

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHLEEN OVERALL,  
Plaintiff-Appellee,

UNPUBLISHED  
April 26, 2007

v

BOB HOWARD and LINCOLN  
CONSOLIDATED SCHOOLS,

No. 274588  
Washtenaw Circuit Court  
LC No. 05-001188-NI

Defendants-Appellants.

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Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that defendant Howard was entitled to summary disposition with respect to his individual liability as a government employee. Indeed, even plaintiff acknowledges that Howard was not grossly negligent within the meaning of MCL 691.1407. However, I respectfully dissent from the majority's conclusion that defendant Lincoln Consolidated Schools was not entitled to summary disposition on the basis of governmental immunity.

Our Supreme Court has defined a motor vehicle, for purposes of governmental immunity, as an automobile, truck, bus, or similar motor-driven conveyance. *Stanton v Battle Creek*, 466 Mich 611, 618; 647 NW2d 508 (2002). The *Stanton* Court chose this definition of motor vehicle for the reason that it reflected the Legislature's intention that immunity is to be construed broadly, and that the exceptions to immunity are to be construed narrowly. *Id.* The *Stanton* Court specifically held that a forklift is not a motor vehicle for purposes of MCL 691.1405. *Id.*

I recognize that this Court has held that devices such as a hydraulic excavator, a tractor mower, and a broom tractor are motor vehicles for purposes of MCL 691.1405. See *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 277-278; 705 NW2d 136 (2005), rev'd in part on other grounds *Kik v Sbraccia*, 272 Mich App 388; 726 NW2d 450 (2006); *Regan v Washtenaw Co Bd of Rd Commrs (On Remand)*, 257 Mich App 39, 47-51; 667 NW2d 57 (2003). However, the vehicles at issue in *Wesche* and *Regan* were motor-vehicle-like conveyances that were designed for operation on or alongside the roadway, and each of these conveyances generally resembled an automobile or truck. In contrast, the forklift at issue in *Stanton* was not similar to an automobile, bus, or truck, and was not designed for operation on or alongside the roadway. *Stanton, supra* at 618.

I conclude that the golf cart in the instant case more closely resembled the forklift at issue in *Stanton* than it did the conveyances at issue in *Wesche* and *Regan*. Under the reasoning of *Stanton*, the golf cart did not meet the definition of a motor vehicle. The motor vehicle exception of MCL 691.1405 should not have been applied in this case, and the school district was entitled to summary disposition.

/s/ Kathleen Jansen