STATE OF MICHIGAN

COURT OF APPEALS

RONALD JAMES NORTON, SR., Personal Representative of the ESTATE OF RONALD JAMES NORTON II, deceased, and LUCINDA NORTON,

Plaintiffs-Appellants,

v

LEE WARD, JAMES EVANS and WEST BRANCH-ROSE CITY SCHOOL DISTRICT,

Defendants-Appellees.

UNPUBLISHED
October 28, 1997

No. 195816
Ogemaw Circuit Court
LC No. 95-000717-NI

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendant West Branch-Rose City School District, defendant Lee Ward, the superintendent of defendant school district, and defendant James Evans, the transportation supervisor for defendant school district. We affirm.

In 1993, defendants devised a new plan for the bus pick-up and transportation of students. This new plan required plaintiffs' sixteen-year-old son, Ronald Norton II, who had previously been picked-up a few feet from his driveway on Rau Road, to now cross Rau Road, which had a speed limit of fifty-five miles per hour, and then to walk against traffic in the morning darkness to a new bus stop on Pointer Road. While so walking on the traveled portion of Rau Road one morning in September, 1994, plaintiffs' son was killed when he was struck from behind by a semi-truck tractor that had crossed the double-yellow line while traveling in the same direction as plaintiff's son. Plaintiffs filed a complaint asserting various tort claims and a breach-of-contract claim against defendants. The trial court granted summary disposition of plaintiffs' breach-of-contract claim pursuant to MCR 2.116(C)(8) and (10). The trial court granted summary disposition of plaintiffs' various tort claims pursuant to MCR 2.116(C)(7) on the basis of government immunity.

Despite the various tort theories alleged below, plaintiffs allege error on appeal with respect to only one tort theory. Specifically, plaintiffs contend on appeal that the trial court erred in granting

summary disposition with respect to their claim of gross negligence because a question of fact existed concerning whether defendants were grossly negligent.

The numerous statutes and rules enacted with respect to school bus transportation indicates "a strong public policy for a high degree of care in the transportation of students to and from school." *Nolan v Bronson*, 185 Mich App 163, 171-172; 460 NW2d 284 (1990). However, when employees or officers of a governmental agency such as defendant school district[1] are acting within the scope of their authority while engaged in the exercise or discharge of a governmental function, [2] such employee or officer can claim the protection of governmental immunity from tort liability unless their conduct amounts to "gross negligence that is the proximate cause of the injury or damage." See, generally, MCL 691.1407(2); MSA 3.996(107)(2); see also *Cebreco v Music Hall Center*, 219 Mich App 353, 362; 555 NW2d 862 (1996).[3] The Legislature has defined "gross negligence" to mean "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).[4] In specifically defining "gross negligence," the Legislature intended to limit governmental employee liability to those situations in which the conduct at issue was substantially more than negligent. *Dedes v Asch*, 446 Mich 99, 118; 521 NW2d 488 (1994). Summary disposition under MCR 2.116(C)(7) is precluded in cases in which reasonable jurors honestly could have reached different conclusions with regard to whether a defendant employee's conduct amounted to gross negligence. *Harris v Univ of Michigan Bd of Regents*, 219 Mich App 679, 694; 558 NW2d 225 (1996). However, if, on the basis of the evidence presented reasonable minds could not differ, then the motion for summary disposition should be granted. *Id*.

In this case, plaintiffs alleged below that defendants failed to design a safe travel route and bus stop because no analysis of the relevant hazards and risks, such as a determination of lighting, traffic volume or traffic speed, was made. Plaintiffs contended that defendants could have eliminated any risk and danger involved in the Pointer Road bus stop by keeping the old bus stop in front of plaintiffs' house. In support of these allegations, plaintiffs presented evidence consisting of pictures of the conditions of the roadway over which plaintiffs' son was required to walk and of the failure of the new bus stop to meet certain statutory requirements. Plaintiffs also presented the affidavit of an expert witness in school bus transportation that stated, in part, (1) "[t]he bus stop assigned to Ronald Norton unnecessarily exposed him to the obvious danger of injury from traffic on Rau Road, and would have been substantially eliminated by retention of the stop previously assigned," and (2) "[t]he Pointer/Rau Road bus stop was not in conformity with the requirements of state law or reasonable safe route planning."

