

STATE OF MICHIGAN
COURT OF APPEALS

LORINE BRANYON,

Plaintiff-Appellee,

v

DEBRA LYNN-PARK FIELDS and DEREK
MONTEZ-TRENELL PARK-FIELDS,

Defendants,

and

DAVID GIBSON and SUBURBAN MOBILITY
AUTHORITY FOR REGIONAL
TRANSPORTATION,

Defendants-Appellants.

UNPUBLISHED

January 15, 2013

No. 305994

Wayne Circuit Court

LC No. 10-009440-NI

Before: TALBOT, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Defendants, David Gibson and Suburban Mobility Authority for Regional Transportation (SMART), appeal by right an order denying their motion for partial summary disposition in this personal injury action resulting from a vehicular collision. We affirm.

On appeal, defendants Gibson and SMART argue that plaintiff failed to present sufficient evidence to demonstrate a genuine issue of material fact regarding whether defendants Gibson and SMART were liable for negligent operation of a motor vehicle or gross negligence. This action arises out of a collision involving a bus, driven by defendant, Gibson, and owned by defendant, SMART, and a car, driven by defendant, Debra Lynn-Park Fields, which allegedly caused injuries to plaintiff, who was a passenger on the bus.

I. STANDARDS OF REVIEW

Defendants Gibson and SMART filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10), and they argue on appeal that the trial court erred in denying this motion because there was no genuine issue of material fact and defendants Gibson and SMART are entitled to governmental immunity. This Court reviews a trial court's decision regarding a motion for summary disposition de novo, and whether governmental immunity applies is a

question of law to which this Court likewise applies de novo review. *Seldon v Suburban Mobility Authority for Regional Transp*, 297 Mich App 427, 432; __NW2d__ (2012) A motion pursuant to MCR 2.116(C)(10) “tests the factual sufficiency of a claim” *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). If no genuine issue of material fact remains such that the moving party is entitled to judgment in their favor as a matter of law, summary disposition is appropriate pursuant to MCR 2.116(C)(10). *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 424-425; 751 NW2d 8 (2008).

“There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.” *Id.* at 425. “The moving party must specifically identify the undisputed factual issues and has the initial burden of supporting its position with documentary evidence. The responding party must then present legally admissible evidence to demonstrate that a genuine issue of material fact remains for trial.” *ER Zeiler Excavating, Inc v Valenti Trobec Chandler Inc*, 270 Mich App 639, 644; 717 NW2d 370 (2006) (citation omitted). This Court reviews “the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party” when reviewing a motion brought pursuant to MCR 2.116(C)(10). *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

“Summary disposition under MCR 2.116(C)(7) is appropriate when a claim is barred by immunity granted by law.” *Seldon*, 297 Mich App at 432. Under Michigan’s governmental tort liability act, MCL 691.1401 *et seq*, government agencies and governmental employees are generally entitled to immunity from tort liability. *Stanton v City of Battle Creek*, 466 Mich 611, 615; 647 NW2d 508 (2002). In reviewing denials or grants of summary disposition pursuant to MCR 2.116(C)(7), this Court “consider[s] all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them.” *Fane v Detroit Library Com’n*, 465 Mich 68, 74; 631 NW2d 678 (2001).

II. NEGLIGENT OPERATION OF A MOTOR VEHICLE

First, defendants Gibson and SMART argue that governmental immunity bars plaintiff’s claim because plaintiff failed to establish that the negligent operation of a motor vehicle exception to governmental immunity applies, and therefore, the trial court erred in denying defendants Gibson’s and SMART’s motion for summary disposition. We disagree.

There are several narrow exceptions to governmental immunity as applied to government entities. *Stanton*, 466 Mich at 615. Under MCL 691.1405, “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.” *Id.* at 616, quoting MCL 691.1405. Plaintiff is required to prove four elements to establish a prima facie claim of negligence: “(1) duty, (2) breach, (3) causation, and (4) damages.” *Seldon*, 297 Mich App at 433.

On appeal, plaintiff argues that a question of fact remains regarding whether defendant ran at least one red light and whether defendant could have and should have stopped the bus before it entered the intersection of the eastbound lanes of Eight Mile and the south bound lanes

of Gratiot. Conversely, defendant Gibson argues that because he was lawfully in the intersection before the light turned red, and because the light was green when he entered the intersection, he had the statutory right of way to exit the intersection, and defendant Debra was required to yield to defendant Gibson.

There are two intersections of lanes at issue here because Eight Mile is a boulevard. There are two traffic lights, and a vehicle may potentially be stopped at either one when attempting to cross Eight Mile heading southbound on Gratiot. Based on the facts in the record, it is clear that before the bus crossed the westbound lanes, one of the lights was green when defendant Gibson entered the intersection of the westbound Eight Mile and southbound Gratiot lanes. Then, while defendant Gibson was crossing the westbound lanes of the intersection, a car driving along the left side of the bus, going the same direction as the bus on Gratiot, turned right in front of the bus, cutting the bus off, and headed westbound on Eight Mile. While the bus was stopped at the intersection of the westbound Eight Mile lanes and the southbound Gratiot lanes, one of the lights turned yellow, then red, and the bus was blocking the westbound Eight Mile traffic. It is unclear whether the light just before the intersection of the eastbound Eight Mile lanes and the southbound Gratiot lanes was red before defendant Gibson entered that intersection of lanes.

Defendants Gibson and SMART argue that MCL 257.612(1)(a) and MCL 257.649(1) gave defendant Gibson the statutory right-of-way because defendant Gibson was lawfully in the intersection, without specifying which portion of the intersection, when the light turned red.

MCL 257.612(1) provides in part:

(a) If the signal exhibits a green indication, vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at that place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians and bicyclists lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) If the signal exhibits a steady yellow indication, vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection or at a limit line when marked, but if the stop cannot be made in safety, a vehicle may be driven cautiously through the intersection.

(c) If the signal exhibits a steady red indication, the following apply:

(i) Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or at a limit line when marked or, if there is no crosswalk or limit line, before entering the intersection and shall remain standing until a green indication is shown, except as provided in subparagraph (ii). [See also *Engle v Rawlison*, 46 Mich App 422, 423-424; 208 NW2d 223 (1973), quoting MCL 257.612(1).]

MCL 257.649(1) provides: “The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection from a different highway.” This Court looks to the plain language of a statute, and “only where the statutory language is

ambiguous may we look outside the statute to ascertain the Legislature's intent." *DiBenedetto v West Shore Hosp.*, 461 Mich 394, 402; 605 NW2d 300 (2000).

Defendant Gibson argues that because the light was green when he entered the intersection, he was lawfully in the intersection when the light turned red, and pursuant to MCL 257.612(1)(a), defendant Debra was required to yield the right of way to defendant Gibson, even though defendant Debra had the green signal. However, this analysis presumes that defendant Gibson was in the intersection of the eastbound Eight Mile lanes and southbound Gratiot lanes when the light turned red. However, it is not clear, based on the evidence in the record, what color the light before the eastbound Eight Mile lanes and southbound Gratiot lanes was when defendant Gibson entered that specific portion of the intersection. If it was red, MCL 257.612 would apply, which, based on the plain language of MCL 257.612(c)(i), would require defendant Gibson to stop before entering the intersection and remain standing until the light turned green.

Defendants Gibson and SMART argue that if defendant Gibson had stopped before entering the intersection of the eastbound Eight Mile and southbound Gratiot lanes, he would have blocked the westbound Eight Mile traffic in violation of MCL 257.676b(1), which provides:

A person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section shall not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway. [*Poppen v Tovey*, 256 Mich App 351, 358; 664 NW2d 269 (2003), quoting MCL 257.676b(1).]

However, if the light before the intersection of the eastbound Eight Mile lanes and the southbound Gratiot lanes was solid red before defendant Gibson entered that intersection of lanes, then defendant Gibson would have broken a law in either scenario, by either running a red light or blocking traffic. Because running a red light would arguably create a greater risk of harm than blocking traffic, a jury could find that defendant Gibson was negligent for running the red light, even though not doing so would result in the bus blocking traffic. Therefore, whether the second light was solid red is a genuine issue of material fact that remains, and viewing the evidence in the light most favorable to plaintiff, the nonmoving party, the trial court did not err in denying defendants Gibson and SMART's motion for summary disposition.

III. GROSS NEGLIGENCE

Second, defendants Gibson and SMART argue that governmental immunity bars plaintiff's claim because plaintiff failed to establish that defendant Gibson was grossly negligent; therefore, the trial court erred in denying defendants Gibson's and SMART's motion for summary disposition. We disagree.

A governmental employee must show three things to establish entitlement to governmental immunity: (1) "[t]he officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority[.]" (2) "[t]he

governmental agency is engaged in the exercise or discharge of a governmental function[.]” and (3) [t]he officer’s, employee’s, member’s, or volunteer’s conduct does not amount to gross negligence that is the proximate cause of the injury or damage.” *Seldon*, 297 Mich App at 440, quoting MCL 691.1407(2). Gross negligence is “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” *Id.*, quoting MCL 691.1407(7)(a). “Evidence of ordinary negligence does not create a question of fact regarding gross negligence.” *Poppen*, 256 Mich at 356.

Summary disposition is appropriate where “no reasonable person could find that a governmental employee’s conduct was grossly negligent[.]” *Tarlea v Crabtree*, 263 Mich App 80, 88; 687 NW2d 333 (2004). Gross negligence “suggests . . . almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks. It is as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety or welfare of those in his charge.” *Id.* at 90.

Because there is a question of fact regarding whether the second light was solid red before defendant Gibson entered the intersection of the eastbound Eight Mile lanes and the southbound Gratiot lanes, it is possible that defendant Gibson ran the second red light. A jury could find this action constituted gross negligence because of the inherent risks involved in running a red light, particularly while driving a bus transporting several people. Therefore, in viewing the evidence in the light most favorable to plaintiff, the nonmoving party, a genuine question of material fact remains regarding whether defendant Gibson was grossly negligent. Therefore, the trial court did not err in denying defendants Gibson’s and SMART’s motion for summary disposition regarding plaintiff’s claim that defendant Gibson was grossly negligent.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens