

STATE OF MICHIGAN  
COURT OF APPEALS

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WANDA DARROW,

Plaintiff-Appellant,

v

POTTERVILLE SCHOOL DISTRICT,

Defendant-Appellee.

UNPUBLISHED

January 10, 2006

No. 256049

Eaton Circuit Court

LC No. 03-001325-CD

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Before: O’Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendant’s motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8) on plaintiff’s claims for intentional infliction of emotional distress and negligent infliction of emotional distress in connection with the termination of her employment.<sup>1</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court’s ruling on a motion for summary disposition. *Maskery v U of M Bd of Regents*, 468 Mich 609, 613; 664 NW2d 165 (2003). In examining a motion brought under MCR 2.116(C)(7), this Court examines the evidence submitted by the parties to determine whether a claim is barred because of immunity granted by law. *Id.* A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of the of the complaint on the basis of the pleadings alone. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004); MCR 2.116(G)(5). All well-pleaded factual allegations in support of the claim are accepted as true and construed in the light most favorable to the nonmoving party. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). “A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are ‘so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.’” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999), quoting *Wade v Dep’t of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992).

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<sup>1</sup> Plaintiff does not appeal the trial court’s grant of summary disposition to defendant on her claim brought under the Whistleblowers’ Protection Act, MCL 15.362.

In Michigan, unless one of five exceptions specified by statute applies,<sup>2</sup> a governmental agency is “immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.” MCL 691.1407(1). The immunity from tort liability provided by MCL 691.1407(1) is expressed in the broadest possible language and extends to all governmental agencies and applies to all tort liability when the governmental agencies are engaged in the exercise or discharge of a governmental function. *Nawrocki v Macomb Co Rd Comm’n*, 463 Mich 143, 156; 615 NW2d 702 (2000). Further, the exceptions to governmental immunity are to be narrowly construed. *Maskery, supra* at 614.

On appeal, plaintiff concedes that defendant is a governmental agency and that its operations constitute a governmental function. Notwithstanding these concessions, plaintiff argues that, because defendant’s employees’ actions amounted to gross negligence, defendant is not entitled to governmental immunity. We disagree.

Plaintiff erroneously relies on MCL 691.1407(2) for the proposition that a gross negligence exception applies to defendant’s immunity. However, MCL 691.1407(2) confers immunity from tort liability on certain classes of individuals who act on behalf of a governmental agency provided that the individual’s conduct does not amount to gross negligence. Hence, by its plain language, the exception for gross negligence applies only to the immunity conferred on individuals acting on behalf of the agency and not to the agency itself. Likewise, defendant cannot be vicariously liable for the intentional torts of its employees. *Payton v Detroit*, 211 Mich App 375, 393; 536 NW2d 233 (1995).

Therefore, because plaintiff failed to plead in avoidance of defendant’s governmental immunity, *Mack v Detroit*, 467 Mich 186, 198; 649 NW2d 47 (2002), and defendant cannot be held liable for its employee’s intentional torts, *Payton, supra* at 393, summary disposition was appropriately granted.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Michael R. Smolenski  
/s/ Michael J. Talbot

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<sup>2</sup> The five statutory exceptions are: the highway exception, MCL 691.1402, the motor vehicle exception, MCL 691.1405, the public building exception, MCL 691.1406, the hospital exception, MCL 691.1407(4), and the proprietary function exception, MCL 691.1413.