

STATE OF MICHIGAN
COURT OF APPEALS

MELODY HORNE,

Plaintiff-Appellee,

v

SUBURBAN MOBILITY AUTHORITY FOR
REGIONAL TRANSPORTATION and DERECK
WILLIAMS,

Defendants-Appellants.

UNPUBLISHED

May 22, 2014

No. 312663

Macomb Circuit Court

LC No. 2011-003748-NI

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

In this action for damages after a trip and fall accident, defendants Suburban Mobility Authority for Regional Transportation (“SMART”) and Dereck Williams appeal as of right the trial court’s order denying their motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm with regard to defendant SMART, reverse with regard to defendant Williams, and remand for proceedings consistent with this opinion.

Plaintiff Melody Horne was a passenger on a SMART bus driven by Williams. When the bus arrived at her stop, plaintiff moved to exit. Plaintiff testified that when she reached the front door, the bus lunged, causing her to be thrown to the ground and suffer injury. Another passenger on the bus stated that after he saw plaintiff move toward the exit, he felt the bus lunge and contemporaneously heard a scream. Williams recalled a different version of events and testified that the bus did not lunge and that plaintiff did not fall until after she had exited the bus. Both plaintiff and Williams testified that after plaintiff fell, Williams asked her if she was injured, and she replied that she was okay.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), alleging that they were protected by governmental immunity without any exception. Plaintiff argued that there was a question of fact for a jury to determine whether governmental immunity barred her suit. The trial court denied defendants’ motion, reasoning that there was a question of fact better left to a jury.

“This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law.” *Alcona Co v Wolverine Environmental Prod, Inc*, 233 Mich App 238, 245; 590 NW2d 586 (1998). “When reviewing a

motion brought under MCR 2.116(C)(7), we consider all affidavits, pleadings, and other documentary evidence filed or submitted by the parties. All well-pleaded allegations are accepted as true and are construed most favorably to the nonmoving party.” *McFadden v Imus*, 192 Mich App 629, 632; 481 NW2d 812 (1992) (citations omitted). “Under MCR 2.116(C)(7), summary disposition is proper when a claim is barred by immunity granted by law.” *State Farm Fire & Cas Co v Corby Energy Servs, Inc*, 271 Mich App 480, 482; 722 NW2d 906 (2006). The applicability of governmental immunity and its statutory exceptions are also reviewed de novo. *Moraccini v Sterling Hts*, 296 Mich App 387, 391; 822 NW2d 799 (2012). Summary disposition is proper where no relevant factual dispute exists regarding whether a claim is barred pursuant to MCR 2.116(C)(7). *Id.*

The governmental tort liability act (“GTLA”), MCL 691.1401 *et seq.*, provides immunity for governmental agencies where “the governmental agency is engaged in the exercise or discharge of a governmental function,” except where otherwise provided within the act. MCL 691.1407(1). One such exception is found at MCL 691.1405, which, in pertinent part, states 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.” It is undisputed that Williams was an employee of SMART, that SMART is a governmental agency, that SMART owned the bus Williams was driving, and that plaintiff suffered bodily injury.

Defendants assert, however, that SMART was entitled to summary disposition because no reasonable juror could determine that Williams was negligent. We disagree. “To establish a prima facie case of negligence, a plaintiff must prove the following elements: (1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant’s breach was a proximate cause of the plaintiff’s damages.” *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). The legal duty between a carrier and its passengers is the “duty to exercise such diligence as would be exercised in the circumstances by a reasonably prudent carrier.” *Frederick v Detroit*, 370 Mich 425, 437; 121 NW2d 918 (1963). In *Bolton v Detroit*, 10 Mich App 589, 595; 157 NW2d 313 (1968), this Court held that where a bus is stopped, an individual is exiting, and the bus inexplicably lurches causing the individual to fall, negligence is presumed. That is precisely what happened in this case. Defendants insist that the bus did not move while plaintiff was exiting, and even if it did, plaintiff cannot point to any negligent act or omission on behalf of Williams to explain the movement. Nevertheless, the Court was clear in *Bolton* that differing testimony simply creates a question of fact, and plaintiff’s inability to point to a specific instance of negligence is not required. *Id.*, see also *Woodard v Custer*, 473 Mich 1, 6-7; 702 NW2d 522 (2005) (stating that doctrine of res ipsa loquitur allows a plaintiff’s negligence case to continue even though the plaintiff cannot specifically identify what negligent act took place as long as the instrumentality causing injury was in the defendant’s exclusive control). Therefore, because there was a question of fact regarding Williams’s negligence, there was a question of fact regarding whether SMART was entitled to governmental immunity, and the trial court properly denied the motion for summary disposition.

Next, defendants argue that the trial court should have granted summary disposition to Williams because no reasonable juror could determine that Williams was grossly negligent. We agree.

MCL 691.1407(2) considers immunity for governmental employees:

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person or damage to property caused by the . . . employee . . . while acting on behalf of a governmental agency if all of the following are met:

(a) The . . . employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The . . . employee's . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Once again, the only disputed issue is regarding Williams's alleged gross negligence. "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Evidence of gross negligence suggests an "almost . . . willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks. It is as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety or welfare of those in his charge." *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004). No such evidence exists in this case. Plaintiff's testimony establishes only that the bus suddenly lunged while she was exiting. Plaintiff provided no testimony or evidence that Williams "simply did not care about [her] safety or welfare." *Id.* Williams's actions may be determined to be negligent, but there was no evidence that would allow a reasonable juror to determine that Williams's conduct was "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). And, "evidence of ordinary negligence does not create a material question of fact concerning gross negligence." *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999). Therefore, because there was no evidence of gross negligence, Williams was entitled to governmental immunity and summary disposition pursuant to MCR 2.116(C)(7).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs, as no party has prevailed in full. MCR 7.219.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood