

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

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BILLY JOE FIFIELD and JODI LYNN FIFIELD,  
  
Plaintiffs-Appellants,

UNPUBLISHED  
September 21, 2001

v

No. 221755  
Ingham Circuit Court  
LC No. 97-085164-NO

CITY OF LANSING, LANSING POLICE  
DEPARTMENT, WOODY WRIGHT, ANDREA  
DAWN HARRIS, CAMERON M. PRIEST,  
MICHELLE BURKHARDT, REBECCA SUE  
POWELL, KYLE MCPHEE, ROBERT  
EBERSOLE, DAWN HAWES, and JUDITH  
SPENCER,

Defendants-Appellees,

and

DEPUTY DEBRUIN and DEPUTY NOVAK,

Defendants.

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Before: White, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's decision granting defendants' motions for summary disposition. We affirm as to all defendants except Officer Woody Wright. With respect to plaintiffs' claims against Wright, we reverse the circuit court's grant of summary disposition and remand for further proceedings.

This case arises from an altercation between two drivers in the City of Lansing. On December 3, 1995, the victim reported to city police officers that another driver attacked his car while stopped at a traffic light. The suspect struck the victim's car with his fist and kicked it with his foot, in an apparent attack of "road rage." According to the police report, the victim described the offender as a white male, approximately five feet eight inches in height, weighing 150 pounds. We presume that the victim also provided police with the offender's license plate number because officers traced that plate to Joseph Hill. Officer Woody Wright, a detective with

the Lansing Police Department, contacted Hill and his mother about the incident. The Hills informed Wright that someone named “Billy Fifield,” aged eighteen to twenty years old, had borrowed the car on the date in question. The Hills also provided Wright with the suspect’s telephone number and an address on Grace Street where he could be located.

Wright ran the name through the police department’s computer system, searching for a match. During that search, Wright discovered plaintiff Billy Joe Fifield’s personal information, including an address, telephone number, and physical description.<sup>1</sup> All of that information differed from the description of the suspect provided by the victim and by the Hills. Billy Joe was taller, heavier, and significantly older than the suspect. He also lived at a different address, with a different telephone number. Further, it is undisputed that the police department’s computer system contained an entry for William Harold Fifield, the true suspect. That entry included the Grace Street address provided by the Hills and a physical description matching that provided by the victim and by the Hills, including a matching age.<sup>2</sup> Nevertheless, Wright determined that Billy Joe Fifield was the offender for whom he was searching, based on his name alone.

Wright then telephoned the number provided to him by the Hills (not the telephone number contained in the police department’s computer system for Billy Joe Fifield). Wright spoke with a man, presumably William Harold Fifield, who admitted striking the victim’s car with his fist. Wright never asked the man for identifying information, a physical description, or an address. Wright never telephoned the number contained in the computer system for Billy Joe. Further, Wright never attempted to visit either the address provided by the Hills or the address contained in the computer system for Billy Joe, in order to speak with the suspect in person. Wright simply assumed that he had reached the person whose information he had pulled from the police computer system, despite the fact that he had not used that telephone number.

Wright submitted a request for a complaint and warrant to the prosecutor’s office. In January 1996, assistant prosecutor Robert Ebersole sent the request back to the police department because he wanted the police to conduct a face-to-face interview with the suspect. Despite the prosecutor’s request, Wright failed to conduct any further investigation. Instead, he simply filed a supplemental report recounting his telephone conversation with the real suspect. However, the police report prepared by Wright did not include the telephone number he had used to contact “Billy Fifield.”

Because of Billy Joe’s clean record, he was deemed eligible for the prosecutor’s diversion program.<sup>3</sup> Defendant Judith Spencer, a supervisor in the diversion program, assigned the case to defendant Dawn Hawes. In turn, Hawes sent a letter to the Grace Street address provided by the

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<sup>1</sup> Plaintiff Billy Joe Fifield’s entry in the police department’s computer system resulted from a traffic offense seven years earlier.

<sup>2</sup> The record does not reveal whether Wright ignored or simply failed to discover the information about William Harold Fifield.

<sup>3</sup> Ironically, William Harold would not have been eligible for the diversion program, given his record.

Hills. The real suspect, William Harold Fifield, responded to the letter by attending a meeting set up by Hawes. When William Harold produced his driver's license at that meeting, Hawes noticed that both the name and the birth date differed from the information contained on the warrant request. Hawes therefore corrected that information on the paperwork in her file.<sup>4</sup>

Because William Harold refused to participate in the diversion program, the warrant request eventually returned to the prosecutor's office. Defendant Ebersole failed to notice the corrections entered by Hawes and signed a request for an arrest warrant for Billy Joe Fifield, rather than William Harold Fifield. On April 2, 1996, Officer Wright appeared before the magistrate and affirmed that the information contained in the warrant, identifying Billy Joe as the suspect, was correct. The magistrate therefore approved the issuance of an arrest warrant for Billy Joe, containing the date of birth, height and weight from Billy Joe's personal history. Defendant Kyle McPhee, a member of the state police fugitive team, executed the warrant on July 2, 1996, arresting Billy Joe at his home on Holt Road. Defendants DeBruin and Novak, county sheriff's deputies, assisted McPhee in making the arrest. Defendants Harris, Priest, Burkhardt and Powell processed plaintiff, Billy Joe's arrest and booking. After a brief detention, the police department released Billy Joe on an interim bond.

On July 15, 1996, plaintiff Billy Joe's attorney notified the prosecutor's office that the wrong man had been arrested. The prosecutor's office reviewed the file, discovered the discrepancies in the various descriptions of the suspect, and sent a letter to defendant Wright identifying the problem. Wright did not respond to the letter until after plaintiff's preliminary examination.<sup>5</sup> Because Wright did not respond to the letter, the prosecutor's office decided to proceed with the preliminary examination, held on July 25, 1996. After the victim and another witness failed to identify him as the person who struck their vehicle, the court dismissed the charges against Billy Joe.

Plaintiffs filed suit in circuit court, alleging claims of false arrest, false imprisonment, gross negligence, and deprivation of civil rights.<sup>6</sup> All defendants moved for summary disposition of plaintiffs' claims, which the circuit court granted. Plaintiffs appeal as of right from that decision. We affirm in part and reverse in part.

First, we address plaintiffs' claims regarding the City of Lansing. Plaintiffs argue that they should be permitted to assert a cause of action against the City of Lansing for violating Billy Joe's state constitutional rights to due process and protection from unreasonable seizures. Our Supreme Court has ruled that no such cause of action exists against municipalities. *Jones v Powell*, 462 Mich 329, 335-337; 612 NW2d 423 (2000). The possibility of a constitutional tort

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<sup>4</sup> The record is unclear regarding whether Hawes made the corrections only on the paperwork retained by the diversion office, or also made the corrections on the paperwork returned to the prosecutor's office. It is also unclear whether only a portion of the file was returned to the prosecutor's office.

<sup>5</sup> Although he did not remember with specificity, Wright believed that he may have been on vacation when the letter arrived.

<sup>6</sup> Plaintiff Jodi Lynn Fifield's claims are solely derivative of plaintiff Billy Joe Fifield's claims.

created in *Smith v Dep't of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987), aff'd sub nom *Will v Michigan Dep't of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989), is limited to actions against the state itself. *Jones, supra* at 335-337. Therefore, the circuit court properly granted summary disposition to the City of Lansing regarding plaintiffs' state constitutional claims.

Next, we address plaintiffs' claims against defendant Ebersole, the assistant prosecutor. Plaintiffs argue that Ebersole engaged in grossly negligent conduct when he requested the warrant in Billy Joe's name and when he referred him to the diversion program, thereby removing plaintiffs' claim against him from the statutory grant of governmental immunity. MCL 691.1407(2). However, we need not decide whether the assistant prosecutor's conduct rises to the level of gross negligence because he is absolutely immune from liability under the common law for his quasi-judicial actions. *Payton v Wayne Co*, 137 Mich App 361, 371; 357 NW2d 700 (1984); *Davis v Eddie*, 130 Mich App 284, 286; 343 NW2d 11 (1983). In addition, we need not decide whether common law immunity extends to conduct by the assistant prosecutor that is not quasi-judicial in nature because the assistant prosecutor's decisions to seek a warrant in Billy Joe's name and to refer him to the diversion program were quasi-judicial functions of the prosecutor's office.

Next, we address plaintiffs' claims against the remaining defendants, with the exception of defendant Wright. Plaintiffs argue that these defendants all committed acts of gross negligence, therefore removing plaintiffs' claims against them from the statutory grant of governmental immunity. MCL 691.1407(2). Government employees are generally immune from liability as long as their agency was engaged in a government function, the employees reasonably believed that they were acting within the scope of their authority, and the employees did not engage in grossly negligent conduct. MCL 691.1407(2); *Vargo v Sauer*, 457 Mich 49, 64; 576 NW2d 656 (1998). Summary disposition is appropriate only when reasonable minds could not have reached different conclusions with regard to whether the defendant's conduct amounted to gross negligence. *Haberl v Rose*, 225 Mich App 254, 265; 570 NW2d 664 (1997). The Legislature has defined gross negligence as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2); *Harris v University of Michigan Bd of Regents*, 219 Mich App 679, 694; 558 NW2d 225 (1996). Gross negligence requires more than ordinary negligence, and evidence of ordinary negligence alone is insufficient to avoid summary disposition. *Maiden v Rozwood*, 461 Mich 109, 121-122; 597 NW2d 817 (1999).

We cannot find that the diversion program employees acted with gross negligence. The supervisor, defendant Spencer, did nothing more than assign the case. Defendant Hawes, the employee who interviewed William Harold Fifield and noticed the discrepancies existing on the warrant request, fulfilled her duty by changing the information. She could not have known that the assistant prosecutor would fail to notice the changes before requesting the warrant. Further, we cannot find that the arresting officers were grossly negligent because the discrepancies between the warrant and Billy Joe Fifield were slight. The arrest warrant contained Billy Joe's correct height and date of birth. Although his weight appeared to differ from the weight stated on

the warrant, it would have been reasonable for the officers to believe that Billy Joe might have gained weight or that police had incorrectly estimated his weight.<sup>7</sup> The arresting officers had no knowledge of defendant Wright's multiple errors. The officers had no duty to investigate the warrant further because it appeared valid on its face. *Hollis v Baker*, 45 Mich App 666, 669; 207 NW2d 138 (1973). They were also immune from liability because they did nothing more than execute a facially valid warrant in good faith. *Flones v Dalman*, 199 Mich App 396, 404; 502 NW2d 725 (1993). Further, we cannot find that the corrections officers who booked Billy Joe acted with gross negligence. The minor discrepancies between the warrant and Billy Joe himself, along with Billy Joe's claims of innocence, were not so unusual that they would raise any suspicions. We do not believe that reasonable minds could have reached different conclusions with regard to whether the above government employees' conduct amounted to gross negligence. Therefore, the circuit court properly granted summary disposition to these defendants.

Finally, we consider plaintiffs' claim against defendant Wright. We conclude that reasonable minds could reach different conclusions with regard to whether defendant Wright's conduct amounted to gross negligence, meaning "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Harris, supra* at 694. Wright's assumption that Billy Joe was his suspect was extremely careless, especially in light of other available information, the obvious discrepancies and the serious potential consequences posed by a mistaken identification. In addition, Wright failed to conduct a further investigation when requested to do so by the prosecutor. Wright's failure to do so may convince the jury that he had a reckless disregard for whether he had identified the correct person. Finally, a reasonable jury could disbelieve Wright's claim that he acted promptly upon receipt of the prosecutor's letter informing him that the wrong man had been arrested. Given all of the facts set forth above, we conclude that a reasonable jury could find that Wright's conduct was "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2). Therefore, the trial court committed error requiring reversal when it entered summary disposition on behalf of defendant Wright. We reverse the trial court's grant of summary disposition on his behalf and remand for further proceedings not inconsistent with this opinion.

Affirmed in part and reversed in part. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Michael R. Smolenski

/s/ Donald S. Owens

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<sup>7</sup> Billy Joe's estimated weight had been obtained approximately seven years earlier. See note 1.