

STATE OF MICHIGAN
COURT OF APPEALS

RONALD MORLEY,

Plaintiff-Appellant,

v

LEISHA CRAWFORD and GRAND RAPIDS
PUBLIC SCHOOLS,

Defendants-Appellees.

UNPUBLISHED

July 3, 2012

No. 303466

Kent Circuit Court

LC No. 10-002630-CZ

Before: WHITBECK, P.J., AND SAWYER AND HOEKSTRA, JJ.

PER CURIAM.

Plaintiff Ronald Morley appeals as of right the trial court's order granting defendants Leisha Crawford and Grand Rapids Public Schools (the school) summary disposition under MCR 2.116(C)(7) on governmental immunity grounds. We affirm.

I. FACTS

From approximately January 13, 2009, to February 26, 2009, Professional Educational Services Group (PESG), a private substitute teacher service, assigned Morley to work as a substitute teacher at Alger Elementary school in Crawford's classroom. On or about March 16, 2009, PESG notified Morley that the school was concerned with his relationship with a student and that the school had terminated Morley's employment. Because of the school's allegations, PESG told Morley that it would no longer consider him for employment in any other school district.

The school's termination of Morley was prompted by a letter that Crawford authored concerning Morley's relationship with a student in Crawford's classroom. Crawford's principal instructed her to write the letter after she reported her concerns to him. Because Crawford was absent from her classroom while Morley substituted for her, Crawford wrote her letter based on observations that three colleagues relayed to her. In her letter, Crawford said that Morley developed an "extreme relationship" with a 13-year-old, developmentally challenged female student. Crawford wrote that Morley's relationship with the female student had the following extreme elements: Morley fed into the student's obsessions, Morley held the student's hand to escort her to the bus, Morley tried to remove her from other classrooms, Morley gave the student back rubs and tickled her, Morley took an inordinate amount of pictures of the student as compared to other students, and Morley switched churches to attend the church that the student

and her family attended. Crawford concluded her letter by saying, “[w]hile I am not in any way making any accusations on what may or may not have happened or will happen, there are too many red flags for me not to have acted on this information” Crawford’s letter prompted the school to terminate Morley’s employment. The school then sent the letter to PESG, after which PESG stopped considering Morley for employment in other school districts.

Morley filed this lawsuit against Crawford and the school, alleging defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and tortious interference with a business relationship. Crawford and the school moved for summary disposition under MCR 2.116(C)(7), (8), (10), and MCL 691.1407. At a hearing on the motion, the trial court rendered its opinion from the bench:

The law is clear. The answer is plain. A governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. See Michigan Compiled Law 691.1407(2).

Similarly, a governmental employee is immune from tort liability under the same statute if “(a) the employee is acting or reasonably believes he or she is acting within the scope of his or her authority, (b) the governmental agency is engaged in the exercise or discharge of a governmental function, or (c) the employee’s conduct does not amount to gross negligence.”

In Michigan, the legislature has seen fit to include among the schools’ functions the prerogative to report potential sexual abuse. See Michigan Compiled Laws 722.625 and 380.1230b. It is for this reason that the Court concludes that the immunity doctrine applies and plaintiff’s claims must be dismissed pursuant to Michigan Court Rule 2.116(C)(7).

Accordingly, the trial court granted Crawford and the school’s motion for summary disposition and dismissed Morley’s complaint with prejudice.

Morley now appeals.

II. GOVERNMENTAL IMMUNITY

A. STANDARD OF REVIEW

Morley argues that the trial court erred when it granted summary disposition. This Court reviews de novo a trial court’s grant of summary disposition to determine if the moving party is entitled to judgment as a matter of law.¹ “If no facts are in dispute, or if reasonable minds could

¹ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

not differ regarding the legal effect of the facts, the question whether the claim is barred by governmental immunity is an issue of law.”²

B. THE SCHOOL’S IMMUNITY AS A GOVERNMENTAL AGENCY

With respect to the school’s liability, Morley argues that the trial court erred when it granted the school summary disposition because the school was engaged in an ultra vires act when it gave Crawford’s letter to PESG.

MCL 691.1407(1) provides that “a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.” The school is a governmental agency.³ A “governmental function” is “an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law.”⁴ However, activities not authorized by law, including ultra vires acts, are not entitled to immunity.⁵ An ultra vires act is one which is “*not* expressly or impliedly mandated or authorized by law.”⁶ Determination whether an activity was a governmental function must focus on the “general activity involved rather than the specific conduct engaged in when the alleged injury occurred.”⁷

As the trial court mentioned in its opinion below, under the Michigan Child Protection Law,⁸ a school administrator, school counselor, or teacher “who has reasonable cause to suspect child abuse or neglect” must immediately submit an oral report of the suspected abuse or neglect to the Department of Human Services (DHS) and, within the next 72 hours, must then file a written report to the DHS.⁹ In addition, where the reporting person is a member of a school, the reporting person must notify the person in charge of the school of the report and make a copy of the written report available to the person in charge.¹⁰

Morley contends that because Crawford and the school did not report him to DHS, they must not have had “reasonable cause” to believe that he was abusing the student, and thus, Crawford’s letter and the school’s act of giving that letter to PESG were ultra vires acts and not a

² *Pierce v City of Lansing*, 265 Mich App 174, 177; 694 NW2d 65 (2005).

³ *Nalepa v Plymouth-Canton Community Sch Dist*, 207 Mich App 580, 587; 525 NW2d 897 (1994).

⁴ MCL 691.1401(f).

⁵ *Richardson v Jackson Co*, 432 Mich 377, 381; 443 NW2d 105 (1989).

⁶ *Id.*

⁷ *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 84; 782 NW2d 514 (2010).

