

STATE OF MICHIGAN
COURT OF APPEALS

MARY MACK, as Personal Representative for the
Estate of JAMAR FRENCH,

UNPUBLISHED
April 16, 2002

Plaintiff-Appellant,

v

No. 227067
Washtenaw Circuit Court
LC No. 98-004527-NO

OFFICER PATRICK QUELLETTE,
OFFICER DOUGLAS MARTELLE,
SERGEANT JAMES STEPHENSON,
DETECTIVE RALPH MARROQUIN, and
SERGEANT MARK SZYNWELSKI,

Defendants-Appellees.

Before: Cavanagh, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants in this wrongful death action. We affirm.

In May 1996, two Ann Arbor police officers responded to a complaint regarding the alleged sale of narcotics and detained plaintiff's decedent, Jamar French, at the location. French denied any involvement in a drug transaction and, during an attempted pat down search, French turned away from the officer, made a gesture toward his face, threw an object to the ground, and then began to run. After being caught, French spit something out of his mouth and, although not found to possess narcotics, he was arrested for failing to obey. The object that French threw to the ground was a plastic baggie with a hole in one corner. While one officer transported French to the police station, the other officer searched the area of the arrest for possible discarded narcotics but was unable to locate any narcotics at the scene.

While French was in police custody, a strip search failed to uncover any drugs, French repeatedly denied possessing narcotics, and French specifically denied ingesting any drugs. After the searches of both French and the area of his arrest failed to produce narcotics, French was released from police custody at approximately 6:15 p.m., within an hour and a half after first being approached by the officers. Approximately a half hour later, French began having seizures and, subsequently, suffered a cardiac arrest. He ultimately died from complications caused by acute cocaine intoxication. Thereafter, this wrongful death action was filed, alleging that defendants were grossly negligent for failing to provide French with medical attention during his

arrest. The trial court granted defendants' motion for summary disposition, pursuant to MCR 2.116(C)(10), holding that defendants were entitled to governmental immunity because their failure to provide French with medical assistance did not amount to gross negligence. Plaintiff appeals.

Plaintiff argues that the trial court erred in dismissing this action because defendants knew there was a substantial risk that French had ingested crack cocaine; therefore, the officers were grossly negligent in failing to obtain medical assistance for French. We disagree. This Court reviews a trial court's grant of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion brought under MCR 2.116(C)(10), the documentary evidence is considered in a light most favorable to the nonmoving party to determine whether the movant is entitled to judgment as a matter of law or whether a genuine issue of material fact exists. *Ritchie-Gamester v Berkley*, 461 Mich 73, 76-77; 597 NW2d 517 (1999); *Spiek, supra*.

Generally, government officers and employees, including police officers, acting within the scope of their authority are immune from tort liability unless their conduct amounted to gross negligence that was the proximate cause of the injury. See MCL 691.1407(2); *Robinson v Detroit*, 462 Mich 439, 458-459; 613 NW2d 307 (2000); *Maiden v Rozwood*, 461 Mich 109, 121-122; 597 NW2d 817 (1999). The issue in this case is whether defendants' conduct amounted to gross negligence, which is defined by MCL 691.1407(2)(c) as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

Here, the trial court properly held that reasonable minds could not differ that defendants were entitled to immunity. The uncontroverted evidence included that none of the officers knew that French had ingested cocaine or any narcotic, French repeatedly and vehemently denied possessing or ingesting any narcotic, French refused an offer of medical assistance, a search failed to uncover any drugs on his person or at the location of the arrest, and French displayed no signs of any type of distress. Nevertheless, plaintiff primarily claims that the officers were grossly negligent because they ignored a "substantial risk that Mr. French had swallowed crack cocaine." Plaintiff argues that while being detained, French appeared to have put something from a plastic baggie into his mouth; however, he also appeared to have spit it out. In any event, plaintiff's claim does not raise a material question that defendants' conduct was "so reckless as to demonstrate a substantial lack of concern" for whether an injury would result to French. See *Jackson v Saginaw Co*, 458 Mich 141, 150-151; 580 NW2d 870 (1998).

Under the facts presented, reasonable minds could not differ that defendants' conduct with regard to French did not amount to gross negligence. See *Id.* at 146-147. Therefore, plaintiff failed to support a claim in avoidance of defendants' governmental immunity pursuant to MCL 691.1407(2). See *Cebreco v Music Hall Center for the Performing Arts, Inc*, 219 Mich App 353, 361-362; 555 NW2d 862 (1996). Accordingly, the trial court properly granted summary disposition for defendants. See MCR 2.116(C)(10).

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Peter D. O'Connell