

STATE OF MICHIGAN
COURT OF APPEALS

MARIA LISANTI, Personal Representative of the
Estate of JOSEPH LISANTI,

Plaintiff-Appellant,

v

BURLINGTON MOTOR CARRIERS, INC.,

Defendant,

and

JOHN EDWARDS and MARCIA LINEBAUGH,

Defendants-Appellees,

and

DEPARTMENT OF STATE POLICE, and
FRANK E. ZINCK,

Defendants.

Before: Murphy, P.J., and White and Meter, JJ.

PER CURIAM.

This suit stems from a fatal collision that occurred when a vehicle driven by Joseph Lisanti collided with the rear end of a truck that was stopped on I-94, along with many other trucks that were in line to enter an inspection station for random brake checks being conducted by defendants-appellees (“defendants”) John Edwards and Marcia Linebaugh, state employees. Plaintiff, Lisanti’s surviving spouse, appeals as of right from a judgment granting summary disposition to defendants under MCR 2.116(C)(7), based on the affirmative defense of governmental immunity under MCL 691.1407(1). We affirm.

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March 21, 2006

No. 264954
Ingham Circuit Court
LC No. 03-000956-NI

We review the trial court's grant of summary disposition "de novo to determine if the moving party is entitled to judgment as a matter of law. In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Defendants' summary disposition motion was expressly made under MCR 2.116(C)(7).¹ "[T]o survive a motion for summary disposition [under MCR 2.116(C)(7)], the plaintiff must . . . allege facts justifying application of an exception to governmental immunity." *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992), modified by *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994).

The trial court did not err in dismissing plaintiff's case because she failed to present a case in avoidance of governmental immunity. The general rule is that government employees are immune from suit for actions they take in performance of their duties:

Generally, government officers and employees acting within the scope of their authority are immune from tort liability, provided that their actions are not grossly negligent. 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. Gross negligence is defined by statute as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c) [now MCL 691.1407(7)(a)]. [*Maiden, supra* at 121-122.]

Further, a government employee acting in the scope of his or her authority can only be held liable for an injury if the employee's conduct is the proximate cause of the injury, meaning "the one most immediate, efficient, and direct cause" of the injury. *Robinson v Detroit*, 462 Mich 439, 445-446; 613 NW2d 307 (2000).

As the court below noted, Michigan law charges each driver with the duty of driving at a careful and prudent speed not greater than . . . is reasonable and proper, having due regard to the traffic . . . and of any other condition then existing. A person *shall not drive* a vehicle upon a highway *at a speed greater than that which will permit a stop within the assured, clear distance ahead.* [MCL 257.627(1) (emphasis added).]

The court also correctly noted that Michigan law presumes that the rear vehicle involved in a rear-end collision was driven negligently. MCL 257.402(a). That statute expressly includes collisions involving vehicles "lawfully standing upon any highway." *Id.* The court also reviewed *Hill v Wilson*, 209 Mich App 356; 531 NW2d 744 (1995). In *Hill*, this Court affirmed

¹ Although defendant's summary disposition motion expressly relied on MCR 2.116(C)(7), plaintiff incorrectly asserts on appeal that defendants based their motion on MCR 2.116(C)(10).

the dismissal of a case stemming from a rear-end collision that occurred “shortly after 4:30 p.m. on a work day” when “[t]raffic was heavy,” after a car in front of a motorcycle “stopped abruptly” and the two collided. *Id.* at 357-358. This Court held that “[a]ny motorist in heavy traffic should anticipate that unexpected events may cause drivers ahead to slow down or stop” and that “no record could be developed in this case on which reasonable minds might differ.” *Id.* at 361.

From the undisputed facts in the instant case, involving plaintiff’s decedent driving into the back of a truck that was stopped on an expressway in good weather conditions, it is manifest that the presumption of negligence on the part of the decedent applies. Plaintiff has not overcome this presumption, and it is manifest that the decedent’s negligence in this regard was “the one most immediate, efficient, and direct cause,” *Robinson, supra* at 445-446, of the traffic accident causing the decedent’s death. Any possible negligence by defendants in failing to alleviate the traffic backup by allowing truck drivers to bypass the inspection station cannot support the imposition of liability on them because that negligence would not have been the proximate cause of the harm to plaintiff’s decedent. *Id.* Therefore, the trial court properly granted summary disposition to defendants.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Patrick M. Meter