

COA Opinion: Executive-specific governmental immunity does not extend to a police chief's conduct while performing the duties of an ordinary police officer

24. October 2011 By Sarah Lindsey

In *Petipren v. Jaskowski*, Case Nos. 298088, 301125, the Court of Appeals concluded that absolute immunity for the elected or highest appointed executive official, under MCL 691.1407(5), does not apply to “conduct by a police chief that occurred when the chief was acting as an ordinary police officer rather than within his capacity as the highest executive official of a level of government.”

Accordingly, the Court affirmed two trial court orders denying the police chief's motions for summary disposition that he brought on the basis of absolute governmental immunity.

This consolidated appeal addressed motions brought in two separate cases arising out of a single incident during which the police chief of the Village of Port Sanilac personally arrested an individual. That person filed a claim against the chief for assault and wrongful arrest and, in a second case, filed a counterclaim against the chief for negligent and intentional infliction of emotional distress. In both cases, the chief moved for summary disposition pursuant to MCR 2.116(C)(7) on the basis of governmental immunity under MCL 691.1407(5). Subsection (5) grants immunity to, among others, the “highest appointive executive official of all levels of government . . . if he or she is acting within the scope of his or her . . . executive authority.” The threshold under subsection (5) is easier to satisfy than that required for lower level governmental employees under subsection (2) of the statute, which only grants immunity to such employees who meet additional requirements.

The Court analyzed the statute's language and the “Essential Duties and Responsibilities” within the police chief's job description before it determined that the chief was acting outside the scope of his executive authority when he made the arrest. The court decided that, “[w]hen a police chief acts as an ordinary police officer . . . he is not entitled to absolute immunity simply because he is also the police chief.” Instead, “he would be entitled to the immunity provided to government employees under MCL 691.1407(2) if all statutory requirements are satisfied.” Judge Fitzgerald authored the majority opinion, in which Judge Ronayne Krause joined.

Judge Murray *dissented*, concluding that the scope of the police chief's executive authority included the duty to arrest offenders, which was one of the “functional responsibilities of the Police Department,” but was not listed among the “essential duties and responsibilities” of the police chief's job description. Judge Murray reasoned that because the chief “was the highest executive official within the police department, and the authority granted to that executive position included the ability to arrest offenders, he acted within the scope of his executive authority when he arrested plaintiff.” Judge Murray also noted that “to the extent the trial court's decision rested on a perceived ‘personal vendetta’” of the chief against the plaintiff, “that ruling had no legal support under Michigan law.”