However, even assuming that the new route and bus stop did not comply with certain statutory requirements and that the individual defendants therefore breached the duty of care they owed to plaintiffs' son, plaintiffs have simply established negligence. We find no evidence indicating that any breach of duty by the individual defendants was conduct that was either "substantially more than negligent," *Dedes, supra*, or "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). Instead the evidence also indicated that the individual defendants planned the bus routes with the safety of the school children in mind. Their testimony indicated it was their intent to comply with the state guidelines in designing the bus route. As

part of a cost-cutting measure, defendants consolidated only the bus stops on the bus routes for high school students. Bus stops in closer proximity to homes were not eliminated for the grammar school children. This evidence indicates an awareness of safety concerns on the part of the individual defendants, rather than a lack of concern for whether an injury could result. Where there was evidence that defendants were attempting to comply with the various bus safety codes, even though they may arguably have failed to do, we conclude that reasonable jurors could not honestly have reached a different conclusion with regard to the fact that defendants' conduct did not amount to gross negligence. Accordingly, we affirm the summary disposition of plaintiffs' gross negligence claim.

Next, plaintiffs argue that the trial court erred in dismissing their breach of contract claim. Plaintiffs breach-of-contract claim consists of a novel theory that a contract implied in law to provide safe transportation arose between plaintiffs and defendant school district because defendant school district accepted compensation from the state and was required to comply with the various statutes regulating school bus transportation. A contract may be implied in law in certain circumstances. Also known as a quasi or constructive contract, such contract does not require a meeting of the minds, but instead is imposed to prevent the unjust enrichment of a defendant who has received a benefit from the plaintiff that would be inequitable for the defendant to retain. *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546, 549; 473 NW2d 652 (1991) (Riley, J., with Brickley and Griffen, JJ., concurring) (Boyle, J., concurring separately); *Detroit v Highland Park*, 326 Mich 78, 100; 39 NW2d 325 (1949). In this case, we conclude that, at the very least, plaintiffs have failed to establish a question of fact concerning defendant school district's unjust enrichment. We likewise reject plaintiffs third-party beneficiary theory. See MCL 600.1405; MSA 27A.1405. Accordingly, the trial court did not err in granting defendants' motion for summary disposition with respect to plaintiffs breach of contract claim.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Stephen J. Markman
/s/ Michael R. Smolenski

[1]See MCL 691.1401(d); MSA 3.996(101)(d) (defining "governmental agency" to include "political subdivisions"); MCL 691.1401(b); MSA 3.996(101)(b) (defining "political subdivision" to include any "school district").

[2]The maintenance and operation of a school bus system by a school district constitutes an immune governmental function. *Nolan, supra* at 176; *Cobb v Fox*, 113 Mich App 249, 257; 317 NW2d 583 (1982).

[3] The gross-negligence exception to governmental immunity applies only to individuals, not to governmental agencies. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), overruled in part on another ground *American Transmissions, Inc v Attorney General*, 454 Mich 135, 143; 560 NW2d 50 (1997). Thus, we consider in this case the applicability of the gross-negligence exception with respect to only the individual defendants.

[4] Where the trial court specifically found in its written opinion that neither of the individual defendants "engaged in conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results," we reject plaintiffs' contention that the trial court applied the wrong legal standard in determining whether a question of fact existed concerning the individual defendants' gross negligence.

We likewise reject plaintiffs' contention that the trial court relied on "out-dated" caselaw, specifically, this Court's decision in *Cobb, supra*. Rather, in its written opinion, the trial court properly cited *Cobb* as authority for its conclusions (1) that a school district's maintenance and operation of a school bus system is a governmental function, and; (2) that plaintiff's intentional nuisance claim, in reality, pleaded only negligence and was, therefore, barred by governmental immunity. See *Cobb, supra* at 257, 259. Contrary to plaintiff's contention on appeal, *Cobb* did not consider the issue of an employee's gross negligence and there is no indication that the trial court relied on *Cobb* in determining that the individual defendants in this case were not grossly negligent.