

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN OVERALL,
Plaintiff-Appellee,

UNPUBLISHED
April 26, 2007

v

BOB HOWARD and LINCOLN
CONSOLIDATED SCHOOLS,

No. 274588
Washtenaw Circuit Court
LC No. 05-001188-NI

Defendants-Appellants.

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order denying their motion for summary disposition in this governmental immunity case. This appeal is being decided without oral argument pursuant to MCR 7.214(E). For the reasons set forth in this opinion we affirm the denial of defendant's motion for summary disposition as to defendant Lincoln Consolidated Schools, but reverse the denial of summary disposition as to defendant Bob Howard.

Plaintiff Overall went to Lincoln High School to watch a high school football game. She was standing with a group of people at a concession stand when defendant Howard, an athletic trainer for defendant Lincoln Consolidated Schools, drove past in a golf cart. The right rear passenger wheel of the cart allegedly rolled over plaintiff's right foot and ankle.

Plaintiff filed suit alleging that defendants operated the golf cart in a negligent manner, and that defendants' negligence proximately caused injuries to her right foot and ankle. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that plaintiff's cause of action against the school district under the motor vehicle exception to governmental immunity, MCL 691.1405, should be dismissed because a golf cart was not a motor vehicle, and that plaintiff's cause of action against Howard should be dismissed because his actions did not amount to gross negligence as defined by MCL 691.1407(2).

The trial court denied defendants' motion. The court noted that MCL 691.1405 did not specify that a vehicle had to be driven on a roadway to be considered a motor vehicle. The court also declined to dismiss the claim against Howard, reasoning that a governmental employee could be held liable under MCL 691.1405.

We review a trial court's decision on a motion for summary disposition de novo. When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(7), we must accept as true the plaintiff's well-pled allegations and construe them in a light most favorable to the plaintiff. The motion should not be granted unless no factual development could provide a basis for recovery. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996). In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), we must review the record evidence and all reasonable inferences drawn therefrom in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists. *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).

The applicability of governmental immunity is a question of law that we review de novo. *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

A governmental agency is liable for bodily injury and property damage resulting from the negligent operation by an officer, agent, or employee of the governmental agency of a motor vehicle of which the governmental agency is the owner. MCL 691.1405. The motor vehicle exception does not define "motor vehicle." The governmental immunity act does not refer to the Vehicle Code, MCL 257.1 *et seq.*, for the definition of the term. *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002). Therefore, the term must be given its plain and ordinary meaning. *Id.* at 617. A motor vehicle is an automobile, truck, or similar motor-driven conveyance. *Id.*, quoting the *Random House Webster's College Dictionary* (2001). The *Stanton* Court chose this definition of motor vehicle for the reason that it reflected the Legislature's intention that immunity is to be construed broadly, and that the exceptions to immunity are to be construed narrowly. *Id.* at 618. The *Stanton* Court held that a forklift is not a motor vehicle for purposes of MCL 691.1405. *Id.* However, panels of this Court have held that devices such as a hydraulic excavator, a tractor mower, and a broom tractor are motor vehicles for purposes of MCL 691.1405. See *Wesche v Mecosta Cnty Rd Comm*, 267 Mich App 274, 277-278; 705 NW2d 136 (2005), *rev'd in part on other grds in Kik v Sbraccia*, 272 Mich App 388; 726 NW2d 450 (2006); *Regan v Washtenaw Cty Bd of Cnty Rd Commrs (On Remand)*, 257 Mich App 39, 47-51; 667 NW2d 57 (2003).

We hold that the trial court did not err by concluding that the school district was not entitled to governmental immunity because the golf cart was a motor vehicle for purposes of application of MCL 691.1405. "A reading of the language used by the Legislature in MCL 691.1405 indicates a desire and purpose, in part, to make roadways as safe for travel as possible by creating liability for governmental vehicles that are operated negligently and that create a danger for citizens as they use those same roadways." *Regan, supra* at 48-49 (footnote omitted). The vehicles at issue in *Wesche, supra*, and *Regan, supra*, were motor-driven conveyances, similar to the vehicle in question in this case.

The public policy goal of MCL 691.1405 is to protect citizens against the negligent operation of motor vehicles. While it is clear from our holdings in *Wesche* and *Regan* that the statute seeks protection of the public on our roadways, it is equally apparent that the statute seeks protection of the public in other public areas, such as crowded sports stadiums. Thus, we reject defendant's argument that MCL 691.1405 applies only to roadways. Despite the fact that the trial court's reasoning that the school district was not entitled to immunity because MCL 691.1405 did not specify that a conveyance had to be driven on a public roadway in order to qualify as a motor vehicle does not mean that the trial court's ruling did not adhere to the

Legislature's intention that immunity is to be construed broadly, and did not comport with the Legislature's intention that MCL 691.1405 should be applied to create liability for governmental agencies whose vehicles present a danger to the public.

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c). To be the proximate cause of an injury, the gross negligence must be "the one most immediate, efficient, and direct cause" preceding the injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000), reh den sub nom *Cooper v Wade*, 463 Mich 1211; 618 NW2d 590 (2000). Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817, reh den 461 Mich 1205 (1999).

However, liability of a governmental agency and an individual employee are treated differently by our governmental immunity statutory scheme. MCL 691.1405 specifically refers to the potential liability of a governmental agency, therefore, the trial court's assertion that a governmental employee can be held liable in his individual capacity if MCL 691.1405 applies is erroneous. The potential liability of an individual governmental employee is addressed in MCL 691.1407(2). See *Stanton*, 466 Mich at 619. Additionally, plaintiff specifically stated during argument to the trial court that she was not arguing Howard's actions constituted gross negligence. Because plaintiff takes the same position on appeal, pursuant to MCL 691.1407(2) Howard is entitled to summary disposition.

We therefore affirm the trial court as to its denial of summary disposition as to defendant Lincoln Consolidated Schools, but reverse the trial court's decision as to defendant Bob Howard. Accordingly, we remand to the trial court for further proceedings against defendant Lincoln Consolidated Schools, and for entry of summary disposition against defendant Howard.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello