STATE OF MICHIGAN

COURT OF APPEALS

JEANNE CADARET, Next Friend of REBECCA CADARET, Minor,

Plaintiff/Appellee/
Cross-Appellant,

v

TOM PACHERA and GROSSE POINTE PUBLIC SCHOOLS BOARD OF EDUCATION,

Defendants/Appellants/
Cross-Appellees.

UNPUBLISHED

October 22, 1996

No. 186633
LC No. 94-426837-NO

Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,* JJ.

PER CURIAM.

In this negligence action, defendants appeal by leave granted the trial court's order denying their motion for summary disposition. Plaintiff has filed a cross-appeal challenging the trial court's ruling that defendant school board was engaged in a non-proprietary function. We reverse.

Rebecca Cadaret, a sixth grade student at Pierce Middle School, was injured while on a downhill ski trip sponsored by the school drama club and the P.T.O. Defendant Pachera was one of several chaperones accompanying the students on the outing. Plaintiff filed a complaint against defendants, alleging that that the school board and Pachera failed to provide adequate supervision and medical care. In denying defendants' motion for summary disposition, the trial court held that the ski trip was a nongovernmental function, that an issue of fact existed with regard to whether Pachera was grossly negligent, and that the Ski Area Safety Act, MCL 408.321 *et seq*.; MSA 18.483(1) *et seq*. did not bar plaintiff's claims.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant school board argues that it is entitled to absolute immunity from tort liability under MCL 691.1407(5); MSA 3.996(107)(5). We disagree. By its terms, section 1407(5) applies only to claims asserted against individual defendants. In the instant case, there are no allegations directed at the board members individually. Rather, plaintiff contends that the board itself was negligent in failing to provide adequate supervision. Thus, § 1407(5) is inapplicable here. Defendant school board is immune from liability, however, under MCL 691.1407(1); MSA 3.996(107)(1).

Section 1407(1) provides that all governmental agencies shall be immune from tort liability where the agency is engaged in the exercise of discharge of a governmental function. A governmental function is an activity "expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f); MSA 3.996(101)(f). The operation of a school district is governed by the school code of 1976, MCL 380.1 *et seq*.; MSA 15.4001 *et seq*. Although there is no language in the code expressly authorizing a school district to sponsor and supervise a ski trip, the statute evinces a legislative intent to promote extracurricular and recreational activities for school children. See MCL 380.1282; MSA 15.41282; MCL 380.1289(1) and (3); MSA 15.41289(1) and (3). The definition of governmental function is to be broadly applied. *Adam v Sylvan Glynn*, 197 Mich App 95, 97; 494 NW2d 791 (1992). Recreational activities of a school have generally been considered an exercise of their governmental function. *Cody v Southfield-Lathrup School District*, 25 Mich App 33, 37; 181 NW2d 81 (1970). Because the general nature of the activity involved in the instant case is impliedly authorized by statute, see *Pardon v Finkel*, 213 Mich App 643, 649; 540 NW2d 774 (1995), we find that defendant school board is immune from liability under MCL 691.1407(1); MSA 3.996(107)(1).

Next, defendants contend that the trial court erred in denying summary disposition to Pachera. Under Michigan law, officers, employees and volunteers of governmental agencies may be liable in tort where their conduct amounts to gross negligence. MCL 691.1407(2); MSA 3.996(107)(2). Based on the uncontroverted evidence submitted by the parties, we find that no genuine issue of material fact existed with regard to Pachera's conduct. Although Pachera was the only teacher on the ski trip, he was part of a group of chaperones accompanying the students to Mt. Brighton. Throughout the day, Pachera provided impromptu ski lessons to students who asked for assistance. Sarah Verlinden, a P.T.O. member, was in charge of the outing. Rebecca was aware that a free ski lesson was offered during the trip, yet she decided to forgo the lesson and have her friend teach her how to ski. It was the ski patrol who allowed Rebecca to go back out to the slopes after her accident. Pachera was merely asked to provide instruction to Rebecca. Whenever Rebecca felt discomfort during the lesson, Pachera told her to "take it easy." After suffering her injury, Rebecca repeatedly expressed her desire to continue skiing. Where reasonable minds could not differ with regard to whether the defendant's conduct amounted to gross negligence, summary disposition is appropriate. *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). On these facts, we find that the trial court erred in denying summary disposition to defendant Pachera.

Plaintiff contends that the school board was engaged in a proprietary function in sponsoring the ski trip. We disagree. In order for an activity to be deemed a proprietary function under MCL 691.1413; MSA 3.996(113), it must (1) be conducted primarily for the purpose of producing a

pecuniary profit; and (2) not normally be supported by taxes or fees. *Hyde v Univ Of Michigan Bd of Regents*, 426 Mich 223, 252-253; 393 NW2d 847 (1986). Verlinden testified that the principal of Pierce Middle School asked her to plan an activity to keep the children busy during the unusually long holiday break. Verlinden also emphasized that the ski trip was not intended to be a "profit maker" or fund-raiser. Accordingly, the trial court did not err in ruling that defendant school board was engaged in a nonproprietary function.

Because defendants are immune from liability, it is not necessary for this Court to address the applicability of the Ski Area Safety Act, MCL 408.321 *et seq*.; MSA 18.483(1) *et seq*.

Reversed.

/s/ Myron H. Wahls
/s/ Mark J. Cavanagh
/s/ John F. Kowalski