

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA PUROLL, as Personal Representative of
the Estate of PAIGE PUROLL, Deceased Minor
and as Next Friend of MATTHEW PUROLL, a
Minor,

UNPUBLISHED
July 24, 2003

Plaintiffs-Appellees,

v

No. 234445
Otsego Circuit Court
LC No. 97-007117-NO

GAYLORD COMMUNITY SCHOOL
DISTRICT,

Defendant-Appellant,

and

HELEN PEPOWSKI and BARBARA FIGIEL,

Defendants.¹

Before: Donofrio, P.J., and Markey and Murray, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order entering judgment on the jury verdict in favor of plaintiffs in the amount of \$600,000 in this wrongful death case. We reverse.

Basic Facts and Procedural History

This case arises out of a fatal pedestrian/automobile accident that occurred on the morning of October 22, 1996, in Elmira, Michigan. The decedent, Paige Puroll, six years old, and her brother, Matthew Puroll, eight years old, were waiting to cross Alba Road to board a Gaylord Community School bus, driven by Barbara Figiel and stopped at the designated bus stop with its red overhead flashers activated. The decedent had begun to cross the road when an oncoming car driven by Helen Peplowski struck her. The decedent was fatally injured. Matthew

¹ Because defendants Helen Peplowski and Barbara Figiel are not parties on appeal, the term "defendant" refers only to defendant Gaylord Community School District.

witnessed the accident. It was disputed at trial whether Figiel had waved the children to cross the road in the face of oncoming traffic.

In August 1998, plaintiffs filed this action against Peplowski, Figiel, and defendant for the wrongful death of the decedent and intentional infliction of emotional distress as to Matthew. Prior to trial, a settlement was reached between plaintiffs and Peplowski and during trial, Figiel was dismissed from the lawsuit by plaintiffs with regard to any personal liability, leaving only plaintiffs' claim of negligence against defendant. Following a jury trial, the jury returned a verdict in favor of plaintiffs² and awarded one million dollars to the estate of Paige Puroll and two million dollars to Matthew Puroll.

At the conclusion of the trial, defendant filed a motion for judgment notwithstanding the verdict (JNOV) on the basis of governmental immunity, arguing that the motor vehicle exception to governmental immunity was inapplicable under the facts as presented at trial. Defendant argued that because plaintiffs' injuries were not caused by the operation of the school bus, the exception was not implicated. The trial court denied defendant's motion, as it had on directed verdict motions, finding that plaintiffs had presented facts in avoidance of the governmental immunity statute, specifically under the motor vehicle exception to governmental immunity. Relying on *Nolan v Bronson*, 185 Mich App 163; 460 NW2d 284 (1990), the trial court found that the term "operation" was to be broadly construed and included the loading and unloading of students from a school bus in a reasonably safe manner. The trial court noted that the bus did not have to be in motion in order to constitute "operation" within the statutory exception. Thus, the trial court ruled the exception applied, denied the motion, and defendant appealed.

II. Standard of Review

On appeal defendant argues that it was entitled to JNOV and a dismissal of this case based on governmental immunity. Defendant contends that the act of designing a school bus route and designating a particular place as a school bus stop does not constitute the "operation" of a motor vehicle within the meaning of the exception to governmental immunity. The trial court's decision with regard to a motion for JNOV is reviewed de novo on appeal. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). At the same time, this issue involves the interpretation or construction of a statute, which is a question of law that this Court reviews de novo. *Christiansen v Gerrish Twp*, 239 Mich App 380, 384; 608 NW2d 83 (2000).

III. Analysis

² The jury found that defendant was negligent and that defendant's negligence was a proximate cause of plaintiffs' injuries. Under the "special question sheet," the jury answered that Figiel was negligent in the ways claimed by plaintiffs, but not negligent in waving the kids to board the bus prior to all traffic stopping. Last, the jury found that other employees of defendant were negligent in the ways claimed by plaintiffs. The jury also found that Peplowski was negligent and that her negligence was a proximate cause of the death of Paige Puroll. In the end, the jury found twenty percent of the negligence attributable to defendant and eighty percent attributable to Peplowski.

A. Governmental Immunity

MCL 691.1407 provides the legislative grant of governmental immunity from tort liability:

Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. . . . [MCL 691.1407(1).]

