

Court of Appeals, State of Michigan

ORDER

William Delong v Fairfield Township

Docket No. 319825

LC No. 13-004884-CZ

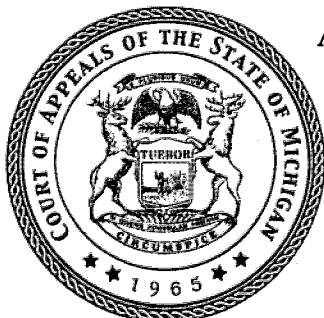
Kurtis T. Wilder
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

The Court orders that the motion for peremptory reversal pursuant to MCR 7.211(C)(4) is GRANTED. The circuit court erred in denying defendant's motion for summary disposition under MCR 2.116(C)(7) on the basis that plaintiff's allegation of gross negligence should be submitted to a jury as a question of fact. By its plain language, MCL 691.1407(2) applies to officers and employees of a governmental agency, not to the governmental agency itself and, in this case, only the township has been named as a defendant. Even if plaintiff amended his complaint to add those of defendant's employees who allegedly were responsible, and even viewing the facts in a light most favorable to plaintiff, reasonable minds could not differ that the conduct alleged here – the failure to submit a check to the Michigan State Tax Commission – does not rise to the level of gross negligence as a matter of law. See *Briggs v Oakland Co*, 276 Mich App 369, 374; 742 NW2d 136 (2007). "Evidence of ordinary negligence does not create a question of fact regarding gross negligence." *Love v Detroit*, 270 Mich App 563, 565; 716 NW2d 604 (2006). Further, the governmental tort liability act, MCL 691.1401 *et seq.*, provides broad immunity from tort liability to governmental agencies when engaged in a governmental function. *Burise v City of Pontiac*, 282 Mich App 646, 652, 766 NW2d 311 (2009). Plaintiff has failed to plead an exception to governmental immunity to support his claim for detrimental reliance, which is another facet of his negligence claim that sounds in tort. The matter is REMANDED to the circuit court for entry of summary disposition in defendant's favor.

This order is to have immediate effect. MCR 7.215(F)(2). The Court does not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 30, 2014

Date


Chief Clerk