STATE OF MICHIGAN

COURT OF APPEALS

RICKEY ROLAND SCHEFFLER, personal representative of the estate of JENNIFER LYNN SCHEFFLER,

Plaintiff–Appellant,

v

CRAIG S. POIKE, TOWNSHIP OF CANTON, GEORGE BOMBYK,

Defendants–Appellees.

UNPUBLISHED
September 27, 1996

No. 170748
LC No. 93-307854

JAMES GRIMM, JR., personal representative of the estate of SADIE MAE GRIMM,

Plaintiff–Appellant,

v

GEORGE BOMBYK, TOWNSHIP OF CANTON, CRAIG S. POIKE,

Defendants–Appellees.

No. 180793
LC No. 94-422805

Before: Reilly, P.J., and Cavanagh, and R.C. Anderson,* JJ.

PER CURIAM.

In this consolidated action, plaintiffs appeal as of right the circuit court orders granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This action arose out of an auto accident in Canton Township. Decedent Scheffler was a passenger in a car driven by decedent Grimm. Grimm was driving northbound on Denton Road, a two-

lane road in Canton Township. At the same time, defendant Poike was driving an EMS vehicle owned by Canton Township going westbound on Geddes road, a two-lane road that had the right of way at the Denton Road intersection. As Grimm proceeded into the intersection of Denton and Geddes Road, her car crossed into the path of the EMS vehicle. Grimm and Scheffler were killed in the resulting collision. At the time of the accident, defendant Bombyk's vehicle was parked on the south shoulder of Geddes Road east of the intersection where the collision occurred. Bombyk happened to be using a video camera at the time of the collision and recorded on videotape some of the events surrounding the collision.

Plaintiffs filed separate suits alleging that defendants' negligence and gross negligence caused the deaths of Grimm and Scheffler. The trial court granted defendants' motions for summary disposition finding no genuine issue of material fact with respect to plaintiffs' claims. Plaintiffs appeal the dismissal of the claims against each defendant.

Summary disposition is appropriate under MCR 2.116(C)(10) where there is no genuine issue of material fact with respect to a particular claim, except on the issue of damages, and the moving party is entitled to judgment as a matter of law. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party. *Id*. This Court reviews a trial court's grant of summary disposition de novo. *Borman v State Farm*, 198 Mich App 675, 678; 499 NW2d 419 (1993) affirmed, 446 Mich 482 (1994).

Plaintiffs first contend that the trial court erred in granting Bombyk's motion for summary disposition of plaintiffs' negligence claims. We disagree.

A prima facie case of negligence requires proof of four elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). The issue with respect to plaintiffs' claims against defendant Bombyk concerns the first element, "duty." Plaintiffs argue that Bombyk owed "a duty to exercise reasonable care so as not to create an unreasonable risk of harm" to plaintiffs' decedents. However, the Supreme Court has explained that

> the duty to use "reasonable care" is the standard for liability rather than the antecedent conclusion that a particular plaintiff has protection against a particular defendant, or that a particular defendant owes any specific duty to a particular plaintiff. Duty is actually a "'question of whether the defendant is under any obligation for the benefit of the particular plaintiff' and concerns 'the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other.'" "'Duty' is not sacrosanct in itself, but is only an expression of the sum total of those considerations which lead the law to say that the plaintiff is entitled to protection." [Citations omitted. *Buczkowski v McKay*, 441 Mich 96, 100; 490 NW2d 330 (1992).]

We agree with the trial court that Bombyk did not owe a duty to plaintiffs' decedents. "The duty to protect others against harm from third persons is based on a relationship between the parties." *Id.* at 103. There is no "special relationship" between a person who parks anautomobile and other individuals who happen to be driving nearby. *Id.* at 104 n 9. Plaintiffs have not cited any authority which would support the recognition of a duty in these circumstances. To the extent that plaintiffs suggest that Bombyk's violation of statutes or ordinances suffice to establish a duty to plaintiffs' decedent, we disagree. With respect to plaintiffs' contention that Bombyk parked in violation of MCL 257.674(1); MSA 9.2374(1), it is clear that Bombyk was not parked within thirty feet of the " approach" to a stop sign, nor was he parked alongside or opposite a street excavation or obstruction. MCL 257.674(1)(g) and (k); MSA 9.2374(1)(g) and (k). Therefore, Bombyk was not parked in violation of that statute. Furthermore, it is undisputed that Bombyk's automobile was parked on the shoulder. Accordingly, the vehicle was not parked in violation of MCL 257.672(1); MSA 9.2372(1).

In any event, the alleged violations, had they been established, would have been helpful to establish negligence, but do not establish that Bombyk owed plaintiffs a duty. *Ward v Frank's Nursery & Crafts Inc*, 186 Mich App 120, 135; 463 NW2d 442 (1990). Therefore, we conclude that the trial court did not err in granting Bombyk's motion for summary disposition. In addition, because further factual development would not have assisted plaintiffs in establishing this claim, summary disposition before the close of discovery was not premature. *Neumann v State Farm Ins Co*, 180 Mich App 479, 485; 447 NW2d 786 (1989).

Plaintiffs next argue that the court erred in dismissing their negligence claims against defendant Poike. We disagree.

Under the governmental immunity act, MCL 691.1401 *et seq*., MSA 3.996(101) *et seq*., government employees are immune from tort liability for injuries to persons caused by the employees during the course of their employment, unless they acted with gross negligence. MCL 691.1407(2); MSA 3.996(107)(2). Gross negligence is defined by the statute as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). Furthermore, the grossly negligent act must be a proximate cause of the plaintiff's injuries, although it need not be the sole cause of the injuries. MCL 691.1407(2)(c); MSA 3.996(107)(2)(c); *Dedes v Asch*, 446 Mich 99, 118-119; 521 NW2d 488 (1994).

Where reasonable jurors could honestly disagree on whether certain conduct amounted to gross negligence, summary disposition is inappropriate. *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). However, if, on the basis of the evidence presented, reasonable minds could not differ, then summary disposition is appropriate. *Id.*

We agree with the trial court that reasonable minds could not differ as to whether defendant Poike was grossly negligent. There was no evidence that would support a conclusion that Poike's conduct was so reckless as to amount to a substantial lack of concern for whether an injury results, and therefore, there was no genuine issue of material fact that Poike was grossly negligent. Furthermore, because further discovery would not have aided plaintiffs' claims in this regard, the trial court did not err in granting summary disposition before the conclusion of discovery. *Neumann*, *supra* at 485.

Finally, plaintiffs assert that the trial court erred in granting summary disposition of their negligence claims against Canton Township. We disagree.

Governmental agencies are liable for bodily injury that results from their employees' negligent operation of motor vehicles owned by the agency. MCL 691.1405; MSA 3.996(105). Thus, the critical issue with respect to the liability of Canton Township is whether there is a genuine issue of material fact as to whether Poike negligently operated the ambulance. Primarily, plaintiffs rely on evidence that Poike was driving in excess of the posted speed limit to demonstrate that the ambulance was being negligently operated.

Defendants contend that Poike was entitled to exceed the speed limit pursuant to MCL 257.603(b), (c)(3); MSA 9.2303(b), (c)(3), which states as follows:

> (b) The driver of an unauthorized emergency vehicle when responding to an emergency call, but not while returning from an emergency call, may exercise the privileges set forth in this section, subject to the conditions of this section.
>
> (c) The driver of an authorized emergency vehicle may:
>
> * * *
>
> (3) Exceed the prima facie speed limits so long as he does not endanger life or property.

In addition, MCL 257.632; MSA 9.2332 states in part:

> The speed limitation set forth in this chapter shall not apply to . . . public or private ambulances when traveling in emergencies. . . . This exemption shall not however protect the driver of the vehicle from the consequences of a reckless disregard for the safety of others.

We conclude that reasonable minds could not differ as to whether the ambulance in this case was excused from complying with the speed limit pursuant to the above statutes. Plaintiffs do not dispute that the ambulance was transporting a patient to the hospital at the time of the accident. According to the police report, Poike stated that the patient had suffered a miscarriage at her residence. Poike also stated that "he wasn't rushing to the hospital as the patient was stabilized." Plaintiffs, citing *Fiser v City of Ann Arbor*, 417 Mich 461, 472; 339 NW2d 413 (1983), contend that the existence of an emergency is a question of fact. In *Fiser*, the Court stated, "The chase or apprehension of violators of the law does not necessarily constitute an emergency situation." *Id.* In contrast, reasonable minds could not differ as to whether the transportation of the patient in this case, even though she was been stabilized, was an emergency, MCL 257.632; MSA 9.2332 , and that the ambulance was "responding to an emergency call," MCL 257.603(b); MSA 9.2303(b), as it proceeded to transport the patient to the hospital. Furthermore, reasonable minds could not disagree that the speed at which the ambulance was allegedly operated (65 miles per hour in a 50 miles per hour zone) did not "endanger life or property." Although two deaths occurred in the collision in which the ambulance was involved, the excessive speed in and of itself did not endanger life. Thus, there was no genuine issue of material fact

as to whether Poike was excused from compliance with the speed limit at the time the accident occurred. Therefore, plaintiffs cannot rely on the alleged violation of the posted speed limit to establish "negligent operation" of the ambulance.

Considering the circumstances of the case, including the existence of an emergency, there is no genuine issue of material fact with respect to whether there was "negligent operation" of the ambulance so as to come within the exception to governmental immunity. MCL 691.1405; MSA 3.996(105). In *Fiser*, the Court explained that "the existence of an emergency is but one factor to be considered in evaluating the reasonableness of an officer's conduct." *Id.* In this case, the videotape of the collision shows that the car occupied by plaintiffs' decedents stopped completely at the stop sign. Poike told the police that he saw the car stopped at the stop sign. The videotape shows that the ambulance lights and siren were activated before Grimm's car entered the intersection. Because Geddes was a through street, the traffic at Denton had a stop sign, Grimm's car was stopped at the sign, and the ambulance lights and siren were activated, Poike had no reason to anticipate that Grimm's car would suddenly proceed into the pathway of the ambulance. Under these circumstances, reasonable minds could not disagree that plaintiffs failed to establish the negligent operation of the ambulance. Accordingly, the claims were barred by governmental immunity.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Michael J. Cavanagh
/s/ Robert C. Anderson