

STATE OF MICHIGAN
COURT OF APPEALS

DALE L. SMITH, as Next Friend of JUAN
RODELA, JR., a Minor,

UNPUBLISHED
June 26, 2003

Plaintiff-Appellant,

v

PARENTS & TEACHERS TOGETHER, a/k/a
PATT, RICK MCNEIL, MELISSA RENNER,
MICHELLE PALPANT, KRISTEN ISOM,
JAMES HARTLEY, DEBI WAGNER,
LORI COLE, and JUDY HAYES,

No. 236214
Lenawee Circuit Court
LC No. 99-008459-NO

Defendants-Appellees.

Before: Meter, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of summary disposition in favor of defendants in this negligence action. We affirm in part, reverse in part, and remand for further proceedings.

On January 25, 1999, plaintiff's next friend, then two-year-old Juan Rodela, Jr., was allegedly injured while he was under care provided by Parents and Teachers Together (PATT), which was conducting a meeting at Madison Junior High School that Juan's mother was attending. Juan was struck in the head by a student who was practicing a cheerleading maneuver. Thereafter, plaintiff brought this action against the principal of the school, Debi Wagner, and the cheerleading coach, Lori Cole, alleging negligence and gross negligence related to the provision of such childcare services, including because it was rendered in the vicinity of practicing cheerleaders.

Subsequently, plaintiff amended his complaint to include as defendants PATT, Rick McNeil as president of PATT, Melissa Renner and Michelle Palpant as representatives of PATT and members of its "babysitting committee," Kristen Isom as head of the athletic office for Madison Schools, James Hartley as superintendent of Madison Schools, and Judy Hayes as the adult advisor for the "Service Learning Class." Plaintiff alleged that PATT, McNeil, Renner, Palpant, Hartley, Wagner, and Hayes were negligent and grossly negligent with regard to their "operation of a child care center" and associated provision of childcare services. Plaintiff alleged that Isom and Cole were negligent and grossly negligent for permitting cheerleading activities in the vicinity of children.

Defendants eventually filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that (1) plaintiff's claims were barred by the governmental tort liability act (GTLA) because "[a]ll of the Defendants in this action are either employees of the Madison School District, or volunteers of the School District by virtue of their position and affiliation with PATT," (2) plaintiff failed to establish a prima facie case of gross negligence, (3) the babysitting services provided by PATT did not establish a "child care center," (4) plaintiff cannot establish proximate cause, and (5) the federal Volunteer Protection Act of 1997 causes PATT and its members to be immune from liability.

In response to defendant's dismissal motion, plaintiff argued that PATT, McNeil, Renner, and Palpant were not volunteers of a governmental agency and, thus, were not shielded from liability by the GTLA, MCL 691.1401 *et seq.* In particular, PATT was clearly not a governmental agency and was not a volunteer of a governmental agency. PATT was not under the control of, or supervised by, the school district — it had its own bylaws and board of directors, and conducted activities, including fundraising, without input from the school district, donating significant funds to charitable organizations. Since PATT was not a governmental agency or a volunteer of such agency, plaintiff argued, neither were its members. Accordingly, these defendants were subject to a negligence standard of care, not a gross negligence standard, and they breached the standard of care when they permitted numerous children to be cared for by an eighth grader, without adult supervision, in the vicinity of practicing cheerleaders.

Further, plaintiff argued, defendants Wagner, Cole, Hayes, and Isom, employees of the school district, were grossly negligent and, thus, were not entitled to immunity. Wagner and Cole signed the building permit that allowed PATT to use the school premises for the PATT meeting and associated childcare without investigating the nature of the childcare services being rendered. In addition Cole, the cheerleading coach, was present and permitted cheerleading practice to continue despite the presence of young children in the same room. Hayes, the Service Learning Class teacher, approved of her students providing childcare services during the PATT meetings without properly investigating or supervising the same. Accordingly, a reasonable jury could find that the action or inaction of these defendants was so reckless as to demonstrate a substantial lack of concern for whether an injury would result to one of the children. Further, plaintiff argued, there was an issue of fact as to whether this conduct, i.e., placing Juan "in harm's way," was the proximate cause of Juan's injury. In addition, Hartley, the school superintendent, was not "the highest appointed official in the school district;" therefore, he was not entitled to absolute immunity under MCL 691.1407(5).

Defendants replied to plaintiff's response to their motion for summary disposition, arguing that PATT and its members were "a volunteer organization acting on behalf of the Madison School District." In support of their claim, defendants referenced PATT's bylaws which indicated that (1) its name was "Parents and Teachers Together of the Madison Elementary School District," (2) its purpose was to "foster communication and promote problem solving for the education advancement of the students of Madison Elementary School," and (3) its membership included "all parents and staff of the Madison Elementary School." Defendants also asserted that PATT's treasury account was part of the school district's general fund account/budget, all of its meetings took place using the school district's facilities, and it was named on the school district's insurance policy. In sum then, defendants argued, without citation to supporting authority, "a school PTA, such as PATT, is indeed a volunteer organization acting

on behalf of the governmental school district.” Further, Hartley was entitled to absolute immunity pursuant to MCL 691.1407(5) and *Nalepa v Plymouth-Canton Community Sch Dist*, 207 Mich App 580, 589; 525 NW2d 897 (1994). Finally, all of the defendants were entitled to summary dismissal because plaintiff could not establish that any one of them was grossly negligent such as to be *the* proximate cause of Juan’s injuries since the cheerleader who struck Juan was *the* proximate cause and she was not named in the suit. See *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000).

After hearing oral arguments on defendants’ motion, the trial court granted summary disposition in defendants’ favor, holding:

Well, I think that the PATT volunteers do meet the definition [under the GTLA]. I think that they are immune from tort liability. I think that they were acting reasonably and within the scope of their authority. I don’t think there’s any question about that. And I think that this governmental agency – I think that at the time that they were engaged in the discharge of a governmental function. I think having these children there and having the parents there really ha – taking care of the children so they could have the parents there and I think that’s a proper function.

We get to the gross negligence and I agree that’s a much closer question but I’m convinced that the act that caused the injury was the act of the minor child. I don’t think that the volunteers’ conduct amounted to gross negligence that is the proximate cause of the injury or damage. First, I don’t think it’s gross negligence, and I also don’t think it was the proximate cause of the injury or damage.

I think, for those reasons, the motion should be granted. It is.

Thereafter, an order dismissing the case was entered. Plaintiff’s motion for reconsideration was denied and this appeal followed.

Plaintiff first argues that the trial court improperly dismissed his claims against PATT and its members, McNeil, Renner, and Palpant, because they were not entitled to governmental immunity since PATT was not a governmental agency and these defendants were not “volunteers” of a governmental agency performing a governmental function. We agree. This Court reviews de novo a trial court’s decision to grant summary disposition under MCR 2.116(C)(7). *Maiden v Rozwood*, 461 Mich 109, 118-119; 597 NW2d 817 (1999). Likewise, statutory interpretation is a question of law considered de novo on appeal. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 469; 628 NW2d 577 (2001).

Pursuant to MCL 691.1407(1) of the GTLA:

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.

When a statute specifically defines a given term, that definition alone controls. *Tryc v Michigan Veterans’ Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). Under MCL 691.1401(d),

“[g]overnmental agency means the state or a political subdivision.” A “political subdivision” is “a municipal corporation, county, county road commission, school district, community college district, port district, metropolitan district, or transportation authority or a combination of 2 or more of these when acting jointly; a district or authority authorized by law or formed by 1 or more political subdivisions; or an agency, department, court, board, or council of a political subdivision.” MCL 691.1401(b).

Accordingly, for PATT to be immune from liability under the GTLA, it must be a “governmental agency.” It appears that the trial court held, without explanation, that PATT was a governmental agency. However, we discern from the limited record that PATT was neither “the state” or “a political subdivision” of the state; rather, PATT was an unincorporated voluntary association that could sue or be sued in its own name. See MCL 600.2051(2); see, also, e.g., *Benvenue Parent-Teacher Ass’n v Nash Co Bd of Ed*, 4 NC App 617, 621; 167 SE2d 538 (1969); *Lewis Ave Parent Teachers’ Ass’n v Hussey*, 250 Cal App 2d 232; 58 Cal Rptr 499 (1967). No authority was presented in support of the assertion that a PTA-like association is entitled to benefit from the GTLA. Accordingly, we must reverse and remand the issue of PATT’s alleged immunity back to the trial court for further consideration.

Similarly, the trial court apparently considered PATT members McNeil, Renner, and Palpant immune from tort liability as “volunteers” of PATT, a “governmental agency.” However, since PATT is not a governmental agency, these PATT members cannot be “volunteers,” under the GTLA, i.e., “an individual who is specifically designated as a volunteer and who is acting solely on behalf of a governmental agency.” MCL 691.1401(h). Thus, we must reverse and remand the issue of PATT’s members’ alleged immunity back to the trial court for further consideration. In addition, PATT is obviously not “an individual” and, therefore, cannot itself be considered a “volunteer” of a governmental agency, i.e., the school district.

Next, plaintiff argues that Wagner, Cole, Hayes, and Isom, employees of the school district, were not entitled to governmental immunity because a genuine issue of fact existed as to whether their gross negligence was the proximate cause of Juan’s injuries. We disagree.

It is uncontested that Wagner, Cole, Hayes, and Isom were entitled to governmental immunity as employees of the school district if their conduct did not amount to “gross negligence that is the proximate cause of the injury or damage.” MCL 691.1407(2)(c). Plaintiff contends, however, that their conduct was grossly negligent because (1) Wagner and Isom signed the building permit allowing PATT to use the school premises for the PATT meeting and associated childcare without investigating the nature of the childcare services being rendered, (2) Cole was present and permitted cheerleading practice to continue despite the presence of young children in the same room, and (3) Hayes approved of her students providing childcare services during the PATT meetings without properly investigating or supervising the same. “Gross negligence” is “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(2)(c). We agree with the trial court that these actions, even if proved, would not give rise to a finding of gross negligence. Further, none of the alleged actions were the proximate cause, i.e., “the one most immediate, efficient, and direct cause” of Juan’s injuries. See *Robinson, supra*. Accordingly, these defendants were properly dismissed from the litigation.

Finally, plaintiff claims that Hartley, the school district superintendent, was not entitled to governmental immunity. We disagree. MCL 691.1407(5) provides that “the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property” It is uncontested that Hartley was the superintendent of Madison Schools; therefore, he was entitled to governmental immunity. See *Nalepa, supra*. Accordingly, Hartley was properly dismissed from the litigation.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper