STATE OF MICHIGAN

COURT OF APPEALS

STACEY HELFNER, Next Friend of AMBER SEILICKI, Minor,

Plaintiff-Appellee,

v

CENTER LINE PUBLIC SCHOOLS and DEANNA LYNN MULRENIN,

Defendants/Third-Party Plaintiffs-Appellants,

and

MICHELLE SLOAT,

Defendant/Third-Party Defendant.[1]

UNPUBLISHED
June 20, 2006

No. 265757
Macomb Circuit Court
LC No. 2004-003161-NI

Before: White, P.J., Whitbeck, C.J., and Davis, J.

PER CURIAM.

Defendants appeal as of right an order that, in relevant part, denied their motion for summary disposition pursuant to MCR 2.116(C)(7) and (10) on the grounds that there existed genuine issues of material fact whether the motor vehicle and governmental employee exceptions to governmental immunity existed. We affirm.

This case arose when defendant Deanna Lynn Mulrenin, the driver of a school bus for defendant Center Line Public Schools, ordered eighth-grader Amber Seilicki to disembark from the bus. Mulrenin was Amber's regular bus driver. To reach the bus, Amber was required to cross the street. On the day of the accident, Mulrenin apparently understood Amber to be suspended from school, although there is some debate whether Amber had actually received permission to ride the bus that day notwithstanding her suspension. Amber boarded the bus as

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[1] Michelle Sloat is not a party to this appeal. We use the term "defendants" in this opinion only in reference to Center Line Public Schools and DeAnna Lynn Mulrenin.

usual, whereupon Mulrenin ordered Amber to get off. The two of them debated the matter for some unspecified period of time, during which Amber became upset, embarrassed, and emotional. She eventually disembarked, and Mulrenin ordered her to cross the street and go home. Apparently, Amber did not do so immediately. At some point, Mulrenin deactivated the school bus' red flashing warning lights. Michelle Sloat had been stopped in her car alongside the school bus, and when the lights were deactivated, Sloat attempted to pass the bus. At the same time, Amber attempted to cross the street in front of the bus, where she collided with Sloat's vehicle.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, all evidence submitted by the parties must be considered in the light most favorable to the non-moving party, and summary disposition is granted only where the evidence fails to establish a genuine issue regarding any material fact. *Id*., 120. Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id*., 119.

As a general matter, "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). A public school district's operation of a school bus system constitutes a generally immune governmental function. *Cobb v Fox*, 113 Mich App 249, 257; 317 NW2d 583 (1982). Exceptions to this broad grant of immunity should be construed narrowly. *Robinson v Detroit*, 462 Mich 439, 455; 613 NW2d 307 (2000). However, interpretation of statutory language obligates us "to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Chandler v Muskegon Co*, 467 Mich 315, 319; 652 NW2d 224 (2002).

The motor vehicle exception to governmental immunity, MCL 691.1405, excepts injuries "resulting from the negligent operation . . . of a motor vehicle." Our Supreme Court has explained that "operation," in this context, is limited to "the ordinary use of the vehicle *as* a motor vehicle, namely, driving the vehicle." *Chandler*, *supra* at 321-322 (emphasis in original). Therefore, a vehicle that is undergoing cleaning while parked inside a maintenance facility is not in "operation." *Id*., 316, 322. Similarly, a city-owned water truck that was parked at the side of the road, with its warning lights activated, while the driver exited the vehicle to inspect a fire hydrant was no longer in "operation." *Poppen v Tovey*, 256 Mich App 351, 355-356; 664 NW2d 269 (2003). As this Court noted, "[o]nce stopped for this purpose, [the truck's] presence on the road was no longer 'directly associated with the driving' of that vehicle." *Id*., quoting *Chandler*, *supra* at 321.

However, *Chandler* and *Poppen* are significantly distinguishable. Simple, everyday experience demonstrates that the act of driving does not entail *constant* movement. A vehicle does not cease to be "driven" while temporarily halted for a stop sign or a traffic light. Under some circumstances, temporary cessation of movement is "directly associated with the driving" of a vehicle. Temporary stops are an integral part of the driving of a school bus, whether coming to a halt before proceeding over railroad tracks or stopping to take on or discharge passengers. The fact that a school bus is temporarily at rest does not take it outside the motor vehicle

exception under these circumstances. Although halted, the school bus is still being driven, and is therefore still being operated as a motor vehicle within the definition provided by *Chandler*.

