STATE OF MICHIGAN

COURT OF APPEALS

GORDON WILSON, AMY CHABAN and ANTHONY CHABAN,

Plaintiffs-Appellants,

v

OFFICER D. MCCORMICK, OFFICER JASON SCHNEIDER and OFFICER BLAKE MATATALL,

Defendants-Appellees.

UNPUBLISHED
August 25, 2011

No. 298905
Oakland Circuit Court
LC No. 2009-101672-NO

Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

PER CURIAM.

The trial court granted summary disposition to defendants, plaintiff appeals, and, for the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

In October 2007, the United States Secret Service and the Southfield Police Department conducted an investigation of a counterfeiting scheme. A fraud investigator at a Target store in Southfield reported that a cashier named Christopher Dickerson had received a large amount of counterfeit money from customers who bought electronic devices. The investigation revealed that the suspects would purchase the electronics with counterfeit money and return them to other Target stores for cash refunds. On November 1, 2007, the Secret Service and Southfield Police set up a surveillance operation inside and outside the Target store. After Dickerson started his shift, four men arrived at the store in a white Toyota Corolla. The men were later identified as Jason Cooper, Jason McDermott, Carlos McKissic, and Leeshawn McClane. The men entered the store, selected various electronic items, and paid for them at Dickerson's register. Relevant to this case, McClane purchased a large screen television from Dickerson. After the men left the store, another Target employee pulled Dickerson from his register under the pretext that he was needed for a task elsewhere in the store. Law enforcement agents found $3,000 in counterfeit money in Dickerson's cash register.

In the parking lot, the suspects placed most of the items in the Toyota vehicle, but they could not fit the large screen television in the trunk. Three of the suspects drove away in the Toyota and left McClane in the parking lot with the television. A short time later, plaintiff

Gordon Wilson pulled into the Target parking lot in a 1998 Crown Victoria. Plaintiffs Amy Chaban and her minor son Anthony Chaban were also in the car, along with an acquaintance of Wilson's, Lee Greenidge. After Wilson parked the car, Greenidge and Wilson got out and talked to McClane. The men placed the television in the trunk of Wilson's car and went inside the Target store. Wilson walked to the electronics department. He later testified that he intended to buy a Zoom MP3 player, but he did not purchase anything that day. As he was leaving the store with Greenidge, Officers Jason Schneider and David McCormick placed Wilson under arrest.

Around the same time, officers approached the Crown Victoria, which was still occupied by Amy and Anthony Chaban. According to Amy, the officers told her to get out of the car and put her arms up. Amy testified that she initially resisted because she did not know that the people who approached the car were law enforcement officers. Amy recalled that an officer, identified by plaintiffs' complaint as either Officer Blake Matatall, Officer Schneider or Officer McCormick, pulled her out of the car and threw or pushed her to the ground on her stomach. Though she does not claim any physical injuries from the arrest, Chaban maintains that she was four months pregnant at the time of the incident. Amy and Anthony were taken to the Southfield Police Department where Amy was questioned and the two were released.

Wilson was also questioned at the Southfield Police Department. During a search, officers found three counterfeit $100 bills in Wilson's possession. Wilson admitted to officers that Greenidge had told him that a cashier at Target would accept counterfeit money and that he considered using his counterfeit bills that day. In this lawsuit, Wilson testified that he bought the counterfeit bills from someone at a bar, but he now claims that he knew nothing about the counterfeit scheme at Target. According to Wilson, while he allowed Greenidge and McClane to put the television in his trunk, he did not consent to it and he ordered the men to remove it while he went into Target to shop for an MP3 player.

As noted by the trial court in its June 9, 2010 opinion, the evidence presented does not precisely identify the criminal charges prosecutors brought against Wilson, but they in essence told Wilson that he was complicit in "conspiring in the counterfeiting scheme and aiding and abetting the other suspects in uttering and publishing counterfeit notes." Ultimately, the district court ruled that the prosecutor did not present sufficient evidence to bind Wilson over for trial on the counterfeiting charges.

On June 17, 2009, plaintiffs filed this civil action against Officers McCormick, Schneider and Matatall for assault and battery, false arrest, false imprisonment and malicious prosecution. Thereafter, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10). Specifically, defendants argued that they are entitled to governmental immunity as a matter of law pursuant to MCL 691.1407 and *Odom v Wayne County*, 482 Mich 459; 760 NW2d 217 (2008). Defendants maintained that there is no issue of material fact regarding whether the officers acted in the course of their employment and scope of authority, and that their actions were discretionary and made in good faith. In response, plaintiffs argued that they are entitled to summary disposition pursuant to MCR 2.116(I)(1) and (2). Plaintiffs argued that defendants are not entitled to the protections of governmental immunity for intentional torts and that, because the district court ruled that Wilson should not be bound over for trial, the officers had no probable cause to arrest plaintiffs and any immunity defense should fail as a matter of law. The

trial court issued an opinion and order on June 9, 2010, and granted defendants' motion for summary disposition.

II. ANALYSIS

A. STANDARD OF REVIEW AND APPLICABLE LAW

Plaintiffs contend that the trial court erred when it granted summary disposition to defendants. This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). As this Court further explained in *Transou v City of Pontiac*, 283 Mich App 71, 72-73; 769 NW2d 281 (2009):

> A motion under MCR 2.116(C)(7) is properly granted when a claim is barred by governmental immunity and the nonmoving party has failed to allege facts that justify an exception to that immunity. *Steele v Dep't of Corrections*, 215 Mich App 710, 712-713; 546 NW2d 725 (1996). A motion under MCR 2.116(C)(10) is properly granted if no genuine issue of fact exists and the moving party is entitled to a judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In reviewing a motion brought under MCR 2.116(C)(7) or MCR 2.116(C)(10), we consider all the evidence, including admissions, affidavits, depositions, and pleadings in the light most favorable to the nonmoving party.