The statute was intended to provide uniform liability and immunity to state and local governmental agencies when involved in a governmental function. *Pohutski v Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). As a result, the general rule provides that “all governmental agencies are immune from tort liability for actions taken in furtherance of a governmental function.” *Weakley v Dearborn Heights (On Remand)*, 246 Mich App 322, 325; 623 NW2d 177 (2001). The immunity granted is broad, and a governmental agency in the exercise of a governmental function can only face liability if one of the narrowly construed statutory exceptions are applicable to the case. *Id.* at 326.

It is well established (and plaintiffs admit) that the maintenance and operation of a school bus system, including the laying out of routes for school buses to travel and designating school bus stops to pick up students on the way to school and to discharge students on the way home from school, constitutes a governmental function under MCL 691.1407. *Cobb v Fox*, 113 Mich App 249, 257; 317 NW2d 583 (1982); *McNees v Scholley*, 46 Mich App 702, 707; 208 NW2d 643 (1973). Thus, defendant was “clothed with sovereign immunity and not liable to plaintiffs” absent the applicability of an exception to governmental immunity. See *id.* In order to state a valid claim against defendant, plaintiffs must plead facts that clearly come within the scope of one of the narrowly drawn statutory exceptions to governmental immunity. *Weakley, supra*; *Dinh v Forest Hills Public Schools*, 129 Mich App 293, 296; 341 NW2d 510 (1983).

B. The Motor Vehicle Exception

The exception to governmental immunity at issue in this case is the motor vehicle exception, which states in pertinent part:

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 [MCL 691.1405 (emphasis added).]

“The motor vehicle exception requires that a plaintiff’s injuries result from the operation of a government vehicle.” *Robinson v Detroit*, 462 Mich 439, 456; 613 NW2d 307 (2000). The question presented on appeal in this case is whether plaintiffs’ injuries resulted from the negligent operation of defendant’s school bus within the meaning of MCL 691.1405. As noted, a decision on this issue is guided by the basic principle that the grant of governmental immunity is broad, and the statutory exceptions thereto are to be narrowly construed. *Pohutski, supra* at 689-690; *Robinson, supra* at 455.

The gravamen of plaintiffs' complaint asserts that defendant was negligent in (1) designing a bus route that required children to cross several lanes of highway against moving traffic, (2) designating a bus stop in an area of limited visibility; (3) failing to provide adult supervision for young children crossing several lanes of traffic, (4) failing to educate employees in safety procedures for boarding the bus, (5) failing to timely review the safety of its bus routes and individual stops to ensure the safety of students, and (6) waving the decedent to cross the street when Figiel should have known that oncoming traffic had failed to stop. Additionally, plaintiff asserted in the trial court and emphasizes on appeal the defendant also negligently operated the school bus by failing to operate the bus headlights and strobe light. Defendant argued to the trial court and continues to argue on appeal that plaintiffs' allegations of negligence do not constitute the operation of a motor vehicle within the statutory exception. Defendant asserts that the reasoning and rationale of the Michigan Supreme Court in *Robinson, supra*, compels such a result. We agree.

1. The "Operation" of a Motor Vehicle

In *Robinson*, our Supreme Court addressed the motor vehicle exception in the context of injuries suffered during a police chase. In interpreting the language of the statute, the Supreme Court made two separate holdings. Each of those holdings will be discussed in turn. First, the Court held that the an officer's decision to pursue a fleeing vehicle did not constitute the negligent operation of a vehicle. *Id.* at 445, 457. The Court reasoned that the decision to pursue a fleeing motorist, "which is separate from the operation of the vehicle itself, is not encompassed within a narrow construction of the phrase 'operation of a motor vehicle.'" *Id.* at 457.

In *Chandler v Muskegon Co*, 467 Mich 315; 652 NW2d 224 (2002), the Supreme Court revisited the definition of the term "operation" as used in the motor vehicle exception in the context of a claim for injuries allegedly caused by the negligent operation of a school bus. In *Chandler*, the plaintiff was injured while attempting to reopen the hydraulic doors that had closed and caught a county employee exiting the defendant county's bus. When the plaintiff was injured, the bus was parked in a barn. *Id.* at 316. The trial court granted the defendant's motion for summary disposition, finding that the activity of cleaning seats in a bus did not constitute the "operation" of the bus within the motor vehicle exception to governmental immunity. *Id.* at 317. This Court reversed, holding that "a vehicle is in operation 'as long as it is being used or employed in some specific function or to produce some desired work or effect.'" *Id.* at 318.³

However, the Supreme Court reversed this Court's decision, specifically rejecting such a construction of the term "operation" and criticizing it as being overly broad:

In light of this, we reject the Court of Appeals and the dissent's approach because their construction of "operation" would construe the term so broadly that it could apply to virtually any situation imaginable in which a motor vehicle is involved regardless of the nature of the involvement. Therefore, we reject this construction

³ In reaching the conclusion, this Court relied on, among other cases, *Nolan, supra*, a case plaintiffs heavily rely upon on appeal.

as inconsistent with the principles of interpretation stated above. [*Chandler, supra* at 321.]

