STATE OF MICHIGAN

COURT OF APPEALS

HODA DANNAOUI, Individually and as Next Friend of ABDUL-SATTAR DANNAOUI, and MERWAN DANNAOUI,

Plaintiffs-Appellees,

v

CRESTWOOD SCHOOL DISTRICT, LAURINE E. VAN VALKENBURG, and ALICE RIENKE,

Defendants-Appellants,

and

SUKIAINA BADAWI, also known as, JANE DOE ZULCANNA, and BRITTANY BERGER, also known as, JANE DOE BERGER,

Defendants.

UNPUBLISHED
August 26, 2021

No. 354337
Wayne Circuit Court
LC No. 19-016794-NO

HODA DANNAOUI, Individually and as Next Friend of ABDUL-SATTAR DANNAOUI, and MERWAN DANNAOUI,

Plaintiffs-Appellees,

v

CRESTWOOD SCHOOL DISTRICT, LAURINE E. VAN VALKENBURG, and ALICE RIENKE,

Defendants-Appellants,

and

No. 354344
Wayne Circuit Court
LC No. 19-016794-NO

SUKIAINA BADAWI, also known as, JANE DOE ZULCANNA, and BRITTANY BERGER, also known as, JANE DOE BRITTANY,

Defendants.

Before: CAVANAGH, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

In these consolidated appeals[1] concerning the Governmental Tort Liability Act (GTLA), MCL 691.1401, *et seq.*, defendants,[2] Crestwood School District (the District), Laurine E. Van Valkenburg, and Alice Rienke, appeal as of right the trial court's partial denial of their motion for summary disposition under MCR 2.116(C)(7) and (8). Defendants also appeal by leave granted[3] the trial court's same order granting, in part, plaintiffs', Hoda Dannaoui's, individually and as next friend of Abdul-Sattar Dannaoui, and Merwin Dannaoui's, motion to amend their complaint. We reverse the trial court's decisions.

I. BACKGROUND FACTS

This case arises from a March 2018 incident when plaintiffs allege that defendant, Sukiaina Badawi, taped Abdul-Sattar's mouth shut and threw away his lunch. Badawi and defendant Brittany Berger then laughed at him. Abdul-Sattar, a five-year-old preschool student attending the District's Great Start Readiness Program (GSRP), had no food for the remainder of the school day. Rienke was the preschool's principal. Rienke reported to Van Valkenburg, who was the superintendent of the District. Badawi and Berger (collectively, "the paraprofessionals") were paraprofessionals in Abdul-Sattar's classroom.

The alleged incident was reported to Rienke, who placed Badawi on administrative leave and had her removed from the school building. Rienke informed Abdul-Sattar's parents (Hoda and Merwan) of the allegations, and Hoda met with Rienke several times to discuss the incident. Plaintiffs assert during one of these meetings, Berger offered Abdul-Sattar a bracelet to convince him not to tell the truth about the incident. According to plaintiffs, Rienke believed Abdul-Sattar was lying about the incident, yet Hoda became aware of two similar incidents involving the

---

[1] *Dannaoui v Crestwood Sch Dist*, unpublished order of the Court of Appeals, entered October 13, 2020 (Docket No. 354337); *Dannaoui v Crestwood Sch Dist*, unpublished order of the Court of Appeals, entered October 13, 2020 (Docket No. 354344).

[2] Defendants, Sukiaina Badawi, also known as Jane Doe Zulcanna, and Brittany Berger, also known as Brittany Jane Doe, are not parties to this appeal. Therefore, we refer to "defendants" solely with respect to Crestwood School District, Laurine E. Van Valkenburg, and Alice Rienke.

[3] *Dannaoui v Crestwood Sch Dist*, unpublished order of the Court of Appeals, entered September 29, 2020 (Docket No. 354344).

paraprofessionals. Plaintiffs further contend that Rienke was a friend of Berger's, and that Rienke told Hoda that she believed Berger would not participate in this incident.

Plaintiffs filed this action alleging assault and battery, intentional infliction of emotional distress, false imprisonment, conversion, negligent supervision of a subordinate, and violations of the Revised School Code, MCL 380.1, *et seq.* Defendants moved for summary disposition under MCR 2.116(C)(7) and (8), arguing in pertinent part that they were immune from liability and that plaintiffs' complaint failed to state a claim in avoidance of governmental immunity. About the same time, plaintiffs moved to amend their complaint to correct the names of the paraprofessionals, and to perfect the pleading requirements of their claims. The trial court granted, in part, and denied, in part, defendants' motion for summary disposition, stating that while defendants were entitled to immunity on plaintiffs' negligence claims, defendants were not necessarily entitled to immunity for the intentional tort claims. The trial court dismissed plaintiffs' claims under the Revised School Code, stating the Code did not afford plaintiffs a private right of action. With respect to plaintiffs' motion to amend, the trial court granted, in part, and denied, in part, plaintiffs' motion to amend, allowing them to amend their complaint to change the paraprofessionals' names and to amend their intentional tort allegations. These appeals followed.

II. GOVERNMENTAL IMMUNITY

Defendants argue the trial court erred in denying their motion for summary disposition because the District, Van Valkenburg, and Rienke were entitled to governmental immunity.

A. STANDARD OF REVIEW

"We review de novo both a trial court's decision to grant or deny a motion for summary disposition and questions of statutory interpretation." *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009). And, "[t]he question whether an entity has immunity is one of law, which we review de novo." *Co Rd Ass'n of Mich v Governor*, 287 Mich App 95, 118; 782 NW2d 784 (2010).

Though it is not clear under which standard, MCR 2.116(C)(7) or (8), the trial court denied defendants' motion for summary disposition, "MCR 2.116(C)(7) permits summary disposition because of release, payment, prior judgment, [or] immunity granted by law." *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015), citing MCR 2.116(C)(7). "When [a trial court] grants a motion under MCR 2.116(C)(7), [it] should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the nonmoving party." *McLain v Lansing Fire Dep't*, 309 Mich App 335, 340; 869 NW2d 645 (2015) (citations omitted).

"MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted." *Spiek v Mich Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) (citation omitted). "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." *Id.* (quotation marks and citation omitted).

When considering the meaning of a statute, this Court starts by "first examining the plain language of the statute. Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning. When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted." *Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011).

B. LAW AND ANALYSIS

We consider each defendant's claim of immunity separately.

1. THE DISTRICT'S IMMUNITY

Defendants argue the trial court erred in denying their motion for summary disposition because the District, as a governmental agency, was absolutely immune from liability for the alleged intentional torts of its employees. We agree.

MCL 691.1407(1) states, in part, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." "The immunity from tort liability provided by the governmental immunity act is expressed in the broadest possible language; it extends to all governmental agencies and applies to all tort liability when governmental agencies are engaged in the exercise or discharge of governmental functions." *McLean v McElhaney*, 289 Mich App 592, 598; 798 NW2d 29 (2010). "[A] school district is a level of government of the type contemplated by the Legislature in the statute regarding absolute governmental immunity." *Nalepa v Plymouth-Canton Community Sch Dist*, 207 Mich App 580, 587; 525 NW2d 897 (1994), aff'd on other grounds *Nalepa v Encyclopedia Britannica Ed Corp*, 450 Mich 934 (1995). And, "[t]he 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). In determining whether an activity is a "governmental function," courts should focus on "the general nature of the activity of its employees, rather than the specific conduct of its employees." *Payton v Detroit*, 211 Mich App 375, 392; 536 NW2d 233 (1995). There are six statutory exceptions to the GTLA which must be narrowly construed.[4] *Wesche v Mecosta Co Rd Comm*, 480 Mich 75, 84; 746 NW2d 847 (2008); *McLean*, 289 Mich App at 598. "Governmental immunity is not an affirmative defense proffered by governmental defendants, but rather is a characteristic of government; therefore a party suing a unit of government must plead in avoidance of governmental immunity." *Kendricks v Rehfield*, 270 Mich App 679, 681; 716 NW2d 623 (2006) (quotation marks and citation omitted). "To be effective, such pleading must state a claim that fits within a

[4] "The six statutory exceptions 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)." *Wesche*, 480 Mich at 84 n 10.

statutory exception to immunity or include facts that indicate the action at issue was outside the exercise of a governmental function." *Id.*

In denying defendants' motion for summary disposition as to the District's potential liability for the paraprofessionals' alleged intentional torts, the trial court relied on this Court's analysis in *McIntosh v Becker*, 111 Mich App 692, 700; 314 NW2d 728 (1981), for the proposition that "under certain circumstances a governmental unit may be liable under the doctrine of respondeat superior for an agent's intentional misconduct." The trial court concluded that summary disposition was not appropriate as to plaintiffs' intentional tort claims, reasoning that "if the acts complained of are outside the exercise of a governmental function, if proven, neither the school district nor the teachers would be immune from liability." In other words, while the trial court agreed the District was a "governmental agency," under MCL 691.1407(1), the trial court denied summary disposition because it concluded "the alleged acts themselves must . . . still be evaluated" to determine whether the acts were "non-governmental" functions. The trial court's reasoning is problematic in several ways.

First, in denying defendants' motion for summary disposition, the trial court stated:

> To summarize, if Defendants can show that the employees reasonably believed that they acted within the scope of their employment when they committed the acts of taping a student's mouth shut and discarding his lunch, then the employees are immune. Conversely, if Plaintiffs can show that the conduct constitutes gross negligence, Defendants will not be immune. In the case before the Court, if proven, the intentional acts complained of, i.e., taping Abdul-Sattar's mouth shut, discarding his lunch, and laughing at him are clearly outside the exercise or discharge of a governmental function.

The trial court incorrectly inserted a question of fact into the issue of the District's immunity. As noted, "[t]he question whether an entity has immunity is one of law . . . ." *Co Rd Ass'n of Mich*, 287 Mich App at 118. Thus, the question is not whether the facts evince the District's immunity, but whether the District's status as a governmental entity entitles it to immunity.

Second, the trial court failed to consider plaintiffs' pleading requirements with respect to defendants' assertion of immunity under the GTLA. The onus is not on the governmental entity to have pleaded immunity, but rather that obligation rests on a plaintiff to "include facts that indicate the action at issue was outside the exercise of a governmental function." *Kendricks*, 270 Mich App at 681. Plaintiffs' complaint includes a number of platitudes that allege the District's obligations in operating the school, yet none explain how the District's actions were "outside the exercise of a governmental function." *Id.* Indeed, plaintiffs impliedly acknowledge the District was engaged in a governmental function by stating the District's obligations in operating the school.

Third, the trial court incorrectly considered the "governmental function" of the District. The focus of this analysis looks to "the general nature of the activity of its employees, rather than the specific conduct of its employees." *Payton*, 211 Mich App at 392. The trial court found that "taping Abdul-Sattar's mouth shut, discarding his lunch, and laughing at him are clearly outside the exercise or discharge of a governmental function." However, in making this assertion, the trial

court wrongly focused on the "specific nature" of the paraprofessionals' conduct rather than "general nature of the activity of its employees." *Id.*

Fourth, the trial court's reliance on *McIntosh*, 111 Mich App at 700, is misplaced. *McIntosh* was decided in 1981. Cases decided before November 1, 1990 are not binding precedent on this Court. MCR 7.215(J)(1); *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 444 n 4; 773 NW2d 29 (2009). Thus, we cannot rely on *McIntosh* for anything more than its persuasiveness—which we conclude is minimal. While *McIntosh* appears to create an opening for plaintiffs to circumvent immunity for governmental agencies, other recent and binding cases are unequivocal. See e.g., *Payton*, 211 Mich App at 393 ("[E]ven if the officers were not engaged in the exercise of a governmental function within the scope of their employment, the city is nonetheless entitled to immunity because it cannot be held liable for the intentional torts of its employees."); *Alexander v Riccinto*, 192 Mich App 65, 71-72; 481 NW2d 6 (1991) ("If the factfinder determines that defendant Riccinto did not act in good faith or in the course of his employment, the defendant city is still immune, because it cannot be held vicariously liable for the intentional torts of its employees.").

The District is entitled to absolute governmental immunity, under MCL 691.1407(1), because it is a "governmental agenc[y] . . . engaged in the exercise or discharge of governmental functions." *McLean*, 289 Mich App at 598. There is no question the District is a "governmental agency" as contemplated by MCL 691.1407(1). See *Nalepa*, 207 Mich App at 587. Moreover, looking to the general nature of the District's activities, the District was engaged in a governmental function because its role in this case was to administer the school district and oversee its employees.[5] See *Stringwell*, 262 Mich App at 712; *Payton*, 211 Mich App at 392.

Plaintiffs' arguments on appeal do not change this conclusion. Plaintiffs assert their "[c]omplaint consists of 119 paragraph allegations detailing . . . reasons [sic] why governmental immunity does not apply," yet, plaintiffs fail to accurately set forth the standard of immunity for governmental agencies, or explain how their pleadings and the trial court's analysis comport with this standard. Consequently, the trial court erred by failing to acknowledge the District's immunity for plaintiffs' claims of intentional tort under MCL 691.1407(1). Accordingly, we reverse the trial court's denial of defendants' motion for summary disposition with regard to the District's entitlement to absolute immunity for the paraprofessionals' alleged intentional torts.

2. THE SUPERINTENDENT'S IMMUNITY

Defendants next argue the trial court erred with respect to Van Valkenburg's assertions of immunity. According to defendants, Van Valkenburg was acting within the scope of her authority as the superintendent of the District when the alleged incident occurred; therefore, she is immune from liability under MCL 691.1407(5). We agree.

Under MCL 691.1407(5): "A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons

[5] Indeed, in ruling on the District's liability on plaintiffs' negligence claims, the trial court stated, "the function of hiring and supervising employees is an intended governmental agency function."

or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority." By the statute's plain language, a defendant must satisfy two requirements for entitlement to governmental immunity under MCL 691.1407(5). First, the defendant must be "a judge, a legislator, [or] the elective or highest appointive executive official" of a level of government. The defendant must also have been working "within the scope of his or her . . . authority" at the time the alleged tort occurred. MCL 691.1407(5). A defendant's scope of authority "must always be considered in the light of the particular circumstances of the employment." *Backus v Kauffman*, 238 Mich App 402, 410; 605 NW2d 690 (1999). The question of whether an executive acts within his or her executive authority considers a nonexhaustive list of factors: "including the nature of the specific acts alleged, the position held by the official alleged to have performed the acts, the charter, ordinances, or other local law defining the official's authority, and the structure and allocation of powers in the particular level of government." *Petipren v Jaskowski*, 494 Mich 190, 206; 833 NW2d 247 (2013) (quotation marks and citations omitted).

The trial court correctly noted Van Valkenburg satisfied the first requirement under MCL 691.1407(5) because, as superintendent, she was the "highest appointed executive." See *Nalepa*, 207 Mich App at 589 ("[T]he superintendent is the highest appointive executive of the school district."). In looking to the second requirement, the trial court bifurcated plaintiffs' negligence claims from their intentional tort claims. When analyzing the negligence claims, the trial court held that "Van Valkenburg acted within the scope of her authority by administering the preschool." Thus, the trial court stated that Van Valkenburg was entitled to governmental immunity under MCL 691.1407(5) with respect to the negligence claims. However, with respect to plaintiffs' intentional tort claims, the trial court erroneously determined that under *McIntosh*, 111 Mich App at 700, Van Valkenburg was not necessarily entitled to immunity. Again, the trial court determined "the alleged acts themselves must instead be still evaluated under the GTLA," and that a question of fact existed whether the paraprofessionals were acting within the scope of their employment.

Like its analysis of the District's immunity, the trial court's analysis as to Van Valkenburg's immunity is error. When a court is considering the meaning of a statute, it begins "by first examining the plain language of the statute. Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning. When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted." *Driver*, 490 Mich at 247. An executive is immune where he or she is working within the "scope of his or her judicial, legislative, or executive authority." MCL 691.1407(5). By the plain language of the statute, the trial court should have ended its analysis after finding "Van Valkenburg acted within the scope of her authority by administering the preschool." Because Van Valkenburg was an executive official, who the trial court found was working within the scope of her authority, she was entitled to governmental immunity under MCL 691.1407(5)—and, it was an error for the trial court to conclude otherwise.

Moreover, the trial court's analysis of superintendent Van Valkenburg's entitlement to immunity held similar problems as its analysis of the District's immunity. The trial court wrongly emphasized the binding authority of *McIntosh*, while ignoring plaintiffs' failure to have pleaded in avoidance of governmental immunity. Similar to our analysis in the preceding issue, *McIntosh*, 111 Mich App at 700, holds little, if any, precedential effect. And, while "a party suing a unit of government must plead in avoidance of governmental immunity," *Kendricks*, 270 Mich App at

681 (quotation marks and citation omitted), the trial court did not consider plaintiffs' failure to have pleaded in avoidance of governmental immunity as a basis to grant defendants' motion for summary disposition. Accordingly, we reverse the trial court's denial of defendants' motion for summary disposition with regard to Van Valkenburg's entitlement to immunity for plaintiffs' claims of intentional tort under MCL 691.1407(5).

3. THE PRINCIPAL'S IMMUNITY

Defendants next argue that Rienke, as a lower-level employee, was also entitled to governmental immunity under the criteria set forth in *Odom v Wayne Co*, 482 Mich 459, 479-480; 760 NW2d 217 (2008). We agree.

Under MCL 691.1407(2), a governmental employee may enjoy immunity from negligent-tort liability when the employee "is acting within the scope of his or her authority" for an "agency," which "is engaged in the exercise or discharge of a governmental function." However, MCL 691.1407(3) states that "[s]ubsection (2) does not alter the law of intentional torts as it existed before July 7, 1986." Indeed, "the Legislature thereby removed immunity for intentional tort liability from the statutory grant of immunity in subsection 2." *Odom*, 482 Mich at 470. "The seminal pre-July 7, 1986, case defining the parameters of governmental immunity for individuals from tort liability is *Ross v Consumers Power Co (On Rehearing)*, [420 Mich 567, 625-635; 363 NW2d 641 (1984).]" *Odom*, 482 Mich at 472. The *Ross* factors rearticulated in *Odom* consider when a lower-level government employee may be entitled to immunity from intentional tort liability. *Id*. at 473. A lower-level government employee may be entitled to immunity from intentional-tort liability when the following are shown:

> (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. [*Id*. at 479-480.]

However, the burden "fall[s] on the governmental employee to raise and prove h[er] entitlement to immunity as an affirmative defense." *Id*. at 479.

In this case, plaintiffs did not allege that Rienke committed an intentional tort; rather, plaintiffs sought to hold Rienke liable for the intentional torts allegedly committed by the paraprofessionals under the doctrine of respondeat superior. Indeed, at oral argument before this Court plaintiffs' counsel affirmed that plaintiffs were not alleging that Rienke herself committed an intentional tort. As the *Ross* factors make clear, the doctrine of respondeat superior is not applicable in these circumstances. In other words, Rienke—an individual lower-level governmental employee—cannot be held liable for the purported intentional torts of another lower-level governmental employee under the respondeat superior doctrine. As the *Ross* Court explained: "Allegations of vicarious tort liability generally arise where an employment relationship exists between the governmental agency and the individual tortfeasor. *Respondeat superior* liability generally can be imposed only where the individual tortfeasor acted during the course of his or her employment and within the scope of his or her authority." *Ross*, 420 Mich at 623-624.

Thus, liability is premised on the employer-employee relationship and a governmental *agency*—not a governmental *employee*—is subject to vicarious liability under the doctrine of respondeat superior. Therefore, the trial court's conclusion that Rienke was not immune "for the intentional tort claims against the paraprofessionals under the doctrine of respondeat superior" was erroneous. Accordingly, we reverse the trial court's denial of defendants' motion for summary disposition with regard to Rienke's entitlement to immunity as to these intentional tort claims.

III. MOTION TO AMEND

Defendants argue the trial court erred when it granted plaintiffs leave to amend their complaint because any amendment to their intentional tort allegations as to the District, Van Valkenburg, and Rienke was futile. We agree.

A. STANDARD OF REVIEW

"This Court reviews for an abuse of discretion a trial court's denial of a motion to amend a complaint." *Tierney v Univ of Mich Regents*, 257 Mich App 681, 687; 669 NW2d 575 (2003). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Souden v Souden*, 303 Mich App 406, 414; 844 NW2d 151 (2013) (quotation marks and citation omitted). "A court by definition abuses its discretion when it makes an error of law." *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009) (quotation marks and citation omitted).

B. LAW AND ANALYSIS

> Although the trial court has discretion to allow or deny amendments, [a]mendment is generally a matter of right rather than grace. A trial court should freely grant leave to amend if justice so requires. MCR 2.118(A)(2). Leave to amend should be denied only for particularized reasons, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or where amendment would be futile. [*Tierney*, 257 Mich App at 687-688, quoting *Jenks v Brown*, 219 Mich App 415, 419-420; 557 NW2d 114 (1996).]

"The amendment of a pleading is properly deemed futile when, regardless of the substantive merits of the proposed amended pleading, the amendment is legally insufficient on its face." *Kostadinovski v Harrington*, 321 Mich App 736, 743-744; 909 NW2d 907 (2017).

Plaintiffs' complaint made a number of substantive allegations against defendants. These included claims of statutory and common law conversion, assault and battery, false imprisonment, and violations of the Revised School Code. The trial court found the complaint was sufficient as to plaintiffs' claims of common law conversion, but that it was insufficient as to plaintiffs' claims under the Revised School Code, stating the Revised School Code did not permit a private right of action. While the trial court determined plaintiffs' pleadings as to statutory conversion, assault and battery, and false imprisonment were insufficient on their face, the trial court granted plaintiffs' motion for leave to amend as to these claims because "amending the language in the factual allegations for the claims for false imprisonment and statutory conversion may provide

Plaintiffs' [sic] an opportunity to clarify their claims." According to the trial court, "[n]o 'prejudice' has been demonstrated. Hence, the Court grants the motion to amend the complaint . . . for the individual tort claims that require certain elements to be factually alleged."

On appeal, defendants contest the trial court's reasoning as to the intentional tort claims, stating the District, Van Valkenburg, and Rienke were entitled to governmental immunity—thus, any amendment to plaintiffs' complaint would be futile. Again, an amendment is futile when "the amendment is legally insufficient on its face." *Kostadinovski*, 321 Mich App at 743-744. As discussed in the preceding issues, a defendant's claim of immunity differs depending on their status. See MCL 691.1407(1) through (3) and (5); *Odom*, 482 Mich at 469-470. Amendments to include facts showing either the District's or Van Valkenburg's liability would be futile because, as discussed above, the District and Van Valkenburg were entitled to absolute governmental immunity under MCL 691.1407(1) and (5), respectively. See *Payton*, 211 Mich App at 393. Further, any amendment of the intentional tort claims asserted against Rienke would be futile because, as discussed above, she is entitled to immunity as a matter of law. See *Ross*, 420 Mich at 623-624. Because the District, Van Valkenburg, and Rienke were entitled to governmental immunity as a matter of law, the trial court abused its discretion in allowing an amendment of the complaint as it relates to the intentional tort allegations against these defendants. See *Kidder*, 284 Mich App at 170.

Reversed.

/s/ Mark J. Cavanagh
/s/ Colleen A. O'Brien
/s/ James Robert Redford