STATE OF MICHIGAN

COURT OF APPEALS

JUAN MATA and MARTHA MATA,

Plaintiffs-Appellants,

v

VAN BUREN COUNTY and SCOTT SCHMITT,

Defendants-Appellees.

UNPUBLISHED
September 30, 2021

No. 354146
Van Buren Circuit Court
LC No. 20-069818-NI

Before: MURRAY, C.J., and M. J. KELLY and O'BRIEN, JJ.

PER CURIAM.

Plaintiffs, Officer Juan Mata and his wife Martha Mata, appeal by right the trial court's order granting defendants,' Van Buren County and Deputy Scott Schmitt, motion for summary disposition on the basis of governmental immunity. We affirm.

This case arises out of Bangor Police Officer Mata's injuries that he sustained as a result of Van Buren County Sheriff's Deputy Schmitt's police K-9 biting him during the arrest of a fleeing suspect. Plaintiffs sued defendants, alleging that Van Buren County was liable as the owner of the dog and that Deputy Schmitt was liable because of his gross negligence. Defendants moved the trial court to dismiss plaintiffs' complaint on the basis of governmental immunity, which, as noted, the trial court granted.

Plaintiffs argue first that the trial court erred by granting defendants' motion on the basis of governmental immunity because Deputy Schmitt was grossly negligent. This Court reviews de novo a trial court's decision on a motion for summary disposition, as well as issues of statutory interpretation. *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015).

MCR 2.116(C)(7) provides that dismissal is appropriate when immunity is granted by law. *Pew v Mich State Univ*, 307 Mich App 328, 331-332; 859 NW2d 246 (2014). When a trial court considers 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). "If reasonable minds could not differ on the legal effects of the facts, whether governmental immunity bars a plaintiff's claim is a question of law." *Pew*, 307 Mich App at 332.

MCL 600.2966 provides, in relevant part, the following:

> The state, a political subdivision of this state, or a governmental agency, governmental officer or employee, volunteer acting on behalf of a government, and member of a governmentally created board, council, commission, or task force are immune from tort liability for an injury to a firefighter or police officer that arises from the normal, inherent, and foreseeable risks of the firefighter's or police officer's profession.

Plaintiffs rely on MCL 691.1407(2)(c) of the governmental tort liability act (GTLA), MCL 691.1401 *et seq*., which states that a governmental agency is not immune from tort liability if the employee's conduct "amount[s] to gross negligence that is the proximate cause of the injury or damage," to argue that gross negligence is an exception to governmental immunity. However, in *Lego v Liss*, 498 Mich 559, 561-562; 874 NW2d 684 (2016), the Court held that MCL 600.2966 immunizes governmental entities and employees "from *all* tort liability" for injuries to officers that arose during the normal, inherent, and foreseeable risk of the profession. Further, the *Lego* Court stated that "[t]o hinge the applicability of this immunity provision on the degree of recklessness with which the defendant acted would undermine the statutory language by potentially denying immunity to a government defendant on the very basis for which the statute is intended to provide such immunity." *Lego*, 498 Mich at 562. Being shot by a fellow officer when facing an active shooter was, according to the Court, a normal, inherent, and foreseeable risk of the officer's profession, regardless whether the defendant was grossly negligent. *Id*. at 562-563. Hence, the defendant was entitled to immunity as a matter of law. *Id*. at 563.

Likewise, in *Boulton v Fenton Twp*, 272 Mich App 456, 458, 460; 726 NW2d 733 (2006), we previously explained that although the township would generally have been liable for damage or injury resulting from the negligent operation of its fire truck, the plaintiff was barred from pursuing a claim pursuant to MCL 600.2966 because he was an officer injured while responding to the scene of an accident, which was a normal, inherent, and foreseeable risk of his job. This Court explained that MCL 600.2966 barred "recovery from governmental agencies for injuries arising from *all* torts, not just negligence." *Id*. at 461.

