

STATE OF MICHIGAN
COURT OF APPEALS

VANESSA McLITTLE, Next Friend of MYRASIA
McLITTLE,

UNPUBLISHED
March 13, 1998

Plaintiff-Appellant,

v

CITY OF DETROIT,

No. 194735
Wayne Circuit Court
LC No. 95-509473 NI

Defendant-Appellee.

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Plaintiff appeals by right from the trial court's order granting summary disposition to defendant on the basis of governmental immunity. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff contends that defendant's failure to remove abandoned vehicles parked on Chenlot Street, which abuts the park where plaintiff's ward and other children play, gives rise to liability when, as here, a child is injured by a passing motorist, ostensibly because the vision of both the motorist and the pedestrian was obstructed by the "illegally" parked vehicles. We disagree. By statute, the city was mandated to affix a notice to abandoned vehicles that had "remained on public or private property for a period of time so that it appears to the police agency to be abandoned." MCL 257.252a(2); MSA 9.1952(1)(2). If the vehicle was not removed within 48 hours after a notice was affixed, the vehicle was deemed abandoned "and the police agency may have the vehicle taken into custody." MCL 257.252a(3); MSA 9.1952(1)(3). The Legislature used the mandatory term "shall" in establishing the duty of a police agency to affix a notice, but the permissive term "may" with respect to taking such vehicles into custody. See *Mollett v City of Taylor*, 197 Mich App 328, 339; 494 NW2d 832 (1992). Accordingly, defendant had no duty to remove the abandoned vehicles at issue here; therefore defendant cannot be liable in tort for plaintiff's injuries. *White v Beasley*, 453 Mich 308, 323-324; 552 NW2d 1 (1996).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs