

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

DONZEL BUTLER, JR., a Minor, and  
MARQUES IRBY, a Minor, by their Next Friend,  
MIRANDA WEST,

UNPUBLISHED  
September 27, 2005

Plaintiffs-Appellees,

v

CITY OF DETROIT and CREZELLE IVORY,

No. 261367  
Wayne Circuit Court  
LC No. 03-341754-NI

Defendants-Appellants.

---

Before: Fitzgerald, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

Defendants appeal as of right from the order granting in part and denying in part their motion for summary disposition in this automobile negligence action brought by plaintiff, Miranda West, on behalf of minors Donzel Butler, Jr. and Marques Irby. We reverse that part of the order denying defendant's motion for summary disposition..

This case arises out of an automobile accident that occurred at the intersection of Concord and Palmer in the city of Detroit. Defendant Crezelle Ivory, an employee of defendant city of Detroit, was driving a city-owned vehicle eastbound on Palmer toward the intersection of Concord. Kimberly West was driving northbound on Concord with her children, Butler and Irby, in the backseat. As she approached Palmer, Kimberly proceeded through the intersection without stopping, due to an allegedly missing stop sign. As she proceeded through the intersection, Kimberly's vehicle collided with the vehicle driven by Ivory. Kimberly testified that she did not see Ivory's vehicle approach the intersection because a building and tall weeds obstructed her view and that Ivory would not have been able to see Kimberly's vehicle approaching the intersection. Defendants' accident reconstructionist expert opined that Kimberly's vehicle was traveling thirty-eight miles per hour at the time of the impact and that Ivory's vehicle was traveling twenty-five miles per hour at the time of the impact. The minors suffered injuries in the accident.

Plaintiff filed an amended complaint alleging common law negligence against defendants. As relevant to this appeal,<sup>1</sup> plaintiff alleged that Ivory failed to properly observe traffic, proceed with caution, and operate her government vehicle at a reasonably prudent speed given her knowledge of the area and its surroundings. Specifically, plaintiff alleged that Ivory traveled through the intersection of Concord and Palmer frequently and that she should have known about the missing stop sign. Plaintiff also alleged that the city is vicariously liable for Ivory's negligence.

Defendants filed a motion for summary disposition, arguing that they were entitled to summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10) on the basis of governmental immunity under MCL 691.1407(1) and (2). They argued that there was insufficient evidence of Ivory's negligence to warrant application of MCL 691.1405, the governmental vehicle exception to governmental immunity. Defendants also argued that plaintiff failed to set forth evidence showing that Ivory was either grossly negligent or the sole proximate cause of the minors' injuries. After a hearing, the trial court denied the motion for summary disposition.

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337, 572 NW2d 201 (1998). A court reviewing a motion brought under MCR 2.116(C)(10) "must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law." *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114-115, 617 NW2d 725 (2000), quoting *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689, 601 NW2d 155 (1999).

We review de novo a trial court's decision on a summary disposition motion under MCR 2.116(C)(7). MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties. *Wade v Dep't of Corrections*, 439 Mich 158, 162, 483 NW2d 26 (1992). In determining whether a party is entitled to judgment as a matter of law under MCR 2.116(C)(7), a court "must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in plaintiff's favor." *Brennan v Edward D Jones & Co*, 245 Mich App 156, 157, 626 NW2d 917 (2001), quoting *Jackson Co Hog Producers v Consumers Power Co.*, 234 Mich App 72, 77, 592 NW2d 112 (1999).

To succeed on a claim of negligence, a plaintiff must prove that the defendant owed the plaintiff a duty, the defendant breached the duty, the plaintiff suffered harm, and the plaintiff's harm was caused by the defendant's negligence. *Haliw v Sterling Hts*, 464 Mich 297, 309-310,

---

<sup>1</sup> Plaintiff also raised a claim that the city was negligent in failing to notice that the stop sign was missing from the intersection and in failing to remedy the situation in a timely manner. But plaintiff conceded that the claim was barred by governmental immunity and, therefore, the trial court granted summary disposition of this claim.

627 NW2d 581 (2001). And where the defendant is a governmental entity, the plaintiff must allege facts that place the claim within an exception to governmental immunity. *Id.* at 302-304.

At issue here is the motor vehicle exception to governmental immunity, MCL 691.1405. This exception provides, in relevant part:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner . . . . [MCL 691.1405.]

Defendants argue that the motor vehicle exception is not applicable because plaintiff did not set forth any admissible evidence showing that the minors' injuries resulted from the "negligent operation" of the city vehicle. We agree.

There is no dispute that Ivory had the right-of-way at the intersection. Nonetheless, plaintiff alleged that Ivory failed to properly observe traffic, proceed with caution, and operate her vehicle at a reasonably prudent speed given her knowledge of the area and its surroundings. Plaintiff contends that the record shows Ivory was familiar with the area and, therefore, she should have known about the missing stop sign. But there is no evidence in the record to support a finding that Ivory knew about the missing stop sign. Ivory testified that she did not know whether the stop sign on Concord was missing at the time of the accident. She also testified that she was aware that traffic on Concord was supposed to stop. Moreover, the record is devoid of any evidence that the missing stop sign was missing for such a period that Ivory should have known of the missing stop sign. Further, the posted speed limit on Palmer is twenty-five miles per hour and Ivory testified that she was driving approximately twenty miles per hour at the time of impact. Defendants' accident reconstruction expert opined that the vehicle driven by Ivory was traveling twenty-five miles per hour at the time of impact. Plaintiff presented no evidence to support a finding that Ivory was speeding. Further, Kimberly testified that Ivory would not have been able to see Kimberly's vehicle approaching the intersection because a building and tall weeds obstructed the view of traffic approaching in either direction. Having failed to set forth any evidence showing Ivory's negligent operation of the vehicle, plaintiff failed to demonstrate the existence of a genuine issue of material fact for trial regarding the application of the government vehicle exception, MCL 691.1405. The city is therefore immune from liability. MCL 691.1407(1). Similarly, the record is devoid of any grossly negligent conduct on the part of Ivory and, therefore, Ivory is immune from liability. MCL 691.1407(2). Defendants are therefore entitled to summary disposition as a matter of law.

Reversed in part.

/s/ E. Thomas Fitzgerald  
/s/ Jessica R. Cooper  
/s/ Kirsten Frank Kelly