⁸ MCL 722.621 *et seq.*

⁹ MCL 722.623(1)(a).

¹⁰ MCL 722.623(1)(a).

government function. However, as noted above, we must focus our determination regarding whether the activity was a governmental function on the “general activity involved rather than the specific conduct engaged in when the alleged injury occurred.”¹¹

Here, the general activity that the school was engaged in, via Crawford and her drafting of the letter detailing the questionable conduct, was the investigation of possible child abuse within the school. And construing the term “governmental function” broadly, as we must do,¹² we conclude that the Michigan Child Protection Law impliedly mandated and authorized this activity. It may be true that the school did not find it necessary to report Morley’s conduct because it did not believe that it had reasonable cause to conclude that Morley was abusing the student. However, such failure to report does not detract from our conclusion that the school was nevertheless engaged in a governmental function by taking steps to investigate Morley’s conduct with the student.

Moreover, contrary to Morley’s contentions, the fact that the school reported the findings of its investigation to PESG, a private “third-party,” did not take the school’s conduct outside the scope of its governmental function. The school contracted with PESG for the placement of substitute teachers within the school’s district, and providing information to PESG explaining the reasons for Morley’s termination with the school was related to the governmental function of running the school district and supervising those who work within it. That PESG chose to discontinue placing Morley in other school districts was PESG’s prerogative on the basis of the information provided. Therefore, we conclude that the school was entitled to governmental immunity under MCL 691.1407(1).

C. CRAWFORD’S IMMUNITY FOR INTENTIONAL TORTS

Morley argues that the trial court erred when it granted summary disposition to Crawford because she was not engaged in a governmental function when she wrote the letter about Morley and reported her findings to the school. This Court analyzes intentional tort claims under the common-law test for governmental immunity for government employees articulated in *Ross v Consumers Power Co (On Rehearing)*,¹³ superseded in part by MCL 691.1407.¹⁴

The first prong of the *Ross* test requires that for governmental immunity to apply to a government employee, the employee must be found to have been “acting during the course of their employment and acting, or reasonably believe they are acting, within the scope of their authority.”¹⁵ Here, the evidence showed that Crawford’s principal instructed her to write the letter concerning Morley’s relationship with the student. And the Michigan Child Protection

¹¹ *Ward*, 287 Mich App at 84.

¹² *Maskery v Bd of Regents of Univ of Mich*, 468 Mich 609, 614; 664 NW2d 165 (2003).

¹³ *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 633-634; 363 NW2d 641 (1984).

¹⁴ *Odom v Wayne Co*, 482 Mich 459, 472-473; 760 NW2d 217 (2008).

¹⁵ *Ross*, 420 Mich at 633.

Law impliedly mandated and authorized the school's investigation of Morley. Because the school delegated to Crawford the authority to write her letter to accomplish the business of the school in investigating Morley, we conclude that reasonable minds could not differ in finding that Crawford acted in the course of her employment and within the scope of her authority.¹⁶

The second prong of the *Ross* test requires that the employee must have been "acting in good faith."¹⁷ In *Odom*, the Michigan Supreme Court found that the good-faith prong required that the employee act without malice or a "wanton or reckless disregard of the rights of another."¹⁸ In her letter to her principal, Crawford said that Morley developed an "extreme relationship" with a student and listed a series of extreme elements. Crawford wrote her letter on the basis of the observations that three colleagues relayed to her. Crawford, however, concluded her letter by disclaiming: "[w]hile I am not in any way making any accusations on what may or may not have happened or will happen, there are too many red flags for me not to have acted on this information" Crawford's disclaimer shows that she did not act with a reckless disregard of Morley's rights, and we conclude that reasonable minds could not differ in finding that Crawford acted in good faith in writing her letter.¹⁹

The third prong of the *Ross* test requires that the employee must have been "performing discretionary, as opposed to ministerial acts."²⁰ "Ministerial acts" are acts that "constitute merely an obedience to orders or the performance of a duty in which the individual has little or no choice."²¹ "Discretionary acts" are acts that require "personal deliberation, decision and judgment."²² Here, the evidence showed that Crawford's principal instructed her to write the letter, but Crawford was left to decide what facts and allegations concerning Morley she included in her letter. The decisions that Crawford was required to make in the drafting of the letter show that the drafting of the letter required Crawford's personal deliberation, decision, and judgment, and we conclude that reasonable minds could not differ in finding that writing the letter was a discretionary act.²³

D. CRAWFORD'S IMMUNITY FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

With respect to Morley's claim of negligent infliction of emotional distress, we conclude that this claim is inappropriate on the basis of the conduct alleged. As this Court has explained,

¹⁶ *Pierce*, 265 Mich App at 177.

¹⁷ *Ross*, 420 Mich at 633.

¹⁸ *Odom*, 482 Mich at 474.

¹⁹ *Pierce*, 265 Mich App at 177.

²⁰ *Ross*, 420 Mich at 634.

²¹ *Id.*

²² *Id.*

²³ *Pierce*, 265 Mich App at 177.

[a] plaintiff may recover for negligent infliction of emotional distress where (1) the injury threatened or inflicted on the third person is a serious one, of a nature to cause severe mental disturbance to the plaintiff, (2) the shock results in actual physical harm, (3) the plaintiff is a member of the third person's immediate family, and (4) the plaintiff is present at the time of the accident or suffers shock "fairly contemporaneous" with the accident.^[24]

Thus, because Morley is not a plaintiff seeking relief on the basis of injury threatened or inflicted on some third party, his claim on this count is not viable on its face.

We affirm.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Joel P. Hoekstra

²⁴ *Taylor v Kurapati*, 236 Mich App 315, 360; 600 NW2d 670 (1999).