Although plaintiffs argue that a reasonable jury could find that Deputy Schmitt acted with gross negligence, that is not the relevant issue. Instead, following the dictates of the statute and *Lego*, the trial court correctly held that Officer Mata's injuries arose from a normal, inherent, and foreseeable risk of his profession as a police officer, and therefore it did not need to consider whether Deputy Schmitt was grossly negligent. See *Lego*, 498 Mich at 563. Officer Mata was injured by a K-9 during a multiple officer chase of a potentially armed suspect. The use of a K-9 is not unusual, and that one of these animals could injure a suspect or on-the-scene officer during an active situation is likewise an inherent risk of the police officer profession. This situation is not distinguished from the situations in *Lego* or *Boulton*, in which the plaintiffs suffered injuries as a

result of normal, inherent, and foreseeable risks of their professions. Therefore, the trial court did not err by granting defendants' motion for summary disposition. See *Pew*, 307 Mich App at 332.[1]

Finally, plaintiffs argue that an injury covered by MCL 287.351, the "dog-bite statute," should not fall within the scope of governmental immunity.

MCL 287.351(1) provides the following:

> If a dog bites a person, without provocation while the person is on public property, or lawfully on private property, including the property of the owner of the dog, the owner of the dog shall be liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness.

This Court explained in *Tate v Grand Rapids*, 256 Mich App 656, 658; 671 NW2d 84 (2003), that MCL 287.351 created "almost absolute liability" for the owners of dogs who bite. However, we also explained that the GTLA "grants broad immunity to governmental agencies, extending immunity 'to all governmental agencies for *all* tort liability whenever they are engaged in the exercise or discharge of a governmental function.' " *Tate*, 256 Mich App at 658-659, quoting *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 156; 615 NW2d 702 (2000). And, contrary to plaintiffs' argument, in *Tate* we held that "strict liability is based on tort law," *id*. at 660, explaining that MCL 287.351 did not establish liability for dog bites, but, instead, replaced the negligence standard with a strict liability standard, and the GTLA grants immunity from all tort liability. *Id*.

That MCL 287.351 does not comprise an exception to the immunity provided by MCL 600.2966 is supported by our decision in *Boulton*, 272 Mich App at 460, where we held that the motor-vehicle exception to governmental immunity was *not* an exception to MCL 600.2966. There we said that although the GTLA "proscribes government liability for negligence with some exceptions," even the specified exceptions do not defeat governmental immunity under MCL 600.2966. See *Boulton*, 272 Mich App at 460-461. That same conclusion as to the breadth of MCL 600.2966 compels the conclusion that liability cannot exist under MCL 287.351 in these circumstances.

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[1]Although plaintiffs argue that *Lego* is distinguishable because the situation in *Lego* was "fraught with tension" and because it involved a stray bullet rather than a dog, Officer Mata was injured during a situation in which multiple officers had drawn their guns in response to a potentially armed and fleeing suspect, and Deputy Schmitt had his police canine with him in order to participate in the chase. As defendants argue, Officer Mata and the officer in *Lego* were both "injured by an instrumentality under the control of another officer" during the officers' apprehension of a suspect. It is not unforeseeable that a police officer could be injured by a police K-9 in the chase of a suspect, just as it is not unforeseeable that an officer could be shot by another officer during an engagement with an armed suspect. See *Bertin v Mann*, 502 Mich 603, 620-621; 918 NW2d 707 (2018).

Additionally, as defendants argue, more specific and more recent statutory provisions control over more general and older statutory provisions. See *Telford v State*, 327 Mich App 195, 199; 933 NW2d 347 (2019). MCL 287.351 was most recently amended by 1988 PA 142, while MCL 600.2966 was enacted by 1998 PA 389, which was more recent. Likewise, the dog-bite statute is generally applicable, while MCL 600.2966 is a very specific statute focused on providing immunity to government entities and employees in specific situations in which firefighters or police officers are injured. Therefore, MCL 287.351 is not an exception to MCL 600.2966, just as it is not an exception to the GTLA. See *Tate*, 256 Mich App at 660-661. The trial court did not err by granting defendants' motion for summary disposition. See *Pew*, 307 Mich App at 332.

Affirmed.

/s/ Christopher M. Murray
/s/ Michael J. Kelly
/s/ Colleen A. O'Brien