Instead, the Court applied the following construction:

The Legislature has not defined “operation” for the purpose of MCL 691.1405. Where a nontechnical word is used in a statute, the Legislature has directed that the term should be “construed and understood according to the common and approved usage of the language” As might be expected, in undertaking to give meaning to words this Court has often consulted dictionaries. The *Random House Webster’s College Dictionary* (1997) defines “operation” as an act or instance, process, or manner of functioning or operating.” We conclude, in accordance with this definition and in accordance with the narrow construction given to the exceptions to governmental immunity, that the language “operation of a motor vehicle” means that the motor vehicle is being operated *as* a motor vehicle. [*Id.* at 319-320 (emphasis in original) (citations and footnotes omitted).]

The Court went on to note that, “[i]n the context of a motor vehicle, the common usage of the term ‘operation’ refers to the ordinary use of the vehicle *as* a motor vehicle, namely, driving the vehicle.” *Id.* at 321-322 (emphasis in original). Thus, the Court concluded that because the bus was parked in a maintenance facility for purposes of maintenance and was not at the time being operated *as* a motor vehicle, the plaintiff’s injury did not arise from the negligent operation of the bus as a motor vehicle. *Id.* at 322.⁴

We conclude that under the rationale of *Robinson*, the negligent acts alleged by plaintiffs, such as designing a school bus route, designating particular bus stops, failing to provide supervision of young students, failing to educate employers regarding safety, and failing to periodically review the routes for safety, are separate from the operation of the bus itself. See *Robinson, supra*. Instead, given that the exception must be narrowly construed, the “operation” of a motor vehicle “encompasses activities that are directly associated with the driving of a motor vehicle.” *Chandler, supra* at 321. As such, plaintiffs’ allegations did not comprise activities directly associated with the driving of the bus as a motor vehicle. See *id.* Although an argument could be made that the bus was operating as a motor vehicle when it was stopped, waiting to board the children (acting as a stop sign), it is undisputed that the overhead, red flashing lights on the bus were activated, alerting other motorists of the bus’ presence and directing them to stop. Thus, there was no negligence in the operation of the bus in that fashion.⁵ Therefore, we hold that the motor vehicle exception to governmental immunity was not applicable to plaintiffs’ remaining claims, because the bus was not “operating” as a motor vehicle. As a result, defendant was entitled to JNOV.

⁴ In support of their position on appeal plaintiffs rely on this Court’s decision in *Chandler v Muskegon Co*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2001 (Docket No. 220435), which the Michigan Supreme Court reversed. *Chandler, supra*.

⁵ Additionally, because the jury found Figiel not negligent in waving the children into the street, that act cannot form the basis of a claim of the negligent operation of a school bus. Hence, we need not consider whether the act of waving constituted the operation of a motor vehicle.

2. The “Resulting From” Language

Moreover, we find that, under the second holding in *Robinson*, plaintiffs have failed to show injuries “resulting from” the negligent operation of a motor vehicle. The *Robinson* Court also held that a narrow construction of the “resulting from” language of the statute required proof that the pursuing police vehicle hit the fleeing vehicle or otherwise physically forced it off the road into another vehicle or object. *Robinson, supra* at 445, 456-457. The majority in *Robinson* “emphasized that a narrow reading of the phrase ‘resulting from,’ as used in MCL 691.1405, requires a more direct causal connection than the proximate cause ‘but for’ analysis generally employed in cases alleging liability based on negligent conduct” *Curtis v Flint*, 253 Mich App 555, 560; 655 NW2d 791 (2002). Thus, the Court concluded that the plaintiffs’ injuries did not, as a matter of law, result from the operation of a police vehicle where the police car did not hit the fleeing vehicle or physically force it off the road or into another vehicle or object. *Robinson, supra* at 445.

In *Curtis, supra*, this Court recently applied the “resulting from” rationale of *Robinson* in the context of an emergency medical vehicle. In *Curtis*, this Court held that under *Robinson*, the plaintiff failed to establish a claim of governmental liability for the negligent operation of an emergency medical vehicle where the paramedic vehicle was not physically involved in the collision that caused the plaintiff’s injuries, either by hitting the plaintiff’s vehicle or by physically forcing that vehicle off the road or into another vehicle or object. *Id.* at 562. In reaching its holding, the *Curtis* Court rejected the plaintiff’s arguments that *Robinson* was factually distinguishable and not applicable because it involved injuries stemming from a police chase. *Id.* at 557. To the contrary, the *Curtis* Court found the *Robinson* Court’s holding that the motor vehicle exception requires some form of physical involvement by the government-owned vehicle was not limited to cases involving injuries or damages stemming from a police chase. *Id.* at 559. Indeed, the court noted that “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,” and therefore, “[u]nder 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.

Thus, this Court in *Curtis* applied *Robinson* in interpreting the motor vehicle exception in the context of a paramedic vehicle. Applying the statutory construction language in *Robinson*, the *Curtis* Court concluded that because MCL 691.1405 “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.” *Id.* at 560-561.

Accordingly, because *Robinson’s* interpretation of the language used by the Legislature in drafting the motor vehicle exception is not limited to police chases, *id.*, it is fully applicable in this case. The narrow construction in *Robinson* requires that plaintiffs’ injuries “resulted from” the government-owned vehicle, i.e., that the vehicle was physically involved in causing plaintiffs’ injuries while in operation as a motor vehicle. There was absolutely no evidence of such involvement in this case. The undisputed evidence presented at trial established that a private motorist who disregarded the red, flashing lights of the stopped school bus, struck the decedent. The private motorist’s collision with the decedent, although terribly tragic, was not

caused by the alleged negligent operation of the school bus. Compare *Dinh, supra* at 299 (found negligent operation of school bus in failing to pull off the road to allow more area for approaching vehicles to maneuver around the child). Thus, plaintiffs' injuries did not result from the negligent operation of a government-owned motor vehicle.⁶ Consequently, the motor vehicle exception to governmental immunity was not applicable in this case on this basis either and defendant's motion for JNOV should have been granted.

3. The Misapplication of *Nolan*

Further, this Court notes that the trial court incorrectly relied on *Nolan* in denying defendant's motion for JNOV. In *Nolan*, this Court held that the stopping of a school bus for the purpose of discharging passengers, and the bus driver's duties attendant to the stopping of the school bus, "unquestionably constitute operation of a motor vehicle." *Nolan, supra* at 177. In reaching that conclusion, the trial court applied the following test:

One test of whether a motor vehicle is in operation is based on a determination of whether it is "being used or employed in some specific function or to produce some desired work or effect." [*Id.*, quoting *Wells v Dep't of Corrections*, 79 Mich App 166, 169; 261 NW2d 245 (1977).]

The court found that a bus that "is operated in the manner required by [MCL 257.682]⁷ is clearly employed in a specific function or to produce a desired effect." *Id.* However, as previously discussed, our Supreme Court plainly rejected such a definition in *Chandler, supra* at 318, 321, and implicitly overruled *Nolan*. The *Nolan* construction of the term "operation" does not comport with a narrow construction of the exception. Accordingly, the trial court's reliance on *Nolan* in denying defendant's requested relief, though perhaps understandable at the time because *Chandler* had not yet been decided, was in error.

IV. Conclusion

In this case, because the decedent's injury did not result from the negligent operation of the bus as a motor vehicle, plaintiffs' claims did not fall under the motor vehicle exception to governmental immunity. Therefore, the trial court erred in failing to grant defendant's motion for JNOV. Because the above resolution of the issue is dispositive of the case, defendant's remaining issues on appeal need not be addressed.

⁶ Plaintiffs' argument that, even if applicable to the facts presented here, *Robinson* should only be applied prospectively is without merit, as the *Curtis* Court determined that *Robinson* has retroactive application. *Curtis, supra* at 563-567. Therefore, *Robinson* governs this matter. We also reject plaintiff's reliance on *Ewing v Detroit*, 252 Mich App 149; 651 NW2d 780 (2002). First, *Ewing* was recently reversed by our Supreme Court. *Ewing v Detroit*, ___ Mich ___; ___ NW2d ___ (2003). Second, in *Ewing*, unlike in this case, the parties had relied on the pre-*Robinson* case law for ten years of litigation, including through various appeals. *Id.* at 167. In our case, *Robinson* was decided before the proceedings in the trial court had concluded.

⁷ Section 682 defined the duties of school bus drivers and motor vehicle drivers with respect to school bus passengers crossing the road. *Nolan, supra* at 172-173.

Reversed.

/s/ Pat M. Donofrio

/s/ Jane E. Markey

/s/ Christopher M. Murray