

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

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MELANIE MORGAN,

Plaintiff-Appellant,

v

LIFEWAYS,

Defendant-Appellee,

and

W. A. FOOTE MEMORIAL HOSPITAL,

Defendant.

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UNPUBLISHED  
February 14, 2006

No. 264254  
Jackson Circuit Court  
LC No. 04-002725-NO

Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right orders granting summary disposition to defendant Lifeways (“defendant”)<sup>1</sup> and denying plaintiff’s motion to revise that order and to amend her complaint. We affirm.

This case arose out of plaintiff’s status as an indigent recipient of mental health services in Jackson County. Defendant is a community mental health services provider organized under the authority of the Mental Health Code, MCL 330.1200 *et seq.* According to plaintiff’s complaint, between 1993 and 2001, she received services from defendant or from one of the private health care providers with whom defendant contracted.<sup>2</sup> She also received help managing her money for most of this time, so she assigned her social security disability checks to defendant, who then paid her bills and provided her with spending money. Following her discharge, she discovered what she believed to be mismanagement of those funds. She began

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<sup>1</sup> Lifeways is the assumed name of the Community Mental Health Authority of Jackson and Hillsdale Counties.

<sup>2</sup> Two providers were named defendants below, but they are not parties to this appeal.

making repeated complaints to defendant and against defendant to third parties. Allegedly due to the resulting stress, plaintiff sought mental health treatment from another of defendant's providers, who took her to a different program that petitioned the probate court for plaintiff's hospitalization. Plaintiff was taken into custody by a police officer and taken to the mental health ward of Foote Hospital.<sup>3</sup> Plaintiff alleges that she was involuntarily committed when she signed a voluntary admission form after being told she had no choice.

Plaintiff's complaint alleged various intentional torts based on the alleged involuntary committal, on alleged improper handling of plaintiff's complaints, and on the alleged financial mismanagement. Relevant to this appeal, the trial court granted defendant summary disposition pursuant to MCR 2.116(C)(7) based on governmental immunity.<sup>4</sup> Plaintiff moved to revise the order and to amend her complaint to add additional factual bases in support of her allegations. The trial court denied that motion. The remaining parties were dismissed by stipulation, and plaintiff now appeals only as to defendant Lifeways.

Plaintiff first argues that the trial court erred when it granted summary disposition to defendant. We disagree. We review motions for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id.*, 119. Plaintiff concedes that defendant is a governmental agency and that defendant was engaged in the exercise or discharge of a governmental function at the time the alleged torts were committed. Therefore, defendant was entitled to summary disposition on the ground of governmental immunity unless an exception applies. MCL 691.1407(1).

Plaintiff argues that defendant was providing medical care or treatment at the time the alleged torts were committed. If true, MCL 691.1407(4) provides an exception to governmental immunity. However, MCL 333.17001(d) of the Michigan Health Code defines the practice of medicine as:

The diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts.

MCL 333.17001(b) defines medical care services as:

Those services within the scope of practice of physicians licensed by the board, except those services that the board determines shall not be delegated by a

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<sup>3</sup> Also a named defendant below but not a party to this appeal.

<sup>4</sup> This order did not dispose of all issues in the case, and this Court denied leave to appeal it in Docket No. 260297 for failing to persuade this Court of the need for immediate appellate review.

physician without endangering the health and safety of patients as provided for in section 17048(3).

MCL 330.1100(d) of the Michigan Mental Health Code defines treatment as:

Care, diagnostic, and therapeutic services, including the administration of drugs, and any other service for the treatment of an individual's serious mental illness or serious emotional disturbance.

Plaintiff specifically alleged that defendant banned plaintiff from its building, that defendant mishandled plaintiff's complaints, that defendant instituted civil proceedings against plaintiff by petitioning for involuntary hospitalization, that defendant put in motion repeated threats by Foote and Oak Lawn Hospitals to perform shock therapy on plaintiff, that defendant arranged for the police to take plaintiff into custody for purposes of hospitalization, and that defendant put in motion the events that led to plaintiff's detention by the police. None of these allegations constitute the provision of medical care or treatment under the statutory definitions we can find, and plaintiff has provided no authority suggesting otherwise. The trial court correctly found that the medical care or treatment exception to governmental immunity set forth in MCL 691.1407(4) does not apply in this case.

Plaintiff argues that defendant is not entitled to governmental immunity because the acts giving rise to this case were ultra vires. We disagree.

A claim that arises from an ultra vires act is not barred by governmental immunity. *Richardson v Jackson Co*, 432 Mich 377, 381; 443 NW2d 105 (1989). An ultra vires act is "an activity which is not expressly or impliedly mandated or authorized by constitution, statute or other law." *Ross v Consumers Power Co*, 420 Mich 567, 620; 363 NW2d 641 (1984). While a governmental function is "an activity which is expressly or impliedly mandated or authorized by constitution, statute, or other law," an ultra vires act is "an activity which is not expressly or impliedly mandated or authorized by constitution, statute or other law." *Id.*, 620. An ultra vires act, by definition, is the opposite of a governmental function. However, plaintiff conceded that defendant was engaged in the exercise or discharge of a governmental function at the time the acts giving rise to this case were committed.

Plaintiff's argument rests on the assertion that defendant is not entitled to governmental immunity because governmental immunity does not apply to a governmental function performed for an improper purpose. Plaintiff relies on a statement from a concurring opinion, signed by only two justices, stating that "the intentional use or misuse of a badge of governmental authority for a purpose unauthorized by law is not the exercise of a governmental function." *Smith v Dep't of Public Health*, 428 Mich 540, 610-611; 410 NW2d 749 (1987). However, our Supreme Court has more recently explained that the Legislature has not included a "malevolent-heart exception" to governmental immunity, and the language in *Smith* was not intended to provide one. *American Transmissions, Inc v Attorney General*, 454 Mich 135, 141, 143-144; 560 NW2d 50 (1997). Indeed, "a majority of the Justices" in *Smith* were "of the opinion that . . . [t]here is no

‘intentional tort’ exception to governmental immunity.” *Smith, supra* at 544. Motive is not relevant to whether these acts were ultra vires.<sup>5</sup>

Plaintiff next argues that if defendant is not entitled to governmental immunity, she should be permitted to amend her complaint. This does not logically follow. MCR 2.118(A)(2) provides that leave to amend should be freely given when justice so requires. However, leave to amend need not be given when such amendment would be futile, as the trial court found here. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). In any event, plaintiff impliedly concedes that the order denying her motion to amend need not be reversed if we find, as we do, that defendant was entitled to governmental immunity. Plaintiff is not entitled to relief on this issue.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

/s/ Alton T. Davis

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<sup>5</sup> Plaintiff also relies on a number of cases involving intentional torts committed by lower-level governmental employees. See, e.g., *VanVorous v Burmeister*, 262 Mich App 467, 480; 687 NW2d 132 (2004). These cases are irrelevant to the issue here, which is whether there is an intentional tort exception that applies to a governmental agency.