

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

---

ODELL GODBOLD,

Plaintiff-Appellee,

v

CITY OF DETROIT, WALTER MARTIN, TONY  
SAUNDERS, and JAMES TOLBERT,

Defendants-Appellants.

---

UNPUBLISHED  
January 15, 2013

No. 307078  
Wayne Circuit Court  
LC No. 09-023465-NZ

Before: TALBOT, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Defendants appeal as of right a trial court order denying their motion for summary disposition, which was brought in part on grounds that plaintiff's claims were barred by governmental immunity. For the reasons set forth in this opinion, we affirm the ruling of the trial court, albeit on different grounds than stated by the trial court.

This case arises from plaintiff's employment with the City of Detroit. Plaintiff was formerly a sergeant in charge of the Detroit Police Department's cold case unit. He was assigned to investigate the highly-publicized unsolved murder of exotic dancer Tamara Green, who was linked to an alleged party at the home of former Detroit Mayor Kwame Kilpatrick. Plaintiff's complaint alleges that the individual defendants took various actions that interfered with his investigation of the case, which included disbanding the cold case unit and demoting him by reassigning him to another unit, inducing him to retire. Plaintiff alleges that, shortly after he retired, the cold case unit was reopened. Plaintiff filed this action alleging, in part, claims against the individual defendants for intentional interference with his employment and fraudulent inducement. Defendants filed a motion for summary disposition that sought, in relevant part, dismissal of plaintiff's claims on the ground of governmental immunity. The trial court denied defendants' motion on grounds that plaintiff had pleaded intentional torts.<sup>1</sup>

---

<sup>1</sup> The trial court denied the motion as it related to the city because plaintiff did not seek to hold the city liable for the intentional interference and fraud claims. Rather, in one of the other claims not before us, plaintiff asserted a separate claim against the city for violation of the Bullard-

Defendants argue that the trial court erred in ruling that they were not entitled to governmental immunity. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). Summary disposition may be granted under MCR 2.116(C)(7) where a claim is barred by immunity granted by law. In reviewing a ruling pursuant to subrule (C)(7), this Court considers "all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them." *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). "If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law." *Poppen v Tovey*, 256 Mich App 351, 354; 664 NW2d 269 (2003). The applicability of governmental immunity is a question of law that is also reviewed de novo on appeal. *McLean v McElhaney*, 289 Mich App 592, 596; 798 NW2d 29 (2010).

An officer or employee of a governmental agency is immune from tort liability for personal injury or property damage caused while the officer or employee is in the course of his employment, is acting in the scope of his authority, the governmental agency is engaged in the exercise or discharge of a governmental function, and the officer's or employee's conduct "does not amount to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2). However, § 7(2) "does not alter the law of intentional torts as it existed before July 7, 1986." MCL 691.1407(3). This means that governmental employees are immune from liability for intentional torts "to the extent allowed by the common law before July 7, 1986." *Odom v Wayne Co*, 482 Mich 459, 461; 760 NW2d 217 (2008). In *Odom*, the Court set forth the following test for analyzing a defense of individual governmental immunity:

(1) Determine whether the individual is . . . the highest-ranking appointed executive official at any level of government who is entitled to absolute immunity under MCL 691.1407(5).

(2) If the individual is a lower-ranking employee or official, determine whether the plaintiff pleaded an intentional or a negligent tort.

(3) If the plaintiff pleaded a negligent tort, proceed under MCL 691.1407(2) . . . .

\* \* \*

(4) If the plaintiff pleaded an intentional tort, determine whether the defendant established that he is entitled to individual governmental immunity . . . by showing the following:

---

Plawewski Employee Right to Know Act, MCL 423.501 *et seq.* Although the city purports to be a party to this appeal, it did not appeal the trial court's decision as it relates to the city, therefore that claim is not at issue in this appeal. Consequently, the issue on appeal relates only to the individual defendants.

(a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,

(b) the acts were undertaken in good faith, or were not undertaken with malice, and

(c) the acts were discretionary, as opposed to ministerial. [*Id.* at 479-480.]

There is no evidence that any defendant was the highest-ranking appointed official in the police department. Plaintiff's complaint asserted claims for tortious interference with his employment and for fraud, both of which are intentional torts. See *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010) (tortious interference), and *Huron Tool & Engineering Co v Precision Consulting Servs, Inc*, 209 Mich App 365, 368; 532 NW2d 541 (1995) (fraud). Because lower-ranking governmental employees are entitled to qualified immunity from liability for intentional torts, *Odom*, 482 Mich at 473, the trial court erred in ruling as a matter of law that defendants were not entitled to immunity because plaintiff had pleaded intentional torts. Whether defendants are entitled to immunity must instead be analyzed under the fourth step of the *Odom* test.

There is no contention that defendants were not acting during the course of their employment and within the scope of their authority. The allegations in plaintiff's complaint refer to conduct that occurred while plaintiff and defendants were on duty and engaged in their assignments within the police department. Plaintiff does not claim that defendants, who were his superiors, did not have authority to issue him orders regarding the investigation, to demand production of his investigation file, or to close the investigative unit to which he had been assigned. Therefore, the relevant issues are whether defendants acted in good faith and whether their actions were discretionary or ministerial.

An employee acts in good faith if he "exercises good judgment or common sense and meets a standard of competence in the discharge of duties[.]" *Kelly-Nevils v Detroit Receiving Hosp*, 207 Mich App 410, 420; 526 NW2d 15 (1994). It encompasses honest belief and good-faith conduct. *Id.* It is, in essence, action undertaken without malice. *Odom*, 482 Mich at 475, 481-482. Discretionary acts are "those which require personal deliberation, decision, and judgment." *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 634; 363 NW2d 641 (1984). Ministerial acts are those which constitute "an obedience to orders or the performance of a duty in which the individual has little or no choice." *Id.* "In a nutshell, the distinction between 'discretionary' and 'ministerial' acts is that the former involves significant decision-making, while the latter involves the execution of a decision and might entail some minor decision-making." *Id.* at 635.

In this case, defendants did not offer any record evidence to the trial court in support of their claim that they were entitled to immunity. Specifically, defendants failed to introduce any record evidence to support their assertions made on appeal that their actions were made in good faith and lacked any intent to harm. Additionally, defendants' motion in the trial court did not even address the issues whether they acted in good faith and whether their actions were discretionary or ministerial. Although defendants did assert, without citing any supporting

evidence, that plaintiff “cannot show that Defendants engaged in conduct that was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community,” that standard refers to conduct necessary to establish a claim for intentional infliction of emotional distress. See *Dalley*, 287 Mich App at 321. It is not the standard for evaluating whether a governmental employee is immune from tort liability. Further, defendant’s assertion was legally inconsequential as plaintiff did not allege intentional infliction of emotional distress.

Plaintiff’s complaint alleges that defendants’ conduct was undertaken for the purpose of interfering with a police homicide investigation and to protect an elected official by covering up information regarding the official’s connection to Green. These allegations, which the trial court was required to accept as true in the absence of any contradictory evidence, *Fane*, 465 Mich at 74, support that defendants did not act in good faith and, therefore, would not be entitled to immunity. Because defendants did not present any contrary record evidence to support a finding that they acted in good faith (e.g., evidence showing valid business reasons for their conduct and decision to disband the cold case unit), defendants failed to establish that they were entitled to immunity from liability for plaintiff’s tort claims. Accordingly, although the basis for the trial court’s ruling was erroneous, the trial court properly denied defendants’ motion for summary disposition. Given that this Court will not reverse where the trial court reaches the right result for the wrong reason, *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007), we affirm the holding of the trial court.

Affirmed. Plaintiff, having prevailed, is entitled to costs. MCR 7.219(A).

/s/ Michael J. Talbot  
/s/ Kurtis T. Wilder  
/s/ Cynthia Diane Stephens