicion of money laundering. See *Simmons v Grandison* (Docket No. 304633).

II.

Simmons insists that by referencing “small denominations,” the circuit court engaged in impermissible fact-finding that tainted its summary disposition ruling. According to Simmons, Ford’s suspicion of money laundering arose from his inaccurate perception that she was converting small bills into large ones. Once he began counting her money, Simmons contends, Ford should have recognized that her possession of primarily \$100 bills extinguished any possibility of money laundering.

We review a trial court’s summary disposition ruling de novo. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008). For motions under both MCR 2.116(C)(7) (immunity granted by law) and (C)(10) (no genuine issue of material fact), we review the pleadings and evidentiary record in the light most favorable to the nonmoving party to determine if the moving party is entitled to judgment as a matter of law. *Id.* at 466-467. We also consider de novo the availability of governmental immunity. *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 578; 808 NW2d 578 (2011). A court may not make findings of fact when deciding a summary disposition motion. *Jackhill Oil Co v Powell Prod, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995). When the opponent of summary disposition identifies pertinent evidence supporting judgment in her favor, a genuine issue of material fact exists that precludes summary disposition. *Price v Kroger Co*, 284 Mich App 496, 499; 773 NW2d 739 (2009).

Simmons’ argument concerning her currency denominations accurately identifies one strand of Ford’s money laundering suspicion. Ford testified that a “key thing[] to look for” in spotting money launderers is “when a person comes into the casino with the intent of converting small bills to larger bill[s], which is an obvious sign of money laundering.” Ford took the position that Simmons indeed possessed a substantial cache of small bills rather than \$100 bills. Had Ford’s actions flowed entirely from this perception, which Simmons vehemently rebutted, discerning his good faith would have presented a closer call. However, Ford’s deposition testimony continued, “The other key element would be avoiding the \$10,000 threshold that generates that CTR, Cash Transaction Report.” Ford explained:

Because this individual, Ms. Simmons, had such a large quantity of tickets, which varied in denominations on the tickets, she was – the fact that she had gone to the cage to cash out \$8,000 it put her under the \$10,000 threshold to avoid the CTR being generated, which is key

* * *

The simple fact that she had a – which I believe at the time may have been described as a wad of tickets cashing out at the kiosk is suspect of money laundering, because the normal gambler or the average gambler will not take a large amount of slot-generated cashout tickets to a kiosk to stand there for a long period of time to convert these tickets into cash, large bills typically

* * *

. . . There’s no need to generate hundreds of tickets

* * *

[T]he amount of tickets – simply with the amount of tickets that she had you could suspect that was avoiding personal contact with someone at the cage.

Thus, whether Simmons possessed primarily \$100 bills or instead held a multitude of smaller ones presents a contested but immaterial issue. Ford suspected Simmons of structuring her casino transactions to elude an official report. Illegal structuring can occur with large bills or small ones. Despite that the circuit court accepted Ford’s testimony regarding the denominations of Simmons’ bills, we reject that Simmons’ conflicting evidence creates a factual question concerning Ford’s qualified immunity defense.

Ford enjoys qualified immunity under MCL 691.1407(3) if he undertook his actions (1) during the course of his employment and within the scope of his authority; (2) in good faith, and (3) while exercising discretion rather than carrying out a ministerial task. *Odom*, 482 Mich at 480. Simmons challenges only Ford’s good faith.

In *Odom*, the Supreme Court highlighted the attributes of conduct consistent with a *lack* of good faith. Malice is the touchstone of the inquiry. This Court has “described good faith simply as acting without malice.” *Id.* at 474, citing *Armstrong v Ross Twp*, 82 Mich App 77, 85-86; 266 NW2d 674 (1978). “[T]he proponent of individual immunity must establish that he acted without malice.” *Id.* at 475. Two concepts closely related to malice supply additional measures of an absence of good faith: “[T]here is no immunity when the governmental employee acts *maliciously* or with a *wanton or reckless disregard of the rights of another.*” *Id.* at 474 (emphasis in original). The model civil jury instructions provide a “useful guide” for considering whether an official acted without malice. *Id.* at 475. M Civ JI 14.12 defines “willful misconduct” as “conduct or a failure to act that was intended to harm the plaintiff,” while M Civ JI 14.11 describes “wanton misconduct” as “conduct or a failure to act that shows such indifference to whether harm will result as to be equal to a willingness that harm will result.” *Odom*, 482 Mich at 475.

The undisputed *material* facts fail to present a triable issue regarding Ford’s lack of good faith. Ford believed that Simmons possessed a large amount of cash, yet deliberately generated a plethora of slot-machine tickets to cash out. She then redeemed enough tickets from a teller to obtain just under \$10,000 before seeking to “launder” the balance of her tickets at a machine. In Ford’s estimation, these actions were entirely consistent with deliberate avoidance of the reporting threshold. His suspicions ultimately proved ill-founded. But no evidence supports that Ford targeted Simmons without reason, harbored ill will, or that he contrived a pretextual reason for detaining her. We find no hint of malice in Ford’s decision to count Simmons’ money, copy her tickets, and to investigate her background before releasing her. And although Simmons remained in the interview room for almost four hours, she has not disputed that Greektown Casino personnel rather than Ford denied her food, water and a bathroom. A reasonable jury simply could not conclude that Ford acted recklessly, or with utter disregard for Simmons’

rights. Accordingly, we agree with the circuit court that Ford is entitled to qualified immunity from Simmons' intentional tort claims.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Michael J. Kelly

/s/ Mark T. Boonstra