

STATE OF MICHIGAN
COURT OF APPEALS

CHRIS C. LAMBERT,

Plaintiff-Appellee,

v

GREEN OAK TOWNSHIP POLICE
DEPARTMENT,

Defendant,

and

THE CHARTER TOWNSHIP OF GREEN OAK
and MICHAEL JAIN,

Defendants-Appellants.

UNPUBLISHED

May 12, 2011

No. 297088

Livingston Circuit Court

LC No. 09-02459-NI

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Defendants, Charter Township of Green Oak and police officer Michael Jain appeal as of right the trial court's denial of their motion for summary disposition in this motor vehicle governmental immunity case. Because the trial court erred when it denied defendant Jain's motion for summary disposition we reverse in part. Because the trial court properly denied defendant Township's motion for summary disposition, we affirm in part and remand for trial on the remaining claim.

I

On the morning of July 1, 2008, at approximately 6:30 am, plaintiff, Chris C. Lambert, was riding his Harley-Davidson motorcycle on US-23. Plaintiff testified that he is an experienced motorcyclist and was going to visit his daughter and babysit in East Lansing that morning. Plaintiff testified that it was a beautiful day outside and it was sunny and clear while he was riding. Plaintiff was heading northbound on US-23 in the right lane traveling at the speed limit of 70 mph. As he approached the M-36 overpass he was traveling behind a semi truck that was also in the right lane and was also traveling about 70 mph. Plaintiff did not see any markings on the semi truck except that it had a rusty back door. Plaintiff believed he was about

200 or 300 feet behind the semi truck. According to plaintiff the semi truck aggressively applied its brakes.

Plaintiff was still behind the semi truck in the right lane and was about 50 feet behind the semi truck and decided to change lanes to the left lane. Plaintiff signaled his lane change and looked to the left. Plaintiff did not see any traffic in the left lane. He then proceeded to change lanes from the right lane into the left lane of traffic. To his knowledge plaintiff was the only vehicle in the left lane except for a car that was approximately 300 feet ahead of him on US-23. Plaintiff did not see any brake lights on that automobile. Plaintiff testified the bulk of the traffic was in the right lane.

Plaintiff testified that after he changed lanes the semi truck “almost right away,” or “immediately” “took the left lane.” Plaintiff explained that:

I mean, I pulled out in the left lane, because the right lane was coming to a stop or aggressively stopping. I noticed I had room on the left side, so I took the room on the left side; as soon as I did, the semi trailer, the semi truck pulled into the left lane.

Plaintiff was certain that the semi truck did not signal that he was changing lanes. Plaintiff believed he was “really close” to the semi truck at that point and approximated he was about 15 feet behind when the semi truck started to pull into the left lane.

Plaintiff testified that he had slowed down about 5 mph during his lane change into the left lane but the semi truck had slowed down significantly in the right lane from its “aggressive braking action” but could not estimate the semi truck’s speed. Plaintiff stated that

The semi aggressively applied his brakes. So I went into the left lane because it was clear. As I was pulling up along side of him, he pulled over into the left lane, which pushed me off into the median.

I was going a little bit faster than him, because he applied the brakes harder than I did. I would have ran into the back of him, because he pulled in front of me. So, instead of hitting the back of a semi at 65 or 70 miles an hour, I decided to take the median.

Plaintiff testified that the semi truck was still going fast enough that it did not “just hit” plaintiff as it changed lanes. Plaintiff agreed that the way a semi truck works is that the first part of the truck goes into the lane first and then the trailer follows behind. Plaintiff stated that he was looking at the trailer as it was changing lanes and as it got to about 10 feet away from him he began evasive actions. He aggressively applied his breaks for “milliseconds” but when the truck got very close to him he felt the situation was “critical” and he made the decision to move to the left of the semi truck into the median.

Plaintiff stated that there was a gravel shoulder about six feet wide. He got onto the shoulder and then slowly went onto the grass. Plaintiff stated that he could not stay on the gravel

because of inertia as a result of traveling on pavement then immediately onto gravel. Plaintiff stated that he was on the gravel for about 30 feet before he went off onto the grass. He explained that the median had a slope to it and he was “just trying to stay up” on his motorcycle. He was able to keep the motorcycle upright for about 100 feet into the median but because of the slope and the motorcycle sliding on the wet grass, the rear end of the motorcycle started “going out to the left.” Plaintiff remembers his body getting down close to the ground and then “the lights went out.” Plaintiff has no memory of his motorcycle flipping end over end or his body being propelled forward. He remembered waking up three or four feet in front of the motorcycle. Though he estimated that he travelled about 100 feet into the median, he said it happened very quickly. When plaintiff awoke, plaintiff saw that people had stopped on the side of the road and come to his aid, including, defendant Jain.

Jain is a certified police officer who was working for defendant Township of Green Oak in July 2005. On the date of the incident, Jain was finishing up working his regular midnight shift as a patrol officer that ends at 7:00 am. Jain had just responded to a medical assist call at Charring Cross Circle and was headed back to the station via US-23. Jain testified that he had accidentally left his rooftop overhead red and blue blinking lights activated from his previous call. Jain was unaware that the lights were activated when he left the EMS call. As he was driving back to the station he noticed a white car pull over after it turned from westbound Nine Mile onto Fieldcrest. Jain testified that “it was confusing to me, I didn’t know why he was pulling over.”

Jain continued on his way back to the station by entering the on ramp to US-23 with his overhead lights still activated. As he was entering US-23 past the on ramp, he noticed a PT Cruiser begin to pull over into his path and then on to the shoulder of the road. Jain did not realize at that time that the PT Cruiser was pulling over because the driver saw Jain’s police lights. He testified as follows:

I went to turn on my emergency lights, realized they were on, and kind of then came to the realization that it was possible she was pulling over for my lights so I pulled up next to her in the right lane, I said are you okay, she says, yeah, I pulled over for the lights. I said, okay, go on.

Jain admitted that although the shoulder of the road in that particular place on US-23 is wide enough that he could have pulled his patrol vehicle safely behind the PT Cruiser, instead he completely stopped his vehicle in the lane of traffic. Jain stated that the speed limit was 70 mph on US-23 and that there was light morning weekday traffic that day.

Jain stated that as the PT Cruiser pulled back out onto the roadway in front of his patrol car they both accelerated in the right lane together and when he reached 55 mph he turned his lights off. He testified that “immediately thereafter” he saw plaintiff’s motorcycle flipping end over end in his rear view mirror. Jain turned his lights back on, activated his siren, and called dispatch. Jain believed that plaintiff’s motorcycle was about 300 or 400 feet behind him as he traveled on US-23. At that time, Jain had no idea what caused plaintiff to leave the roadway. Jain remembered seeing traffic slow down and then saw the motorcycle in the median. Jain did see a semi truck in the left lane in front of plaintiff.

Jain headed to the scene of the accident by exiting at Silver Lake Road, coming back southbound on M-36 and then getting back on US-23 northbound. When he arrived at the scene he saw plaintiff and his motorcycle in the median and also a semi truck and a Ford Focus stopped on the left hand shoulder. Jain pulled up behind the Ford Focus and got out of the car and began walking toward the motorcycle and plaintiff. As he was walking toward plaintiff he observed two people at the scene. He remembered the conversations as follows:

Someone said that there was a police officer that had someone pulled over, and I said that was me, but I didn't pull her over, she was stopped alongside the road. And he said, oh, okay. And he said that there was a truck that stopped and everyone hit their brakes, and that's what I remember.

At deposition, Jain testified that he did not get the names or phone numbers of either of the people at the scene and he testified that he did not remember why he did not get their information. Jain stated that he does not have any way of identifying the people at the scene because he did not call in their license plate numbers and they were not recorded on his dash camera. When Jain spoke with plaintiff, he explained that he was cut off by a semi truck.

Jain's dashboard camera was activated from the time he left the medical assist call throughout the entire relevant period involved in this case. We have reviewed the recording and it accurately tracks the events as described by Jain during his deposition. However, as a clarifying point, we think it necessary to point out that the video depicts Jain initially following the PT Cruiser off the traveled portion of the road onto the shoulder of US-23, but then veering back out into the right lane of US-23 and pulling alongside the PT Cruiser and coming to a stop.

In the trial court, plaintiff presented an affidavit by Joseph Jager, an accident reconstructionist and police practice expert. Jager averred that he had reviewed the police report, the dashboard camera recording, and Jain's affidavit. Based on this documentation, in his opinion:

Officer Jain violated appropriate and reasonable practices, breached standards of conduct, and operated his vehicle in a negligent manner by improperly stopping his car in the lane of travel on the expressway, in a 70 mile per hour zone, to speak with the driver of the vehicle that pulled over to the shoulder in response to the flashing lights that Officer Jain forgot to turn off from a prior call.

Officer Jain should have pulled up behind the vehicles that had pulled over, rather than initiate contact with the driver from the lane of traffic, thereby improperly blocking the approaching traffic on the 70 mile per hour expressway.

Officer Jain's negligent conduct, was the cause and a proximate cause of the accident involving [plaintiff's] motorcycle. Officer Jain's negligent conduct caused approaching drivers, as required by law, to pull over onto the one and only open lane of traffic, thereby causing and proximately causing the shift in traffic, including the shift of the truck which ran [plaintiff's] motorcycle off the road.

Jager also concluded that Jain acted without due care and in violation of MCL 257.698(5)(c) when he operated his patrol lights at a time when he was not responding to an emergency call.

II

Defendant filed his complaint against Green Oak Township Police Department, the Charter Township of Green Oak, and Officer Jain on July 7, 2009. On January 14, 2010, all three defendants filed a motion for summary disposition based on MCR 2.116(c)(7), (8), and (10) arguing that all defendants were governmentally immune from liability and also that Jain's conduct was not negligent nor was it the proximate cause of the motorcycle accident. The trial court heard oral argument on the matter on March 11, 2010. Plaintiff's counsel conceded liability regarding Green Oak Township Police Department because it is not a separate entity subject to suit. The trial court granted summary disposition in favor of Green Oak Township Police Department in an Order dated March 12, 2010. Argument continued regarding the propriety of governmental immunity with regard to the remaining two defendants. Ultimately, the trial court held as follows:

THE COURT: I don't care what people said at the scene so far as – so far as whether or not this – this car was involved. I can see what happened. I did see. I watched it. Anyway, the officer had been involved in another stop, work related, his lights were on. Which lights, I'm not sure, but lights were on. And he drove out of the subdivision, got himself along M-36, then got onto the freeway and US 23. One car pulled over as he was in that process. He got on the freeway, there was a PT Cruiser in front of him which responded to his lights, put on a right turn signal signaling a change of lanes, moved over from what I'll call the slow lane, right hand lane, to the – to the shoulder. The officer started to move in in back of the PT Cruiser and then stayed on the driving lane of the freeway. That would be the right hand lane. Slow lane, as I call it. Came to a stop and then the PT Cruiser continued on. The flashing light went off momentarily as the PT Cruiser got back on the freeway and then this process – and then there's a pick-up truck that passed the police officer, as I recall it, after the – the flashing light was turned off.

The officer – that PT Cruiser pulled over in response to the officer's flashing light, which he had failed to turn off from the subdivision incident that he was involved in previously. Would that accident have happened but for all that? I say no, it would not have. The officer was stopped on US 23. For those of us who drive it with some regularity know that the 70 mile speed limit is most often observed in the breach. Was the vehicle involved? I say yes. There's at least a question of fact for the trier of fact to decide that. And so as to that aspect of it, I deny the motion for summary disposition. I do grant the motion as to the Green Oak Police Department. I don't know if you wish to make any amendments or not.

[Defense Counsel]: Your Honor, what about the individual officer?

THE COURT: The officer – I'm satisfied that he stays in. There are questions of fact to be decided by the trier of fact.

[Plaintiff's Counsel]: Thank you, Your Honor.

In accordance with its opinion from the bench, the trial court denied the summary disposition motion with regard to both Charter Township of Green Oak and Officer Jain in an Order dated March 12, 2010. It is from this order that defendants Charter Township of Green Oak and Jain appeals as of right.

III

Both defendants moved for summary disposition pursuant to MCR 2.116(C)(7), which “provides that a party may move for summary disposition on the ground that governmental immunity bars the claim.” *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 278; 769 NW2d 234 (2009). This Court reviews “the trial court’s ruling on a motion for summary disposition de novo. Governmental immunity is a question of law that is also reviewed de novo on appeal.” *Kendricks v Rehfield*, 270 Mich App 679, 681-682; 716 NW2d 623 (2006) (internal citations omitted). When a motion is brought on the grounds of governmental immunity, this Court considers “all documentary evidence filed or submitted by the parties. A plaintiff can overcome such a motion for summary disposition by alleging facts that support the application of an exception to governmental immunity.” *Burise v City of Pontiac*, 282 Mich App 646, 650; 766 NW2d 311 (2009). “[A] court must accept as true the plaintiff’s well-pleaded factual allegations and construe them in the plaintiff’s favor. . . . If no facts are in dispute, and reasonable minds could not differ on the legal effect of those facts, whether the plaintiff’s claim is barred is a question for the court as a matter of law.” *Guerra v Garratt*, 222 Mich App 285, 289; 564 NW2d 121 (1997) (internal quotation omitted). The claims in this case involve the governmental immunity act, MCL 691.1401 *et seq.* “This Court also reviews de novo questions of statutory interpretation.” *State Farm Fire & Cas Co v Corby Energy Servs*, 271 Mich App 480, 483; 722 NW2d 906 (2006).

IV

Defendant Township argues that the trial court erred by not granting its motion for summary disposition on the basis that MCL 691.1405 does not apply where plaintiff cannot show that the accident was a direct result of Jain’s alleged negligent operation of a motor vehicle because Jain’s patrol vehicle had no direct contact with plaintiff’s vehicle, who was injured when he drove his motorcycle off the road to avoid rear-ending a semi truck.

Governmental agencies are generally immune from tort liability when carrying out a governmental function, although a number of exceptions exist to this general rule. *Curtis v City of Flint*, 253 Mich App 555, 558-560; 655 NW2d 791 (2002). Specifically, pursuant to MCL 691.1407(1), “[e]xcept 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.” Defendant Township, as a “political subdivision,” MCL 691.1401(b), is a “governmental agency” for purposes of governmental immunity. MCL 691.1401(d). Therefore, defendant Township, is immune from tort liability if the tort claim arises from the exercise or discharge of a governmental function, unless a statutory exception applies. MCL 691.1407(1).

Under the motor vehicle exception, MCL 691.1405, “[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” Our Supreme Court examined the meaning of the “resulting from” language in MCL 691.1405 in *Robinson v City of Detroit*, 462 Mich 439; 613 NW2d 307 (2000). There, the Court was faced with the question whether governmental entities could be liable for injuries to innocent passengers who were riding in cars being pursued by police. *Id.* at 447-449. In each instance, the police vehicles did not make contact with the cars; rather, during the chases, one car collided into a house and the other car hit an uninvolved vehicle. *Id.* at 448-449. In light of the fact that the immunity granted by MCL 691.1407 is broad and the exceptions are to be narrowly construed, the Court rejected an analysis based on a broader notion of “but for” or proximate cause. *Id.* at 456-457, 457 n 14. Rather, it invoked the need for more direct causation, opining that the plaintiffs “cannot satisfy the ‘resulting from’ language of the statute where the pursuing police vehicle did not hit the fleeing car or otherwise physically force it off the road or into another vehicle or object.” *Id.* at 457.

In *Curtis*, a third-party driver noticed an emergency vehicle approaching from a highway exit ramp and so the driver “abruptly moved his vehicle to the curb lane and stopped” in order to allow the emergency vehicle onto the road against a red traffic signal. *Curtis*, 253 Mich App at 557. The plaintiff, who was driving in the curb lane a short distance behind the driver, rear-ended the driver’s car. *Id.* This Court concluded that the defendant city was immune from liability, stating that the trial court:

correctly read *Robinson* to require that the emergency vehicle at issue . . . be physically involved in the collision that caused [the] plaintiff’s injuries, either by hitting plaintiff’s vehicle or by physically forcing that vehicle off the road or into another vehicle or object. [*Id.* at 562.]

Thus, application of the motor vehicle exception, MCL 691.1405 requires a plaintiff to prove that the vehicular accident physically involved a government-owned vehicle, *Curtis*, 253 Mich App at 562, and this proof can be based on physical contact between the governmental agency’s vehicle and the plaintiff’s vehicle, or it can be based on the governmental agency’s vehicle ““otherwise physically forc[ing the plaintiff’s vehicle] off the road or into another vehicle or object.”” *Id.* at 560, quoting *Robinson*, 462 Mich at 457.

There is no dispute that defendant’s vehicle did not directly touch plaintiff’s vehicle: plaintiff conceded that no physical contact occurred, and there exists no evidence to support a contrary conclusion. The only issue is whether there is a genuine question of fact whether defendant’s patrol car physically forced plaintiff’s motorcycle off the road. In *Curtis*, this Court explained that the other motorist had multiple options, so moving to obstruct plaintiff “was not physically required by the alleged negligent operation of the emergency vehicle.” *Curtis*, 253 Mich App at 562. The record is not clear in the present case and factual issues abound.

Although plaintiff testified that he did not see the police car, he testified that both he and the semi truck were in the right hand land heading northbound approaching the on ramp at issue. Plaintiff testified that although he did not see the police cruiser, the semi truck in the right lane began “aggressively braking” for a reason unknown to him at the time. Both plaintiff and the semi truck driver were traveling at the posted speed limit of 70 mph. There was testimony that US-23 has only two travel lanes in the area of concern. Jain’s dashboard camera shows him

merging onto US-23 into the right lane from the on ramp and then exit the right lane to follow the PT Cruiser onto the shoulder. Very shortly thereafter, Jain then veered back out onto the right lane in the traveled portion of the road to speak with the driver through his passenger window. Plaintiff testified that when the semi truck began braking in the right lane, he tried to avoid the situation by moving into the left lane which was free of traffic. Though, within “milliseconds” according to plaintiff, the semi truck also moved into the left lane without signaling forcing him to evade a high speed collision with a semi truck while he was on a motorcycle by moving into the median. While there is a whole universe of reasons the semi truck began braking, it is undisputed that plaintiff and the semi truck were traveling northbound on US-23 approaching the location of Jain’s patrol car and that Jain saw plaintiff’s motorcycle in the median flipping end over end thus establishing at least a temporal relationship with Jain’s operation of his vehicle.

And, plaintiff clearly believed he had no choice but to swerve to avoid hitting the semi truck after it began braking and then immediately changed lanes into his path. Officer Jain’s own testimony corroborates this because he testified that at the scene plaintiff told him that “somebody cut in front of him” and that “someone pulled out to cause this” and that “semis were going every which way.” It is unknown on this record whether the semi truck driver had “multiple” or any other options available to him. It is also unknown whether the semi truck’s movement to obstruct plaintiff was or “was not physically required by the alleged negligent operation of the [police] vehicle.” *Curtis*, 253 Mich App at 562. These are questions for the jury. We conclude that the evidence presented was sufficient to establish a genuine question of fact regarding whether a government-owned vehicle physically forced plaintiff off the road as a result of the Jain’s operation of the patrol car, and whether or not Jain was negligent in the operation of the police vehicle. Accordingly, defendant Township is not entitled to summary disposition on the ground that governmental immunity bars plaintiff’s claim.

Defendant Township also asserts that plaintiff cannot state a claim under the motor vehicle exception because plaintiff cannot show that the accident was “directly associated” with “driving” a municipality’s motor vehicle because the patrol car was stopped. At the outset, this argument is flawed because, based on this record there is a question of fact with regard to when the accident actually occurred. There are actions in which Jain engaged to impede traffic other than when he had come to a complete stop. Jain testified that the PT Cruiser crossed lanes and pulled over because of the patrol vehicle’s emergency lights. Evidence was presented that the emergency lights were improperly activated and that when Jain decided to pull onto the shoulder of the road behind the PT Cruiser and then veer back out into the traveled portion of the road alongside the PT Cruiser, the resultant actions of the semi-truck and the motorcycle ensued.

In any event, even if it can be ascertained that the accident occurred when the patrol car was stopped, this argument fails. Again, the motor vehicle exception to governmental immunity provides: “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. The motor vehicle exception applies when a “motor vehicle is being operated as a motor vehicle.” *Chandler v Muskegon Co*, 467 Mich 315, 316, 320; 652 NW2d 224 (2002). The question in this case is whether the patrol car was operating as a motor vehicle when it was stopped to ask the PT Cruiser driver why she pulled over onto the shoulder.

In *Chandler*, the plaintiff had been waiting to clean a bus that was parked in a barn for maintenance with its engine turned off when he saw another man get caught in the doors of the bus as he was exiting the bus. *Chandler*, 467 Mich at 316. The plaintiff attempted to pry open the doors and injured his shoulder. *Id.* The Supreme Court held that the plaintiff's injury did not arise from the negligent operation of the bus as a motor vehicle. *Id.* at 322. According to the Supreme Court, "the 'operation of a motor vehicle' encompasses activities that are directly associated with the driving of a motor vehicle." *Id.* at 321. Because "the vehicle was parked in a maintenance facility for the purpose of maintenance" it "was not at the time being operated as a motor vehicle." *Id.* at 322. Thus, the Supreme Court held that the motor vehicle exception to governmental immunity was inapplicable. *Id.* at 316, 322. It is notable that the *Chandler* Court focused on the purpose of the vehicle at the time: "The plaintiff was not injured incident to the vehicle's operation as a motor vehicle. Rather, the vehicle was parked in a maintenance facility for the purpose of maintenance and was not at the time being operated as a motor vehicle." *Id.* at 322.

In *Martin v The Rapid Inter-Urban Transit Partnership*, 271 Mich App 492, 494; 722 NW2d 262 (2006), the plaintiff slipped and fell down the steps of a shuttle bus as she was disembarking. This Court ruled that "when the shuttle bus stopped to allow several passengers to disembark, it ceased to be engaged in activities related directly to driving." *Id.* at 500. But, our Supreme Court reversed this Court's holding in *Martin* in a peremptory order, concluding that "[t]he loading and unloading of passengers is an action within the 'operation' of a shuttle bus. Accordingly, the plaintiff has satisfied the exception to governmental immunity set forth in MCL 691.1405." *Martin v Rapid Inter-Urban Transit Partnership*, 480 Mich 936; 740 NW2d 657 (2007). Supreme Court peremptory orders are binding precedent when they can be understood. See *People v Crall*, 444 Mich 463, 464 n 8; 510 NW2d 182 (1993).

Here, Jain drove the vehicle onto an expressway after merging from the on ramp. Jain then drove the vehicle onto the shoulder following the PT Cruiser and then veered back on to the traveled portion of the roadway. Jain stayed in his vehicle while he stopped momentarily to speak with driver of the PT Cruiser. Jain then accelerated to a speed of 55 mph within a short time. Jain never exited his vehicle or turned off his vehicle during the stop. He testified that he stopped only briefly to inquire whether the driver was in distress and the reason for her stop. Under the circumstances of this case, like the bus driver in *Martin*, *supra*, Jain did not cease to be engaged in activities related directly to driving during his brief stop. Whether Jain was driving "at a normal speed" or continuing to "actively drive" his vehicle is not the standard, as defendant suggests. Instead, all that must be demonstrated is that "the 'operation of a motor vehicle' encompasses activities that are directly associated with the driving of a motor vehicle." *Chandler*, 467 Mich at 321. Evidence has been sufficiently presented to establish a justiciable question of fact to meet the standard articulated in *Chandler*, and thus we conclude that the trial court did not err in denying defendant Township's motion for summary disposition.

V

Defendant Jain argues that he is immune from plaintiff's claims because he did not drive his vehicle in a grossly negligent manner and his actions were not "the" proximate cause of plaintiff's accident that occurred when plaintiff intentionally drive off the highway and onto the median to avoid running into the back of a semi truck that abruptly pulled into his lane. "The

governmental immunity act provides ‘broad immunity from tort liability to governmental agencies whenever they are engaged in the exercise or discharge of a governmental function.’” *Linton v Arenac County Road Commission*, 273 Mich App 107, 111; 729 NW2d 883 (2006), quoting *Ross v Consumers Power Co. (On Rehearing)*, 420 Mich 567, 595; 363 NW2d 641 (1984). Under the act, governmental employees are immune from suit “if they were acting within the scope of their authority, were ‘engaged in the exercise or discharge of a governmental function,’ and their conduct did not ‘amount to gross negligence that is the proximate cause of the injury or damage.’” *Miller v Lord*, 262 Mich App 640, 644; 686 NW2d 800 (2004), quoting MCL 691.1407(2)(b) and (c).

“The determination whether a governmental employee’s conduct constituted gross negligence that proximately caused the complained-of injury under MCL 691.1407 is generally a question of fact, but, if reasonable minds could not differ, a court may grant summary disposition.” *Briggs v Oakland County*, 276 Mich App 369, 374; 742 NW2d 136 (2007).

“‘Gross negligence’ means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” *Odom v Wayne County*, 482 Mich 459, 469; 760 NW2d 217 (2008), quoting MCL 691.1407(7)(a). “The plain language of the governmental immunity statute indicates that the Legislature limited employee liability to situations where the contested conduct was substantially more than negligent.” *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Gross negligence involves “almost a 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).

On this record we cannot say that defendant Jain’s conduct rose to the level of gross negligence. While there exists a question of fact with regard to whether Jain’s conduct was negligent, even plaintiff’s expert, Joseph Jager did not conclude that Jain was grossly negligent. Jager opined that, Jain “violated appropriate and reasonable practices, breached standards of conduct, and operated his vehicle in a negligent manner” “Evidence of ordinary negligence does not create a question of fact regarding gross negligence.” *Love v Detroit*, 270 Mich App 563, 565; 716 NW2d 604 (2006).

Because we have concluded that Jain’s conduct was not grossly negligent we need not address the question of whether Jain’s actions constituted “the” proximate cause of plaintiff’s injuries.

VI

Defendant Township is not entitled to summary disposition on the ground that governmental immunity bars plaintiff’s claim because the testimony presented established a genuine question of fact regarding whether a government-owned vehicle physically forced plaintiff off the road as a result of the Jain’s alleged negligent operation of the patrol car. The evidence thus presented in this case is sufficient to raise a justiciable question of fact concerning the standard articulated in *Chandler*, that the patrol car was operating as a motor vehicle when it was stopped to ask the PT Cruiser driver why she pulled over onto the shoulder. Thus, the trial

court properly denied defendant Township's motion for summary disposition. Finally, because, on this record we cannot say that defendant Jain's conduct rose to the level of gross negligence, the trial court erred when it denied defendant Jain's motion for summary disposition.

Affirmed in part, reversed in part, and remanded for trial on the remaining claim. We do not retain jurisdiction. Because no party prevailed in full, no party may tax costs. MCR 7.219.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Jane M. Beckering