

STATE OF MICHIGAN  
COURT OF APPEALS

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BRITTEN STRINGWELL,

Plaintiff-Appellee,

v

ANN ARBOR PUBLIC SCHOOLS,

Defendant-Appellant.

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UNPUBLISHED

August 15, 2006

No. 264252

Washtenaw Circuit Court

LC No. 02-000343-NI

Before: Borrello, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals from an order that denied its motion for summary disposition based on governmental immunity. The trial court held that under the motor vehicle exception to governmental immunity, MCL 691.1405, summary disposition was improper because the student who started a vehicle during an auto-shop class may have been an “agent” of defendant school district and that by starting the vehicle the student may have been “operating” it. We reverse and remand for entry of judgment in favor of defendant.

I. Standard of Review

We review de novo a trial court’s decision on a motion for summary disposition based on governmental immunity to determine whether the governmental entity was entitled to judgment as a matter of law. *McDowell v Detroit*, 264 Mich App 337, 345-346; 690 NW2d 513 (2004), citing MCR 2.116(C)(7). This Court considers all documentary evidence to determine if a suit is barred by governmental immunity and whether there is a material issue of fact. *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004); *Gilliam v Hi-Temp Products Inc*, 260 Mich App 98, 108-109; 677 NW2d 856 (2003). Summary disposition may be granted under MCR 2.116(C)(7) if, based on the evidence presented, reasonable minds could not differ. *Tarlea, supra* at 88. “Where there is a disputed question of agency, any testimony, either direct or inferential, tending to establish agency creates a question of fact for the jury to determine.” *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992) (citations omitted). Statutory interpretation is also a question of law which we review de novo. *Office of Planning Group, Inc, v Baraga-Houghton-Keweenaw Child Dev Bd*, 472 Mich 479, 484; 697 NW2d 871 (2005).

II. Motor Vehicle Exception -- Government Agent

Defendant first says that it was immune from tort liability under the governmental immunity act. According to defendant, the motor vehicle exception to governmental immunity does not apply because the alleged driver was not defendant's "officer, agent, or employee" under the motor vehicle exception to governmental immunity, MCL 691.1405. We agree.

MCL 691.1407 states: "Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." The motor vehicle exception to governmental immunity, MCL 691.1405, provides in pertinent part as follows: "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 . . . ." According to well-established case law, the grant of governmental immunity is construed broadly, while the exceptions to governmental immunity are construed narrowly. *Fane v Detroit Library Comm*, 465 Mich 68, 75; 631 MW2d 678 (2001).

According to plaintiff, the owner's liability act, MCL 257.401, creates a statutory agency relationship between defendant and the student who started the vehicle. The owner's liability act provides as follows:

This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle or his or her agent or servant. The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. [MCL 257.401].

The owner's liability act does not create a form of statutory agency, but imposes liability on vehicle owners irrespective of agency. In *Moore v Palmer*, 350 Mich 363, 389; 86 NW2d 585 (1957), our Supreme Court considered whether defenses applicable to actions brought under respondeat superior would bar liability under the owner's liability act, such as a claim that use by the driver was outside the scope of his employment. *Moore, supra* at 394, overruled *Geib v Slater*, 320 Mich 316; 31 NW2d 65 (1948), which held that "[t]he liability of the owner of a motor vehicle for damages caused by the negligent operation thereof by another person, rests upon the doctrine of agency, express or implied. The liability is based upon the doctrine of *respondeat superior*." *Moore, supra* at 389, quoting *Geib, supra* at 320. In doing so, *Moore* expressly held that because the owner's liability act was enacted pursuant to the police power of the state, the act was not limited by principles of agency law. *Moore, supra* at 390. Thus, we reject plaintiff's theory that the owner's liability act creates a statutory form of agency.<sup>1</sup>

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<sup>1</sup> We also note that the owner's liability act does not create an exception to governmental immunity. *Mead v Michigan*, 303 Mich 168, 172; 5 NW2d 740 (1942).

Although the owner's liability act refers to agency, this reference states merely that the act should not be construed as abolishing liability under an agency theory, but nothing in that reference to agency indicates that the act itself was meant to establish a statutory form of agency. MCL 257.401. Further, because the owner's liability act predates the motor vehicle exception, there would have been no reason for the Legislature to have created a form of agency with the act because whether the act created an agency or not, the state would have originally been immune while others would not have been. Thus, to accept plaintiff's argument, we would have to find that the Legislature, in enacting the owner's liability act, intended to create a form of statutory agency, even though the act imposed liability on private persons and entities irrespective of agency. See *Moore, supra* at 389. Courts cannot assume "that the Legislature intended to do a useless thing." *People v Pfaffle*, 246 Mich App 282, 296; 632 NW2d 162 (2001). Further, had the Legislature intended for the motor vehicle exception to apply to governmental entities whenever the driver or the entity was negligent, it could have expressly provided as much within the text of the motor vehicle exception or incorporated the owner's liability act by reference.

Although plaintiff argues that language from this Court's prior opinion which remanded this case suggests that the owner's liability act could create an agency relationship, this issue was not before that panel, so it could not have decided the issue. Moreover, this Court did not hold that the owner's liability act created a form of statutory agency but merely left open the possibility that it might.<sup>2</sup>

Plaintiff also contends that because the teacher delegated authority to the students, the alleged driver was defendant's common law agent. However, plaintiff failed to support this allegation with evidence that the teacher actually delegated authority and merely speculates that such a delegation may have occurred. For example, plaintiff attempted to characterize the teacher's teaching style as "cooperative learning," then established through expert testimony and a learned treatise that "in general" cooperative learning entailed teachers delegating authority to students. Notably, the teacher himself testified that he was unfamiliar with cooperative learning, and plaintiff offered no evidence to rebut this testimony. Moreover, even assuming that the teacher had utilized a cooperative learning teaching style, plaintiff failed to establish that by merely utilizing some aspects of this teaching style the teacher must have delegated authority, which, according to plaintiff's own evidence, only occurs in general.

Our previous opinion in this case held that plaintiff might be able to establish that the alleged driver was defendant's agent if the evidence showed that the alleged driver's action "confer[ed] a benefit on defendant school district depending on the status and use of the vehicle

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<sup>2</sup> The opinion stated, "By way of example, plaintiff through discovery could explore the concept of agent or permissive user as used in the ownership liability statute of the Michigan Vehicle Code and its interrelationship with the governmental immunity statute to develop relevant facts to sustain her theories." *Stringwell v Ann Arbor Public School Dist*, 262 Mich App 713; 686 NW2d 825 (2004).

within the district.” *Stringwell v Ann Arbor Public School Dist*, 262 Mich App 709, 710, 713-714; 686 NW2d 825 (2004). However, we find that there is simply no evidence that the alleged driver’s actions benefited the vehicle or the defendant school district. The teacher testified that the purpose of lab exercises was to teach students how to perform vehicle maintenance and it is irrelevant that vehicle maintenance may have improved the vehicles. The dispositive point is that the primary purpose of the class and the work on the vehicles is to teach students.<sup>3</sup>

Concerning plaintiff’s argument that the alleged driver was defendant’s common law agent, we note that it is clear that defendant had a right to control the alleged driver, and in general, an indicia of an agency relationship is that the principal has the right to control the alleged agent. *Breighner v Michigan High School Athletic Ass’n, Inc*, 255 Mich App 567, 583; 662 NW2d 413 (2004). However, because a school typically has some right of control over its students, control of students alone cannot establish that an agency relationship exists. *CIR v Bollinger*, 485 US 340, 345; 108 S Ct 1173; 99 L Ed 2d 357 (1988) (noting that “the mere fact of the parent’s control over the subsidiaries [does] not establish the existence of an agent, since such control is typical of all shareholder-corporation relationships”). We also find that *Knapp v Hill*, 276 Ill App 3d 376, 380; 657 NE2d 1068, 1072 (1995), is persuasive on this issue. In *Knapp*, a student was injured when another student drove his vehicle to an auto-shop class as directed by his instructor. The *Knapp* court held:

This was done not as a manifestation of the school district’s intent to vest its students with authority to manage some affair on behalf of the school district, thereby allowing the student to become an agent of the school district; rather, it was done as part and parcel of the student’s course of instruction.

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. . . . The “control” element here, therefore, arising as it does from the fulfillment of duties inherent in the teaching function, manifests a teacher-student relationship exclusive of the principles of agency law. Thus, the ordinary concepts of agency and *respondeat superior* do not apply in this case.

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In reaching this conclusion, we do not mean to imply that a high school student could never under any circumstances become an agent for a school

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<sup>3</sup> The teacher further testified that he did not believe that lab exercises helped the lab vehicles in any way, noting that it would not help a vehicle if that vehicle’s fluid levels were checked more frequently than necessary. It is undisputed that another group of students was performing the lab that plaintiff’s group was performing on five vehicles, and because plaintiff testified that the lab was in what she estimated to be a three or four stall garage, it is reasonable to infer that both groups were rotating through the same vehicles. Further, there was simply no evidence that if the alleged driver had not checked the fluid levels, they would have remained unchecked, since defendant’s purpose in keeping the vehicle was for students to learn vehicle maintenance.

district, such as where a teacher directs a student to perform some act for the benefit of the school district which is wholly unrelated to the education process. [*Id.* at 380-381].

Here, even if the teacher directed the alleged driver to start the vehicle, which is itself questionable, any alleged benefit was related to the educational process.

### III. Operation of a Motor Vehicle

Defendant also argues that even if the alleged driver was defendant's agent, merely starting the vehicle does not constitute "operation . . . of a motor vehicle" within the meaning of MCL 691.1405. In *Chandler v Muskegon Co*, 467 Mich 315, 316, 320; 652 NW2d 224 (2002), our Supreme Court considered whether closing a door of a bus parked for maintenance purposes constituted "operation" of a motor vehicle under MCL 691.1405. The Court held that it did not, stating that "in accordance with this definition and in accordance with the narrow construction given to the exceptions to governmental immunity, that the language 'operation of a motor vehicle' means that the motor vehicle is being operated *as* a motor vehicle." *Id.* at 320 (emphasis in original, footnotes omitted). The court noted that the no-fault act, MCL 550.3105, imposed liability for the "operation, maintenance, or use" of a motor vehicle and reasoned that the Legislature considered maintenance distinct from operation. *Id.* at 320 n 7. Thus, the Court held that "'operation of a motor vehicle' encompasses activities that are directly associated with the driving of a motor vehicle." *Id.* at 321.

However, plaintiff contends that starting a vehicle is distinguishable from closing a bus door and is "directly associated with the driving of a motor vehicle." *Chandler, supra* at 321. Plaintiff further notes that in *Regan v Washtenaw Co Rd Comm'rs*, 257 Mich App 39, 49-50; 667 NW2d 57 (2003), we held that if a vehicle was being *driven* for the purpose of maintenance, liability under the motor vehicle exception would attach. Given the narrow construction applied to exceptions to governmental immunity, we hold that this case is more similar to *Chandler* than *Regan*. To illustrate *Regan* expressly opposed liability because the vehicle had clearly been "driven," holding as follows:

With respect to whether the broom tractor and the tractor mower were being operated as motor vehicles resulting in injury under *Chandler*, there is absolutely no question that the motor vehicles were in operation and being driven when the incidents giving rise to the lawsuits occurred, and that the manner of operation was the alleged cause of the injuries. As required by *Chandler*, and pursuant to the complaints, the injuries in both cases were allegedly caused by activities directly associated with the driving of the motor vehicles. *Chandler* is clearly factually distinguishable because the bus in that case was not being driven but was in for cleaning at the time of the injury. [*Id.* at 49.]

Here, the sole reason alleged for starting the pickup was the alleged driver's belief that starting it was necessary to perform maintenance. We cannot find any evidence that the alleged driver planned to drive it. Thus, we hold that the alleged driver was not operating the pickup because, under the circumstances, starting it was not associated with driving it but, if it was started for any legitimate reason, it was started for instructional purposes.<sup>4</sup>

Accordingly, the trial court erred when (1) it held that the owner's liability act creates a statutory form of agency; (2) the evidence created a genuine issue of material fact concerning whether the alleged driver was defendant's common law agent, and (3) the alleged driver had operated the vehicle within the meaning of the motor vehicle exception.

This case provides a classic example of why our courts have long held that the grant of governmental immunity should be broadly construed and exceptions narrowly construed. Were we to broadly interpret "agent" to include a student in a "car shop" class, and, similarly, broadly interpret "operate" to include a student who starts a car as part of the instructional process, then we would expose every "car shop" class in every school district in this state to substantial tort liability. This would mean that these classes would constitute substantial financial exposure for school districts throughout this state with results that are not difficult to predict.

We reverse the trial court's denial of defendant's motion for summary disposition based on governmental immunity and remand for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Henry William Saad  
/s/ Kurtis T. Wilder

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<sup>4</sup> The parties disputed whether the student had permission to start the vehicle at the time of this incident. However, in any case, it is clear that the reason for starting the vehicle was not for purposes of driving it.