Our Supreme Court has also explained that "resulting from" cannot be satisfied by a proximate cause analysis. Instead it requires, in the context of a police pursuit of a fleeing vehicle, that the government vehicle "hit the fleeing car or otherwise physically force[d] it off the road or into another vehicle or object." *Robinson*, *supra* at 456-457, 457 n 14. This Court then held that the motor vehicle exception requires the government-owned vehicle to physically and directly cause the incident that results in injury. *Curtis v City of Flint*, 253 Mich App 555, 561-562; 655 NW2d 791 (2002). Again, however, *Robinson* and *Curtis* are not directly applicable to the facts here.

Both of those cases involved purely vehicular collisions where the plaintiff was inside a vehicle, and the government-owned vehicle had no physical involvement in the injury-causing collisions. In *Robinson*, the police made arguably questionable decisions to pursue fleeing criminals, who crashed the vehicles they were driving. In *Curtis*, a driver, Kells, pulled over to permit passage of an emergency vehicle that may not have been following proper emergency protocol, whereupon the plaintiff crashed into the rear of Kells' vehicle. The plaintiff then sued the driver and owner of the emergency vehicle. In both cases, the plaintiffs were dismissed because the government-owned vehicle must "be 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." *Curtis*, *supra* at 562 (emphasis added). This rule is not directly applicable where the plaintiff is not, in fact, in a vehicle at all. Instead, the entirely consistent and more general rule is that the government vehicle must directly compel the injury-causing accident.

There is no dispute that there was no physical contact between Amber and the school bus here. However, even under *Robinson* and *Curtis*, there would not necessarily be physical contact between the government vehicle and a plaintiff. For example, in *Robinson*, our Supreme Court suggested that the motor vehicle exception would apply if, for example, a police vehicle had rammed a car off the road and into an innocent pedestrian. See *Robinson*, *supra* at 445 n 2. In other words, it is sufficient for the government vehicle to cause an injury by placing some object in motion, and that object then injures the plaintiff. This Court has found the motor vehicle exception applicable where a government-owned vehicle drove over a piece of tire tread on the road, thereby flinging the tire tread into the plaintiff's windshield. *Regan v Washtenaw Co Bd of Co Rd Comm'rs*, 249 Mich App 153, 161; 641 NW2d 285 (2002).

The dissent notes that these cases still involve the government vehicle physically contacting and physically forcing into motion the injury-causing object. Under the circumstances of this case, where the driver prematurely turned off safety devices and violated protocols mandated by law and unique to a school bus, the dissent's observation is a distinction without a difference. Because this case involves a school bus, it is viewed in light of the strong public policy mandated by our Legislature's enactment of the Pupil Transportation Act, MCL 257.1801 *et seq*., among other statutory provisions. See *Nolan v Bronson*, 185 Mich App 163, 171-173; 460 NW2d 284 (1990), abrogated on other grounds by *Chandler*, *supra* (mostly discussing predecessor statutes). Among other purposes, a school bus is designed to control the motion of other vehicles on the highway, to promote one of the most important public policies imaginable – the safety of our children. Our Supreme Court has explained how special school

busses are, noting in the context of no-fault insurance that the "use" of a school bus – as distinguished from any other ordinary public transit – includes both transporting students *and* properly disembarking them. *Pacific Employers Ins Co v Michigan Mut Ins Co*, 452 Mich 218, 225-227; 549 NW2d 872 (1996). By operation of statute, the deactivation of a school bus' warning lights "is the signal for stopped traffic to proceed." MCL 257.1855(2)(b). That is precisely what occurred here.

A significant fact here, then, is that the defendant driver *did* physically place an object in motion – by prematurely deactivating the warning lights on the bus, which constituted an affirmative signal to waiting vehicles on the road to proceed. Defendant's operation of the school bus may be found to have directly caused the accident because it exercised control over the physical movement of another vehicle. The motor vehicle exception could be found to apply even though the bus was temporarily paused and did not itself physically strike Amber or physically contact the car that struck Amber. Under the unique circumstances of a school bus deactivating its warning lights, there is no principled reason to take this issue from the trier of fact simply because there was no physical contact between the bus and the vehicle that struck Amber.

The governmental employee exception to governmental immunity provides that the employee of an agency exercising a governmental function "may be liable for grossly negligent conduct" performed while acting within the scope of her authority "if that conduct is 'the proximate cause of the injury or damage.'" *Curtis*, *supra* at 562-563, quoting MCL 691.1407(2). There is no dispute that this school bus did not have its flashing red warning lights activated at the time of the accident, contrary to MCL 257.1855. At the time of the accident, MCL 257.1855 provided in relevant part as follows:

> (1) A school bus driver shall actuate alternately flashing lights only when the school bus is stopped or stopping on a highway or private road for the purpose of receiving or discharging pupils in the manner provided in this act. . . .
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> (2) The driver of a school bus while operating upon the public highways or private roadways open to the public shall receive or discharge pupils from the bus in the following manner:
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> * * *
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> (b) If the pupils are required to cross the roadway, the driver of a school bus equipped with red and amber alternately flashing overhead lights in accordance with section 19[2] shall activate the alternately flashing overhead amber lights not less than 200 feet before the stop, stop the bus as far to the right side of the roadway or private road as is possible to provide for the safety of the pupils being boarded or discharged, deactivate the alternately flashing overhead amber lights, and activate the alternately flashing overhead red lights while receiving or discharging pupils. Before resuming motion, the driver shall deactivate these

[2] This bus' compliance with MCL 257.1819 is not disputed.

> lights and allow congested traffic to disperse where practicable. The deactivation of these lights is the signal for stopped traffic to proceed.

Amber always crossed the street after exiting the bus. The driver was Amber's regular driver, so she knew that Amber would need to cross the street immediately after exiting the bus and that she would need to activate the red flashing lights while Amber did so.

On the day of the accident, the driver understood Amber to be suspended from school and therefore not permitted to ride the bus. There is some dispute whether Amber had nevertheless been granted permission to ride the bus. The driver ordered Amber to leave the bus and debated the issue with Amber to the point where Amber was crying and pleading to remain. The driver nevertheless told Amber to leave, knowing that Amber was angry, embarrassed, and upset. The driver then directed Amber to cross the street and deactivated the warning lights. Given the summary disposition posture of this case, there is no doubt that plaintiff has at least presented a genuine issue of material fact whether the school bus driver's conduct was "so reckless as to demonstrate a substantial lack of concern for whether" Amber would be injured. See MCL 691.1407(7)(a), defining "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

In the context of the governmental employee exception to governmental immunity, the dissent correctly notes that "the proximate cause" means that the driver's conduct must be "the one most immediate, efficient, and direct cause preceding an injury." *Curtis*, *supra* at 563, quoting *Robinson*, *supra* at 458-459. The dissent then goes on to conclude that it was not the driver's conduct, but rather plaintiff's inattentiveness to traffic that meets that requirement. It seems to us that this is a question properly determined by the trier of fact. We do not now hold that the driver's conduct *was* that sole cause. This case is before us on summary disposition. Our inquiry is into the existence of a genuine factual question whether the driver's conduct was the "one most immediate, efficient, and direct cause." We agree with the dissent that there is no reason why the voluntary act of a child *cannot* be the proximate cause. We merely decline to hold, on the basis of the record and procedural posture of the case before us, that it necessarily was. Again, the driver ordered Amber to disembark, leaving Amber with no options other than crossing the street. There is no dispute that the only reason the other vehicle drove forward and was in a position to strike Amber was the driver's deactivation of the warning lights on the bus. There is testimony that the driver ordered Amber to cross the street, although Amber apparently did not do so immediately. The driver was aware of Amber's upset emotional state.

Affording every legitimate inference to the plaintiff, the driver had discharged an upset 13-year-old child by the side of the road. To go home, she would need to cross the road. Students are required to cross *in front* of the bus, MCL 257.1855(3), where oncoming traffic is difficult to see. Finally, the driver had deactivated the warning lights, directing traffic to proceed. MCL 257.1855(2)(b). There is at least a genuine question of material fact whether anything other than the bus driver's conduct caused Amber and the other vehicle to come to be in the same place at the same time. The trial court therefore appropriately denied summary disposition on the issue of the governmental employee exception to governmental immunity.

Affirmed.

/s/ Helene N. White
/s/ Alton T. Davis

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COURT OF APPEALS

STACEY HELFER, Next Friend of AMBER SEILICKI, Minor, Plaintiff-Appellee, v CENTER LINE PUBLIC SCHOOLS, and DEANNA LYNN MULRENIN, Defendants/Third-Party Plaintiffs-Appellants, and MICHELLE SLOAT, Defendant/Third-Party Defendant.	UNPUBLISHED June 20, 2006 No. 265757 Macomb Circuit Court LC No. 2004-003161-NI

Before: White, P.J., Whitbeck, C.J., and Davis, J.

WHITBECK, C.J. (*dissenting*).

I respectfully dissent. Because I conclude that the government vehicle in this case did not directly place the injury-causing object into motion and that none of Mulrenin's actions, albeit arguably grossly negligent, were *the* proximate cause of Amber Seilicki's injury, I would reverse.

I. The Motor Vehicle Exception

The majority interprets the language, "resulting from the negligent operation . . . of a motor vehicle"[1] to hold that "the government vehicle must directly compel the injury-causing accident."[2] According to the majority, "it is sufficient for the government vehicle to cause an

[1] MCL 691.1405.

[2] *Ante* at ___.

injury by placing some object in motion, and that object then injures the plaintiff."[3] The majority then provides, for example, the situation where a police car rams another vehicle off the road and into a pedestrian, or the situation where a government vehicle drives over debris, causing the debris to fling into the air and strike another vehicle. According to the majority, Mulrenin therefore placed into motion the vehicle that hit Seilicki by deactivating the bus's warning lights. However, in my opinion, this conclusion contradicts the majority's own examples. In both situations the majority cites, the government vehicle came into direct physical contact with the injury-causing object and, in each example, that direct physical contact forced the injury-causing object into motion. In this case, however, there was *no* direct physical contact between the bus and the vehicle that hit Seilicki, nor was there direct contact between Seilicki and the bus. Therefore, I would conclude that Seilicki's injury did not result from the negligent operation of the bus.

II. Governmental Employee Immunity

MCL 691.1407(2) provides in relevant part that a government employee is immune from tort liability for injuries to a person caused by the employee while in the course of employment if the following are met:

> (a) The . . . employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The . . . employee's . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Thus, if (a) and (b) have been met, as they plainly are in this case, "a governmental employee may be liable for grossly negligent conduct if that conduct is 'the proximate cause of the injury or damage.'"[4]

"'Gross negligence' means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."[5] "[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence. . . . To hold otherwise would create a jury question premised on something less than the statutory standard."[6]

> [T]he phrase "the proximate cause," as used in MCL 691.1407(2)(c), is not synonymous with "a proximate cause," and . . . to impose liability on a

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[3] *Id*.

[4] *Curtis v Flint*, 253 Mich App 555, 562-563; 655 NW2d 791 (2002).

[5] MCL 691.1407(7)(a).

[6] *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

> governmental employee for gross negligence, the employee's conduct must be "the one most immediate, efficient, and direct cause preceding an injury."[7]

While plaintiff arguably presented evidence that Mulrenin was grossly negligent, this was plainly not the proximate cause of Seilicki's injuries.

I agree with that majority that, pursuant to MCL 257.1855(b), Mulrenin was required to activate the red flashing lights while Seilicki exited and crossed the street. Here, there is disputed evidence whether Mulrenin had activated any of the bus's flashing lights at the time of the accident. Nevertheless, Mulrenin admitted that the red flashing lights were not activated when Seilicki exited the bus. In addition, there was testimony that (1) Seilicki was crying and pleading with Mulrenin to let her ride the bus and became angry and embarrassed after being told to exit the bus and that (2) Mulrenin was Seilicki's everyday bus driver at the time of the incident and was therefore likely aware that Seilicki was about to cross the street because Seilicki stated that she did every time she exited the bus. Viewing the testimony in a light most favorable to plaintiff, she has arguably presented evidence that Mulrenin was grossly negligent, that is, that Mulrenin's conduct was reckless and demonstrated a substantial lack of concern for whether an injury to Seilicki would result.

However, it is manifest that none of Mulrenin's actions or inactions were "the one most immediate, efficient, and direct cause preceding"[8] Seilicki's injury. As Seilicki acknowledged, she attempted to run across the street without looking for cars. Seilicki's crossing of the street in this manner was plainly a more immediate, efficient, and direct cause of her injury than Mulrenin having instructed her to leave the bus. Further, although there was deposition testimony indicating that Mulrenin may have also told Seilicki to cross the street, that same testimony indicates that Seilicki failed to immediately heed this instruction. Thus, again, Seilicki's decision to cross the street at the moment when she did was *the* immediate, efficient, and direct cause of her injury. While plaintiff invokes the potential for children to act impulsively, nothing in the language of MCL 691.1407(2) or the controlling case law suggests that the voluntary act of a child cannot constitute "the proximate cause" of injury. Therefore, the trial court erred in failing to grant summary disposition in favor of Mulrenin with regard to governmental employee immunity.

I would reverse and remand for entry of judgment in favor of defendants.

/s/ William C. Whitbeck

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[7] *Curtis*, *supra* at 563, quoting *Robinson v Detroit*, 462 Mich 439, 458-459, 462; 613 NW2d 307 (2000).

[8] *Curtis*, *supra* at 563.