

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMIE A. BRADLEY,

Plaintiff-Appellant,

v

DETROIT PUBLIC SCHOOLS, NOLAN  
MIDDLE SCHOOL, DARYL MCDUFFIE,  
SHAWN GRANT, JANE DOE and JOHN DOE,

Defendants-Appellees.

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UNPUBLISHED  
January 27, 2011

No. 292749  
Wayne Circuit Court  
LC No. 07-722472-NO

Before: M.J. KELLY, P.J., and K.F. KELLY and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition and dismissing plaintiff's claims of malicious prosecution, defamation, libel, slander, intentional infliction of emotional distress, and negligence. For the reasons set forth in this opinion, we affirm.

On March 30, 2006, plaintiff was involved in an incident at defendant Nolan Middle School during a disciplinary hearing with a teacher, defendant Shawn Grant, and plaintiff's son, a student at the school. According to defendant Grant, plaintiff became upset during the meeting and hit her in the stomach before leaving with his son. Defendant Grant was pregnant at the time. She reported the allegation to the police and plaintiff was prosecuted for assault with intent to do great bodily harm less than murder.<sup>1</sup> A jury found plaintiff not guilty, and plaintiff thereafter filed a civil complaint against defendants. As noted above, the trial court granted defendants' motion for summary disposition as to all defendants and dismissed plaintiff's entire case against them.

We review de novo a trial court's ruling on a motion for summary disposition. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion

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<sup>1</sup> MCL 750.84.

brought under MCR 2.116(C)(10),<sup>2</sup> the court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff first argues that the trial court erred in granting summary disposition to defendant Grant because there are genuine issues of material fact regarding his malicious prosecution claim. To substantiate this claim, plaintiff had the burden of proving (1) that defendant Grant initiated or maintained a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that defendant Grant lacked probable cause for her actions, and (4) that her actions were undertaken with malice or a purpose in instituting the criminal claim other than bringing plaintiff to justice. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998); *Rivers v Ex-Cell-O Corp*, 100 Mich App 824, 832; 300 NW2d 420 (1980). The malicious prosecution statute, MCL 600.2907, is a general statute that gives broad authority for many persons and entities to be sued. *Payton v Detroit*, 211 Mich App 375, 393; 536 NW2d 233 (1995). Because of the balancing of the interests involved, actions for malicious prosecution have been limited by restrictions that make them difficult to maintain. *Matthews*, 456 Mich at 377.

We first address the trial court's comments regarding the fact that it was the prosecutor's decision, not Grant's, to bring a criminal charge against plaintiff. These comments relate to plaintiff's burden of establishing an issue of material fact regarding whether Grant or any of the other defendants initiated or maintained a criminal prosecution against him. *Matthews*, 456 Mich at 378. Regarding this element of malicious prosecution, this Court has stated:

Due to the important state policy of encouraging citizens to report possible criminal violations within their knowledge, a defendant cannot be held liable for malicious prosecution unless he took some active role in instigating the prosecution. If the defendant, as complainant, has made full and fair disclosure of all of the material facts within his knowledge to the prosecutor, and the prosecuting attorney recommends a warrant, no recovery may be had against said defendant, for under such circumstances the complaint has not 'instituted' the charge. [*Rivers*, 100 Mich App at 832-833.]

Plaintiff has failed to bring to our attention any facts which could lead us to conclude that Grant did not make a full and fair disclosure or all material facts known to her at the time the warrant was issued. Rather, plaintiff asserts that Grant's statements seemingly vary in their specificity as to the assault. Plaintiff does not allege, and there exists no factual support to

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<sup>2</sup> Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). Because the trial court relied on matters outside the pleadings, MCR 2.116(C)(10) is the appropriate basis for review. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457; 750 NW2d 615 (2008).

conclude, that Grant lied to the authorities. Absent a showing that Grant failed to make a full and fair disclosure of all the material facts known to her, we must find, as a matter of law, that Grant did not “institute” the charge against plaintiff. See *id.*

Even if we were to conclude that defendant Grant made less than a full and fair disclosure of all material facts to the prosecutor, our review of the record leads us to conclude that the decision to prosecute this matter constituted an action independent of any of the defendants’ actions. Defendant Grant made a police report which was followed by an investigation by the Wayne County Prosecutor’s Office. An investigator from the Wayne County Prosecutor’s office took a statement from defendant Grant and the student who was present at the time the alleged assault occurred.<sup>3</sup> Following review of the information, the Wayne County Prosecutor’s office authorized the warrant. Therefore, we conclude that the decision to issue the warrant was based on an independent review by the Wayne County Prosecutor’s Office. In *Matthews*, 465 Mich at 386, our Supreme Court stated: “The independent exercise of prosecutorial discretion establishes that the private defendant did not initiate the prosecution. The prosecutor’s independent investigation is not in law attributable to the private defendants.” Accordingly, plaintiff cannot maintain an action against Grant for malicious prosecution because she did not initiate or maintain the prosecution as a matter of law based on the Wayne County Prosecutor’s independent investigation and decision to prosecute plaintiff.

We next address plaintiff’s contention that a question of fact exists regarding whether defendant Grant lacked probable cause to undertake her actions. Lack of probable cause is a question of law to be determined by the court, unless “the facts on which the issue turns are in dispute,” in which case “the question is for the jury.” *Matthews*, 465 Mich at 381-382. Plaintiff incorrectly asserts that the “precise issue” in determining the existence of probable cause is found in *Rivers*, namely, that there must have been a full and fair disclosure of all material facts within the defendant’s knowledge. The actual standard to be employed is stated in *Matthews*:

“A person may have probable cause for making a criminal complaint from information received from others merely; but in such case, he must honestly believe the information there obtained to be true, and the information must be of that character, and obtained from such sources, that business men generally, of ordinary care, prudence, and discretion, would act upon it under such circumstances, believing it to be reliable. But a man’s mere belief that another is guilty is not probable cause, unless that belief is founded upon reasonable grounds of suspicion, or upon information of such a reliable kind, and from such reliable sources . . . such as would induce an impartial and reasonable mind to believe in the guilt of the accused.” [*Matthews*, 465 Mich at 388, quoting *Wilson v Bowen*, 64 Mich 133, 138; 31 NW 81 (1887).]

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<sup>3</sup> The relevant portion of the student’s statement read: “Then the man hit Ms. Grant in the stomach and pushed her back.”

In this case, the Wayne County Prosecutor's independent investigation was based on information provided by defendant Grant and a student. The student's statement corroborated defendant Grant's allegation that plaintiff had assaulted her. The information available to the Wayne County Prosecutor at the time that the charges were instituted would cause a reasonable mind to believe in the guilt of the accused. As correctly observed by the trial court, there was never an assertion from defendant Grant, or any person deposed in this case, that Grant had provided false testimony to the police. Thus, even if we were to assume that there was sufficient legal evidence that Grant or any of the named defendants initiated or maintained the prosecution, taken in the light most favorable to the plaintiff, there is simply no basis to conclude that a reasonable person would not have believed that plaintiff committed an assault. There also was no evidence that the prosecution was initiated other than at the sole discretion of the Wayne County Prosecutor following an independent investigation. Accordingly, the trial court's finding that there was no genuine issue of material fact regarding the malicious prosecution claim as to all defendants was not in error.

We also reject plaintiff's argument that the trial court incorrectly found that plaintiff touched Grant in some way and based its decision to grant summary disposition of his malicious prosecution claim based on this erroneous finding. The trial court clearly indicated that the issue of the touching did not determine the outcome of the motion. "That's not the gravamen of this case," the court stated. The issue on which summary disposition was based was whether Grant's disclosure to the police was fair and full, not whether plaintiff assaulted Grant. The trial court noted that Grant never stated that she was not touched, and noted the importance of the testimony of the witness in determining whether Grant's disclosure to the police was full and fair. The trial court's finding that there was no genuine issue of material fact regarding the malicious prosecution claim was not in error.

We next address plaintiff's argument that defendant Detroit Public Schools was not immune from tort liability. The applicability of governmental immunity is a question of law that is reviewed de novo. *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004). Governmental immunity from tort liability is governed by the operation of MCL 691.1407. Immunity is broadly interpreted and exceptions to it are narrowly construed. *Frohriep v Flanagan*, 275 Mich App 456, 468; 739 NW2d 645 (2007), rev'd in part on other grounds 480 Mich 962 (2007). The governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, grants immunity from tort liability to the state, as well its agencies when they are engaged in the exercise of a governmental function, except where the Legislature has expressly granted an exception. MCL 691.1407(1).<sup>4</sup> A school district is a "level of government . . . ." *Nalepa v*

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<sup>4</sup> "The statutory exceptions to the governmental immunity provided to the state and its agencies are the highway exception, MCL 691.1402; the motor-vehicle exception, MCL 691.1405; the public-building exception, MCL 691.1406; the proprietary-function exception, MCL 691.1413; the governmental-hospital exception, MCL 691.1407(4); and the sewage-disposal-system-event exception, MCL 691.1417(2) and (3)." *Odom v Wayne Co*, 482 Mich 459, 478; 760 NW2d 217 (2008).