Defendants argued that they are entitled to governmental immunity from tort liability under common law and pursuant to MCL 691.1407 which provides, in relevant part:

> (2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:
>
> (a) The officer, employee, member, or volunteer 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.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.
>
> (3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

The Michigan Supreme Court ruled in *Odom* that, when a defendant raises the affirmative defense of governmental immunity, our courts must follow the following steps:

> (1) Determine whether the individual is a judge, a legislator, or 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 governmental employee or official, determine whether the plaintiff pleaded an intentional or a negligent tort.
>
> ***
>
> (4) If the plaintiff pleaded an intentional tort, determine whether the defendant established that he is entitled to individual governmental immunity under the *Ross* [*v Consumers Power Co (On Rehearing)*, 420 Mich 567; 363 NW2d 641 (1984)] test by showing the following:
>
> (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. [*Odom*, 482 Mich at 479–480.]

Pursuant to step (2), all of the defendants are lower-ranking governmental employees and plaintiffs pleaded intentional torts. Accordingly, as outlined by our Supreme Court in *Odom*, we will analyze plaintiff's intentional tort claims under the test outlined in *Ross*.

B. DISCUSSION

Plaintiffs do not dispute that, in arresting and detaining plaintiffs and placing Wilson in jail, defendants were acting within the course of their employment as police officers and they do not dispute that the officers' actions were discretionary. Plaintiffs instead argue that the officers lacked probable cause to arrest plaintiffs and, therefore, they acted outside the scope of their authority.[1] However, plaintiffs base their argument on the trial court's decision not to bind Wilson over on charges brought by the prosecutor with regard to Wilson's involvement in the

[1] "Scope of authority" is defined as "[t]he reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business." *Backus v Kauffman (On Rehearing)*, 238 Mich App 402, 409; 605 NW2d 690 (1999), quoting Black's Law Dictionary (7th Ed), p 1348.

counterfeiting ring. As the trial court correctly ruled, the question of whether there was probable cause to arrest plaintiffs at the scene of the crime is an entirely different inquiry.

"Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). This standard was clearly satisfied here. Defendants presented evidence that, in conjunction with a detailed investigation by the United States Secret Service, the defendant officers and other law enforcement officials observed McClane and other suspects purchase electronic items from Target employee Christopher Dickerson, who was known to have taken a significant amount of counterfeit money in exchange for electronic merchandise. Immediately after McClane bought the large screen television at Dickerson's register, investigators found counterfeit bills in the register that were clearly used in the transaction. As these activities occurred, Wilson arrived in the Target parking lot with Greenidge and Amy and Anthony Chaban. Outside the store, officers saw McClane, Wilson and Greenidge place the television into Wilson's car. According to plaintiffs' complaint, Amy and Anthony Chaban remained in the car to protect the television while Wilson went back into the Target store and plaintiffs were arrested shortly thereafter.

Clearly, the evidence reported to and observed by the officers was reasonably trustworthy and more than sufficient to warrant a cautious person to believe that plaintiffs were involved in the commission of a crime. *Champion*, 452 Mich at 115. Plaintiffs arrived at the scene of the counterfeiting activity to take possession of merchandise that was clearly purchased with counterfeit money, and all of this activity was observed by law enforcement officials. In detaining, arresting and questioning plaintiffs, the defendant officers clearly acted within the scope of their authority as police officers. In response to this showing by defendants, plaintiffs presented no evidence to establish any basis to believe that the officers lacked probable cause to believe that plaintiffs were involved in the ongoing criminal activity. It is well-settled that, if an arrest is legal, plaintiffs cannot maintain a claim of false arrest or false imprisonment. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 18; 672 NW2d 351 (2003).

For purposes of all of their claims against the officers, plaintiffs make the cursory assertion that defendants failed to show that their acts "were undertaken in good faith, or were not undertaken with malice . . . ." *Odom*, 482 Mich at 480. Plaintiffs again rely entirely on the trial court's decision not to bind Wilson over after the preliminary examination. Again, however, the basis for plaintiffs' argument is erroneous. Regardless of the bindover decision, even if an officer ultimately had no basis to *arrest* a suspect, so long as the officer acted in good faith, he is entitled to immunity under *Ross*. *Id*. at 481.

"Good faith" means the officer did not act maliciously or with an improper purpose. *Odom*, 482 Mich at 474-475. Indeed, our Supreme Court has ruled that a lack of good faith amounts to conduct that evidences " 'an intent to harm or, if not that, such indifference to whether harm will result as to be the equivalent of a willingness that it does.' " *Id*. at 475, quoting *Burnett v City of Adrian*, 414 Mich 448, 455; 326 NW2d 801 (1982). Clearly, the officers presented evidence that they acted without malice. The evidence submitted to the trial court shows that the officers observed criminal activity occurring at the Target store, they observed plaintiffs take possession of merchandise obtained through the use of counterfeit funds,

and they properly arrested and detained plaintiffs as suspects. There is no indication anywhere in the record that the officers acted with any improper purpose in any aspect of the investigation or arrests.[2] Accordingly, the trial court correctly granted summary disposition to defendants.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Elizabeth L. Gleicher

[2] Plaintiffs fail to articulate the specific reasons their assault and battery claim should survive, though this again appears to be based on their erroneous assertion about a lack of probable cause. Otherwise, plaintiffs merely set forth the definition of assault and battery and make no other legal or factual argument to support their claim. This amounts to an abandonment of the issue. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *Peterson Novelties*, 259 Mich App at 14.