

STATE OF MICHIGAN
COURT OF APPEALS

YAKETA ANNETTE LLOYD and DENNIS
REDDEN,

UNPUBLISHED
April 6, 2006

Plaintiffs-Appellants,

v

DARRYL F. CROOM, and CITY OF DETROIT,
DEPARTMENT OF TRANSPORTATION,

No. 265763
Wayne Circuit Court
LC No. 03-310642-NI

Defendant-Appellees,

and,

JEFFREY JAMES BRIDGES and JEFFREY
LAWRENCE BRIDGES,

Defendants.

Before: Smolenski, PJ., and Owens and Donofrio, JJ.

PER CURIAM.

Plaintiffs¹ appeal by right the trial court's order granting summary disposition in favor of defendants Darryl Croom and the City of Detroit, Department of Transportation, on governmental immunity grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of a June 5, 2002 traffic accident that occurred near the intersection of Van Dyke and Outer Drive in the City of Detroit at approximately 7:30 a.m. Croom was driving a city bus southbound on Van Dyke. Defendant Jeffrey James Bridges² was traveling

¹ Plaintiff Dennis Redden's claims are derivative of plaintiff Yaketa Lloyd's claims. We refer to Lloyd as "plaintiff" in the remainder of this opinion.

² Defendant Jeffrey Lawrence Bridges was the owner of the automobile driven by Jeffrey James Bridges. Plaintiffs settled their claims against the Bridges.

westbound in the center lane of Outer Drive, a three-lane roadway. Plaintiff was driving westbound in the left lane of Outer Drive next to Bridges. As the bus approached Outer Drive, the signal directing traffic through the intersection turned red for southbound Van Dyke traffic. When Croom braked for the light, the bus entered the intersection. Upon seeing the bus, Bridges, who was nearing the intersection, swerved his vehicle to the left to avoid, he believed, being hit by the bus. When Bridges swerved, his vehicle struck plaintiff's vehicle. Plaintiff's vehicle left the roadway and hit a utility pole on the median. Plaintiff suffered severe ankle injuries in the accident. It is undisputed that the bus was not physically involved in the accident.

Plaintiffs brought suit against Croom and the City of Detroit. With respect to Croom, plaintiff alleged gross negligence in an attempt to rely on the gross negligence exception of MCL 691.1407(2). Plaintiffs contended that the City was liable pursuant the motor vehicle exception, MCL 691.1405. Croom and the City moved for summary disposition on the grounds of governmental immunity pursuant to MCR 2.116(C)(7). They argued that because Croom's conduct was not "the" proximate cause of plaintiffs' injuries, he was entitled to immunity, and that the motor vehicle exception to governmental immunity did not apply to impose liability upon the City. The trial court agreed and granted summary disposition in their favor.

We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Determination of the applicability of the highway exception is a question of law that we also review de novo. *Meek v Dep't of Transportation*, 240 Mich App 105, 110; 610 NW2d 250 (2000). When reviewing a motion for summary disposition based on governmental immunity, we consider all documentary evidence submitted by the parties. *Dampier v Wayne Co*, 233 Mich App 714, 720; 592 NW2d 809 (1999). Well-pleaded allegations are accepted as true and construed in favor of the nonmoving party. *Id.* A plaintiff must allege facts warranting application of an exception to governmental immunity to survive a motion for summary disposition under MCR 2.116(C)(7). *Id.* at 720-721.

The governmental immunity act, MCL 691.1401 *et seq.*, provides that a governmental agency is immune from tort liability while engaging in a governmental function unless a specific exception applies. Plaintiffs assert that the motor vehicle exception to governmental immunity applies in this case. MCL 691.1405 states:

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, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.293 of the Compiled Laws of 1948.

Plaintiffs also challenge the grant of summary disposition in favor of Croom. At the time of the accident, MCL 691.1407(2) stated in regard to the immunity afforded a governmental employee:

(2) 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. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Plaintiffs argue that the trial court erred when it found that Coombs was not the proximate cause of the accident, and thus not subject to liability pursuant to MCL 691.1407(2). In *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), our Supreme Court interpreted the proximate cause requirement of MCL 691.1407(2)(c) in instances in which allegedly innocent passengers in a fleeing vehicle were injured during a police chase. The Supreme Court noted that the Legislature specifically used the article "the," as opposed to the article "a," to modify the phrase "proximate cause," and opined that such a choice "clearly evinces an intent to focus on one cause." *Id.* at 458-459. Consequently, the Court concluded:

the Legislature provided tort immunity for employees of governmental agencies unless the employee's conduct amounts to gross negligence that is the one most immediate, efficient, and direct cause of the injury or damage, i.e., the proximate cause. [*Id.* at 462.]

In *Curtis v Detroit*, 253 Mich App 555; 655 NW2d 791 (2002), this Court applied *Robinson, supra*, to a factual situation somewhat similar to the instant case. In *Curtis, supra*, a City paramedic vehicle was traveling on a public road in an emergency capacity. Driver Jonathan Kells abruptly changed lanes, pulled his vehicle over to the curb, and stopped to yield to the paramedic vehicle. After Kells stopped, the plaintiff rear-ended Kells' vehicle and suffered serious injury. The plaintiff brought suit against the City and the driver of the paramedic vehicle. This Court, applying *Robinson, supra*, held that the trial court properly granted summary disposition in favor of the driver of the paramedic vehicle because "the most immediate, efficient, and direct cause of plaintiff's injuries was Kells' abrupt movement and stopping of his vehicle." *Id.* at 563.

Applying *Robinson, supra*, and *Curtis, supra*, to the instant case, we hold that the trial court properly granted summary disposition in favor of Croom. Croom's actions arguably set in motion a chain of events that led to the collision. He may have been "a" proximate cause of plaintiff's injuries. However, Croom's actions were not "the" proximate cause of plaintiff's injuries as that phrase has been interpreted in *Robinson, supra*, and *Curtis, supra*. Despite Croom's initial actions, plaintiff was not injured until her vehicle was directly struck by Bridges' vehicle and forced into a utility pole. In this case, Bridges' abrupt "swerving" was a more "direct" and "immediate" cause of plaintiff's injuries than was Croom's "entry into the intersection." Therefore, any negligence on Croom's part was too remote to overcome the grant

of immunity provided in MCL 691.1407. We affirm the trial court's grant of summary disposition in favor of Croom.

Plaintiffs also argue that the trial court erred in its application of the motor vehicle exception to find that the City was immune from liability pursuant to MCL 691.1405. We disagree. Even assuming that Croom's operation of the bus was negligent, plaintiffs have failed to present evidence of injuries "resulting from" Croom's operation of the bus. *Robinson, supra*, also addressed the motor vehicle exception. In particular, our Supreme Court interpreted the "resulting from" language of the exception in the context of "police chase" cases, i.e., where a "police chase results in injuries or death to a person other than the driver of the fleeing vehicle." *Id.* at 444. The Supreme Court held that:

plaintiffs' injuries did not, as a matter of law, result from the operation of the police cars where the police cars did not hit the fleeing car or physically cause another vehicle or object to hit the vehicle that was being chased or physically force the vehicle off the road or into another vehicle or object. [*Id.* at 445. Footnote omitted.]

The *Robinson* Court specifically stated that the exception was to be narrowly construed, and noted that the "resulting from" standard requires something more stringent than a traditional "but for" standard of causation. *Id.* at 456-457, 457 n 14. The narrowness of the *Robinson* Court's interpretation is illustrated by the following discussion:

The dissent suggests that there should be liability where a police vehicle forces an innocent intervening car to hit the fleeing vehicle causing injury to an innocent person in the fleeing vehicle. However, we do not believe that such a scenario would fit within a narrow reading of the statutory requirement of "resulting from." The dissent's position would be more in accord with a proximate cause "but for" analysis. However, the statute does not say that governmental agencies are liable for injuries or property damage "proximately caused" by the negligent operation of a motor vehicle. Rather, the statute says the injuries or property damage must result from the negligent operation of a motor vehicle. Because the Legislature did not utilize proximate cause language, we will not import such an analysis here. [*Robinson, supra* at 457 n 14.]

In *Curtis, supra*, this Court considered whether the *Robinson, supra*, interpretation of the motor vehicle exception was applicable outside of the "police chase" context. This Court answered in the affirmative, stating:

While there is no question that the facts of *Robinson* involved a police chase, or that the Court referenced those facts as well as the facts of other similar cases at several points in its opinion, there is nothing in the analysis employed in *Robinson* to suggest that its holding is to be limited to cases involving police pursuit of a fleeing vehicle. Although other aspects of the Court's opinion hinged on policy considerations exclusive to police pursuits, i.e., whether the police owe a duty to passengers in a fleeing vehicle, see [*Robinson, supra*] at 450-453, the holding of the Court on the question at issue here is broader. Because the statute allows liability only for injuries "resulting from" the negligent operation of a government-owned vehicle, as opposed to a lesser "but for" standard, the motor

vehicle exception will not apply unless there is physical contact between the government-owned vehicle and that of the plaintiff, or the government-owned vehicle *physically forced the plaintiff's vehicle off the road or into another vehicle or object*. This interpretation of the language used by the Legislature in drafting the motor vehicle exception is not limited to police chases. Under the narrow reading given the exception by the Court in *Robinson*, the nature of the governmental vehicle's use is immaterial. [*Id.* at 561-562 (emphasis added).]

The *Curtis* Court went on to hold that, because the paramedic vehicle was not “physically involved” in causing 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,” the trial court properly granted summary disposition in favor of the defendant city. *Id.* at 562. In so doing, the *Curtis* Court focused on the specific acts of physical involvement outlined in *Robinson, supra*, as well as the intervening actions of Mr. Kells, in narrowly interpreting the exception:

Accordingly, we conclude that the trial court correctly read *Robinson* to require that the emergency vehicle at issue here be physically involved in the collision that caused plaintiff's injuries, either by hitting plaintiff's vehicle or by physically forcing that vehicle off the road or into another vehicle or object. There was no evidence of such involvement in this case. Even when viewed in a light most favorable to plaintiff, the evidence indicates that Kells moved his vehicle into plaintiff's lane and stopped, not because he was physically forced to do so by Lawson, but because he wished to leave the intersection open for the approaching emergency vehicle. Moreover, *even assuming that Kells was forced to stop in order to avoid colliding with the paramedic unit, there is nothing in the evidence offered below to indicate that Kells was required to enter plaintiff's lane in order to do so*. In other words, Kells' decision to abruptly change lanes and stop was one of many options available to him; it was not physically required by the alleged negligent operation of the emergency vehicle. Cf. *Regan v Washtenaw Co Bd of Co Road Comm'rs*, 249 Mich App 153, 161; 641 NW2d 285 (2002) (operation of a county vehicle caused the plaintiff's vehicle to swerve and ultimately collide with the county vehicle). Summary disposition of plaintiff's claims against the city was proper. [*Curtis, supra* at 562 (emphasis added).]

Applying *Robinson, supra*, and *Curtis, supra*, to the facts of this case, we conclude that the trial court did not err when applying the motor vehicle exception. There is no evidence that the bus was “physically involved” in causing plaintiff’s injuries. The bus did not physically contact plaintiff’s car or Bridges’ car. While plaintiff maintains that the bus “physically forced” Bridges into her, we find that statement inaccurate. Bridges may have thought that the bus would strike his car or that he would strike the bus. However, Bridges did not unequivocally testify that the bus had even reached his lane when he decided to swerve. And as with the driver’s decision in *Curtis, supra*, “even assuming that he was forced to swerve in order to avoid colliding with the bus, “there is nothing in the evidence offered below to indicate that [he] was required to enter plaintiff’s lane in order to do so.” *Curtis, supra* at 562. Bridges admitted that he knew plaintiff was present in the adjacent lane. His decision to swerve his vehicle was but one of his options, including speeding up or coming to a stop. The bus may have presented an obstacle for Bridges to avoid, but it did not contact plaintiff’s car or “physically force plaintiff’s vehicle off of the road or into another vehicle or object.” *Id.* at 561-562. It was Bridges’

vehicle, not the City's vehicle, that "physically forced" plaintiff's vehicle off the road and into the pole. Consequently, we conclude that, as a matter of law, plaintiffs have not suffered injuries "resulting from" any negligent operation of the city bus as that term has been narrowly defined by *Robinson, supra*, and *Curtis, supra*. The trial court did not err when it granted summary disposition in favor of the City.

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald S. Owens

/s/ Pat M. Donofrio