*Plymouth-Canton Comm Sch Dist*, 207 Mich App 580, 587; 525 NW2d 897 (1994). This Court has observed that “[t]o determine whether a governmental agency is engaged in a governmental function, the focus must be on the general activity, not the specific conduct involved at the time of the tort.” *Tate v Grand Rapids*, 256 Mich App 656, 661; 671 NW2d 84 (2003), quoting *Pardon v Finkel*, 213 Mich App 643, 649; 540 NW2d 774 (1995) (alteration in *Tate*). Here, Detroit Public Schools was engaged in administering the school district, or, alternatively, facilitating a meeting where plaintiff and his son conferenced with school officials regarding his education. The operation of a public school is a governmental function. *Stringwell v Ann Arbor Pub Sch Dist*, 262 Mich App 709, 712; 686 NW2d 825 (2004).

According to plaintiff, the Detroit Public Schools is not immune from vicarious liability for the intentional torts of its employees because intentional torts are not in the exercise of a governmental function. The commission of an intentional tort is not in the exercise or discharge of a governmental function. *Moore v Detroit*, 128 Mich App 491, 497; 340 NW2d 640 (1983); *Graves v Wayne Co*, 124 Mich App 36, 41; 333 NW2d 740 (1983). Under the clear language of MCL 691.1407(1), however, governmental entities are immune from liability for the torts of its employees when they are engaged in the exercise of a governmental function, except where the Legislature has expressly granted an exception to immunity. There is no exception in the governmental immunity statute for intentional torts. *Payton*, 211 Mich App at 392, citing *Smith v Dep’t of Pub Health*, 428 Mich 540, 609; 410 NW2d 749 (1987), *aff’d sub nom Will v Michigan Dep’t of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989). As discussed above, the Detroit Public Schools was engaged in a governmental function at the time of the alleged intentional torts. Because there is no exception in the governmental immunity statute for intentional torts, the school system was immune from liability from any intentional torts committed by its employees. See *Payton*, 211 Mich App at 393 (concluding that a governmental unit was entitled to immunity “because it cannot be held liable for the intentional torts of its employees”).

Plaintiff additionally argues that the Detroit Public Schools should be held vicariously liable for the actions of the individual defendants based on an agency relationship between the school system and its employees. However, as discussed, MCL 691.1407(1) provides that governmental entities are immune from liability for the torts of its employees when they are engaged in the exercise of a governmental function, as is the case here. To allow liability to be imposed under an agency theory would subvert the purpose of the statutory grant of immunity.

We need not address plaintiff’s argument that the trial court erred in concluding that Nolan Middle School was not a legal entity with the capacity to be sued and in granting summary disposition on that basis. Even assuming that Nolan Middle School is a legal entity that can be sued, it is a governmental agency engaged in the exercise of a governmental function and, for the reasons outlined above, it is immune from plaintiff’s intentional tort claims.

We next address plaintiff’s argument that the trial court erred in ruling that defendant Grant was entitled to individual governmental immunity. Here, defendant Grant was alleged to have committed the intentional torts of malicious prosecution, defamation, and intentional infliction of emotional distress. For an intentional tort, Grant must establish that she is entitled to individual governmental immunity by showing the following:

(a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,

(b) the acts were undertaken in good faith, or were not undertaken with malice, and

(c) the acts were discretionary, as opposed to ministerial. [*Odom*, 482 Mich at 480, citing *Ross*, 420 Mich at 633-634.]

Plaintiff alleges that defendant Grant falsely filed a police report and yelled to members of the school staff that plaintiff struck her. Plaintiff argues that these acts were not in the scope of Grant's employment and were made for the purpose of making sure plaintiff would go to jail. However, the parties agree that the incident occurred at the conclusion of a meeting regarding the education of plaintiff's son, thus during the course of employment. There was support that the alleged acts were undertaken in good faith, or at least not with malice, as both Grant and a student witness testified that there was significant physical contact from plaintiff to Grant, and that Grant screamed from the pain of the contact. There was no argument that the acts of Grant were ministerial. Moreover, it would be reasonable for Grant to believe that her conduct of reporting an alleged assault made upon her during the course of employment was within the scope of her authority. The trial court did not err in ruling that Grant had individual immunity.

We finally address plaintiff's argument that the trial court erred in granting summary disposition because it found that defendant McDuffie did not have a duty to investigate Grant's allegations. Because all of the allegations raised against McDuffie involve assertions of negligent, not grossly negligent, conduct, plaintiff's claim could not survive the qualified individual governmental immunity afforded to McDuffie. Governmental immunity for lower-ranking public officials accused of negligent torts is determined by operation of MCL 691.1407(2), which provides as follows:

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, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer 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 officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

According to the clear language of the statute, McDuffie must have engaged in grossly negligent conduct that was the proximate cause of any injury to plaintiff. Here, there was no such allegation or evidence and the claim must fail. The trial court's grant of summary disposition to McDuffie was not in error.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello