S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

CHARLENE MCGHEE,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
February 3, 2005

No. 250357
Wayne Circuit Court
LC No. 01-118263-NO

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

PER CURIAM.

Plaintiff appeals by delayed leave granted from the trial court's order granting defendant's motion for summary disposition based on governmental immunity. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's challenge to the trial court's grant of defendant's motion for reconsideration is not properly before us because this specific issue was not included in plaintiff's application for leave to appeal and leave was granted "limited to the issues raised in the application." MCR 7.205(D)(4). In any event, plaintiff construes MCR 2.119(F)(3) too narrowly. The trial court had discretion to afford defendant a second chance with respect to its previously denied motion for summary disposition. *Kokx v Bylenga,* 241 Mich App 655, 658-659; 617 NW2d 368 (2000).

Whether the trial court correctly granted defendant's motion for summary disposition based on governmental immunity is a distinct question that we review de novo. *Mack v Detroit,* 467 Mich 186, 193; 649 NW2d 47 (2002). "MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties." *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004), quoting *Glancy v City of Roseville,* 457 Mich 580, 583; 577 NW2d 897 (1998). In determining whether summary disposition was appropriate under this rule, we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id.*, 143-144.

Plaintiff alleges that she was injured when she was struck by a metal object that was propelled by a grass-cutting "vehicle" operated by defendant's agent on a vacant lot next to her home. Plaintiff does not dispute the nature of the vehicle as depicted in a photograph submitted to the trial court. The photograph shows that the vehicle is a tractor-type vehicle with an attached bush-hog and is used to cut grass and weeds in vacant lots (hereafter "tractor/bush-

hog"). The dispositive issue on appeal is whether the vehicle qualifies as a "motor vehicle" for purposes of the motor vehicle exception to governmental immunity. MCL 691.1405.

Whether the Legislature intended the tractor/bush-hog to be a "motor vehicle" for purposes of MCL 691.1405 presents an issue of statutory construction. *Stanton v Battle Creek,* 466 Mich 611, 615; 647 NW2d 508 (2002). In *Stanton,* our Supreme Court narrowly defined the term "motor vehicle" for purposes of MCL 691.1405 as "an automobile, truck, bus, or similar motor-driven conveyance." *Id.* at 617-618, quoting *Random House Webster's College Dictionary* (2001). Applying this definition to a forklift used to unload items from a truck on a site owned by a city, the Court held:

> A forklift—which is a piece of industrial construction *equipment*—is not similar to an automobile, truck, or bus. Thus, the motor vehicle exception should not be construed to remove the broad veil of governmental immunity for the negligent operation of a forklift. [*Stanton, supra* at 618 (emphasis in original).].

Upon de novo review, we conclude that the trial court correctly determined as a matter of law that the tractor/bush-hog involved here is not a "motor vehicle" as defined in *Stanton.* We reject plaintiff's claim that this Court's application of *Stanton* to a broom-tractor and tractor-mower in *Regan v Washtenaw Co Bd of Co Rd Comm'rs (On Remand),* 257 Mich App 39, 47-51; 667 NW2d 57 (2003), compels a different result. The majority opinion in *Regan* gave weight to the relationship between the broom-tractor and the tractor-mower to the road in finding that both of these vehicles constituted "motor vehicles." *Id.* at 47. The vehicles were intended to be driven on a roadway, or operated alongside a roadway, and were deemed "invariably connected to the roadways." *Id.* at 48. The majority concluded that the purpose of MCL 691.1405, i.e., to make roads as safe as possible for travel, would not be fulfilled if these vehicles were not deemed "motor vehicles" within the meaning of the statute. *Id.* at 48-49.

By contrast, viewed in a light most favorable to plaintiff, the evidence here indicates that the tractor/bush-hog is used to cut grass and weeds in vacant lots. The tractor/bush-hog lacks the invariable connection to a roadway that was found to be critical in *Regan.* It is more analogous to the forklift in *Stanton* that operated as a piece of equipment. Treating the tractor/bush-hog as a "motor vehicle" will not serve the purpose of MCL 691.1405 to make roadways safe for travel. *Regan, supra* at 48-49. Nor will it comport with the narrow construction of the term "motor vehicle" in MCL 691.1405 *Stanton, supra* at 618. Hence, we conclude as a matter of law that the tractor/bush-hog is not a "motor vehicle" under MCL 691.1405. The trial court did not err in granting summary disposition in favor of defendant on this ground.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello