

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH SMITH,

Plaintiff-Appellee,

v

CAPITAL AREA TRANSPORTATION
AUTHORITY,

Defendant-Appellant.

UNPUBLISHED

March 12, 2009

No. 277086

Ingham Circuit Court

LC No. 05-000875-NO

Before: Murphy, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court order denying defendant's motion for summary disposition under MCR 2.116(C)(7) and (C)(10) in this negligence action. We affirm.

Plaintiff's complaint alleged that she was injured while boarding defendant's bus in the parking lot of a store. As she set her right foot on the first interior step of the bus, the bus driver closed the doors and the bus began to move forward. Plaintiff alleged that she was forced to "hop along" with her left foot in order to avoid being dragged by the bus, and that she suffered injuries to her ribs, chest, shoulders, knees, and head as a result of the incident. The bus driver conceded during her deposition that the bus doors were closing when she heard plaintiff yell, but denied that the bus was ever in motion while plaintiff was stuck in between its doors.

Plaintiff filed suit, alleging that she had suffered a number of injuries as a result of the incident, and claiming that the bus driver had been negligent in operating the bus. Defendant filed a motion for summary disposition on the ground of governmental immunity under MCL 691.1407. Following a hearing, the trial court denied defendant's motion, finding that questions of fact existed as a result of the party's widely divergent versions of the incident. The court also found that no question of fact existed with regard to whether plaintiff had suffered serious physical impairment, citing her "objectively manifested injuries" and the testimony of various witnesses regarding plaintiff's pain, medication, and the psychological impact of her injuries.

Defendant argues that plaintiff failed to properly plead and prove an exception to governmental immunity. It argues that the conflicting details in plaintiff's various descriptions of the incident negate plaintiff's assertion that questions of fact exist regarding the incident. We disagree. This Court is liberal in finding a genuine issue of material fact. *Lash v Allstate Insurance Co*, 210 Mich App 98, 101; 532 NW2d 869 (1995). A genuine issue of material fact

exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Allison v AEW Capital Mgt, LLC*, 481 Mich 419, 424-425; 751 NW2d 8 (2008). Defendant's assertion that plaintiff's version of events is totally void of credibility is not a proper ground for dismissing the case.

Plaintiff pleaded in her complaint the motor vehicle exception to governmental immunity, MCL 691.1405, which provides that “[g]overnmental 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.” In moving for summary disposition under MCR 2.116(C)(7), defendant argued that plaintiff's injury did not result from the operation of the bus. Defendant maintained that the opening and closing of the bus door did not constitute “operation” of the bus and, therefore, could not be construed as “negligent operation” of the bus under MCL 691.1405. The trial properly rejected this argument, as well as defense counsel's argument that boarding a passenger does not constitute “operation” under the statute. See *Martin v Inter-Urban Transit Partnership*, 480 Mich 936; 740 NW2d 657 (2007) (“[t]he loading and unloading of passengers is an action within the ‘operation’ of a shuttle bus” under MCL 691.1405). Opening and closing of a bus door to allow passengers ingress and egress, and loading and unloading of passengers, are actions within the operation of a bus. The trial court properly denied defendant's motion for summary disposition as plaintiff satisfied the exception to governmental immunity set forth in MCL 691.1405.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey