

STATE OF MICHIGAN
COURT OF APPEALS

TIA GENTRY, Personal Representative of the
ESTATE OF DELANA GENTRY,

Plaintiff-Appellee,

v

RYAN BAUGH and CITY OF DETROIT,

Defendants-Appellants,

and

EDWIN ROSS NICHOLS and TERNESIA MARIE
WARD,

Defendants.

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

In this case involving the assertion of governmental immunity, defendants, Ryan Baugh and the city of Detroit,¹ appeal by right the trial court’s order denying Baugh’s renewed motion for summary disposition pursuant to MCR 2.116(C)(7) (immunity granted by law). The motion sought dismissal of the gross-negligence claim asserted by plaintiff, Tia Gentry, as personal representative of the estate of Delana Gentry. Finding no errors warranting reversal, we affirm.

¹ This opinion uses the term “defendants” to reference only defendants-appellants Baugh and the city of Detroit.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case was subject to a prior appeal in *Gentry v Baugh*, unpublished per curiam opinion of the Court of Appeals, issued October 11, 2024 (Docket No. 367862), which set forth much of the relevant factual background and procedural history:

This case arises out of a motor vehicle accident at around 9 p.m. on October 23, 2020, at the intersection of James Couzens Freeway and West McNichols Road in Detroit, Michigan. Plaintiff's mother, Delana, was recovered from a burning home by the Detroit Fire Department and transported by EMS employees to the hospital for further treatment. Baugh drove the ambulance while others treated Delana in the back of the vehicle. As Baugh drove down James Couzens Freeway through the West McNichols Road intersection, defendant Edwin Nichols struck the ambulance, causing it to roll over.

The details of the accident are hotly contested. Baugh wrote in his report following the accident that he had a green light and that Nichols "ran a red light" at a high rate of speed, causing the crash. At his deposition, Baugh testified that he could not remember the color of his light but "remember[ed] driving down James Couzens and seeing the green light." In contrast, Nichols and a witness interviewed at the scene both said that Nichols had the green light. Nichols also testified that he was traveling the speed limit, which was 35 miles per hour. Baugh wrote in his report and testified at his deposition that he slowed down at the intersection, looked both ways to make sure the intersection was clear, and only proceeded after determining that it was safe to do so. Baugh's supervisor testified that, when she arrived at the scene of the accident, a witness told her that Nichols'[s] vehicle went around stopped traffic to enter the intersection. Nichols, however, never said that he went around stopped traffic before the accident. He testified that he turned onto McNichols and was simply driving through his green light when the accident happened. Plaintiff's accident reconstructionist seemingly confirmed this—he represented that the crash data from the vehicle Nichols was driving showed that Nichols'[s] "vehicle was traveling between 34-35 m.p.h. in the five seconds leading up to the crash" Baugh testified at his deposition that he had his lights and sirens activated, and a witness at the scene confirmed this and additionally reported that the ambulance sounded its horn before entering the intersection. Nichols, however, said that, while he heard sirens, he thought that they were the sirens of ambulances that he could see down the street in front of him, and he denied seeing any lights on the ambulance that Baugh was operating. The speed that Baugh was traveling before the accident is also unclear. In his report, Baugh wrote that his speed was "55" but crossed that out and wrote "30." Then, at his deposition, Baugh said that he "couldn't put an estimate on" his speed, but "would say more than 10 miles an hour is a good estimate." When asked if he was traveling "[m]ore than 50," he said, "Probably not more than 50," and agreed that he was traveling "10 to 50, somewhere in there."

. . . [P]laintiff brought claims against defendants alleging that Baugh was negligent or grossly negligent in his operation of the ambulance, which caused the

collision in which Delana suffered a traumatic brain injury that eventually led to her death. Defendants moved for summary disposition under MCR 2.116(C)(7), arguing that plaintiff's claims against them were barred by governmental immunity. Defendants contended that Baugh was not negligent in his operation of the ambulance and, therefore, the motor vehicle exception to governmental immunity was inapplicable. Plaintiff argued in response that there was a question of fact whether Baugh drove the ambulance reasonably and with due care and caution, i.e., whether he was negligent in his operation of the ambulance. The trial court agreed with plaintiff, holding that there were several issues of fact whether Baugh drove appropriately under the circumstances, including discrepancies in what speed Baugh was traveling, whether Nichols observed the ambulance's lights and sirens, and whether Baugh operated the ambulance safely in a way to prevent injuries. The court accordingly denied defendants' motion for summary disposition. [*Id.* at 1-3 (first and fourth alterations in original).]

In the prior appeal, this Court affirmed the trial court's denial of defendants' initial motion for summary disposition, which focused on plaintiff's negligence claim and the applicability of the motor-vehicle exception to governmental immunity. *Id.* It observed that the "evidence is rife with discrepancies," which created "genuine issues of material fact whether Baugh was negligent in his operation of the ambulance." *Id.* at 6. However, the Court did not opine "on whether Baugh was grossly negligent in his operation of the ambulance because the issue was not raised by defendants on appeal." *Id.* at 6 n 7.

After litigation resumed in the trial court, Baugh moved for summary disposition of plaintiff's gross-negligence claim pursuant to MCR 2.116(C)(7). He relied on much of the same evidence presented in the initial summary disposition proceedings, with the addition of a report and deposition testimony from accident reconstructionist, Charles Funk, who "conduct[ed] simulations of the accident to determine the speed the ambulance was going," and "testified that the ambulance was only going 22 to 24 miles on [sic: an] hour at the time of the accident." Plaintiff responded by attaching an affidavit of her own accident reconstructionist, Timothy Robbins, in which he stated that Funk's analysis was based on a simulation that relied on assumptions rather than sound factual data.

Following a motion hearing, the trial court denied Baugh's renewed motion for summary disposition, reasoning that there were genuine issues of material fact concerning whether Baugh was grossly negligent in his operation of the ambulance. This appeal ensued.

II. SUMMARY DISPOSITION

Defendants argue that the trial court erred by denying Baugh's renewed motion for summary disposition on the basis of governmental immunity because plaintiff failed to establish a genuine issue of material fact regarding whether Baugh's conduct amounted to gross negligence. We disagree.

We review a trial court's decision on a motion for summary disposition de novo. *Norman v Dep't of Transp*, 338 Mich App 141, 146; 979 NW2d 390 (2021). The applicability of

governmental immunity also presents a question of law that we review de novo. *Id.* With respect to our review of a motion for summary disposition based on governmental immunity:

Summary disposition is appropriate under MCR 2.116(C)(7) when a claim is barred by immunity granted by law. When reviewing a motion under MCR 2.116(C)(7), the trial court must accept as true all of the plaintiff's well-pleaded factual allegations and construe them in favor of the plaintiff unless disputed by documentary evidence submitted by the moving party. The court must consider any affidavits, depositions, admissions, or other documentary evidence submitted, and the court must determine whether there are any genuine issues of material fact. If no facts are in dispute, or if reasonable minds could not differ regarding the legal effect of the facts, the question whether the claim is barred by governmental immunity is an issue of law for the trial court to decide. If a question of fact exists, dismissal is inappropriate. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. [*Id.* at 146-147 (quotation marks and citations omitted).]

“Although questions regarding whether a governmental employee's conduct constituted gross negligence are generally questions of fact for the jury, if reasonable minds could not differ, summary disposition may be granted.” *Dougherty v Detroit*, 340 Mich App 339, 345; 986 NW2d 467 (2021) (quotation marks and citation omitted).

“The governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, affords broad immunity from tort liability to governmental agencies and their employees whenever they are engaged in the exercise or discharge of a governmental function.” *Kozak v Lincoln Park*, 499 Mich 465, 467; 885 NW2d 443 (2016). There are several statutory exceptions to this general rule, “all of which must be narrowly construed.” *Id.* Relevant here is MCL 691.1407(2), which grants employees of a governmental agency immunity from tort liability under the following conditions:

- (a) The officer, employee, member, or volunteer 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 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.

Under MCL 691.1407(8)(a), gross negligence is defined as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” The standard “suggests almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks.” *Dougherty*, 340 Mich App at 350 (quotation marks and citation omitted). “Evidence of ordinary negligence or simply alleging that an actor could have done more is insufficient to meet the standard of gross negligence under the GTLA.” *Id.* (quotation marks and citation omitted).

Defendants contend that there are “no facts that establish gross negligence.” However, as stated in the prior appeal, the “evidence is rife with discrepancies” that make summary disposition inappropriate. *Gentry*, unpub op at 6. Although the instant appeal addresses plaintiff’s gross-negligence claim and supplements new documentary evidence, many of the same factual disputes underlying the denial of defendants’ first motion for summary disposition remain unresolved.

According to Baugh, his ambulance lights and sirens were active when he approached the intersection. In an incident report, Baugh indicated that he had a green light. While he testified that he did not know his exact speed as he approached the intersection, Baugh estimated traveling between 10 and 50 miles per hour. Baugh’s incident report is similarly equivocal, bearing a handwritten note that he was traveling 55 miles per hour, which was crossed out and replaced with 30 miles per hour. Baugh testified that he looked left and right to ensure there was no oncoming traffic before proceeding through the intersection and entered it upon determining the intersection was clear. Further, he “tried [his] best” to slow down, to give himself enough distance to stop if traffic prevented him from entering the intersection. On the other hand, Nichols testified that he was driving within the 35 mile per hour speed limit and had a green light as he approached the intersection. Nichols heard a siren and looked for an emergency vehicle but did not see one in the immediate area before entering the intersection. He did not see Baugh’s ambulance before the collision and testified that the ambulance lights were not activated at the time of the crash.

There is also competing documentary evidence from the parties’ respective accident-reconstruction experts. While Funk concluded that the ambulance was traveling approximately 22 to 24 miles per hour at the time of impact based on simulation data, Robbins provided an affidavit stating that Funk’s simulation-based analysis relied on assumptions rather than sound factual data.

Construing the evidence in the light most favorable to plaintiff, there are genuine issues of material fact regarding whether Baugh’s conduct amounted to gross negligence, including whether the ambulance lights were engaged, the speed of the ambulance, and whether Baugh ensured the intersection was clear before proceeding through it. Defendants rely on Funk’s conclusion that Baugh was traveling 22 to 24 miles per hour as dispositive, however, Baugh’s own statements about his speed and Robbins’s contradictory analysis sufficiently create a factual dispute regarding the ambulance speed. While a jury may choose to credit the evidence provided by Funk over that of Baugh or Robbins, determinations of weight are left to the trier of fact. See *Flanagin v Kalkaska Co Rd Comm*, 319 Mich App 633, 641; 904 NW2d 427 (2017) (noting that competing accident-reconstruction analyses “would be for a trier of fact to consider how any such discrepancy affected the weight to be given the opinions, if indeed both were presented to the trier of fact”).² Further, even if Baugh was driving at the speed proposed by Funk, reasonable minds could differ regarding whether Baugh ensured it was safe to enter the intersection given Nichols’s testimony that he proceeded through the green light without observing the ambulance before he suddenly struck it.

² It is also noteworthy that Funk’s analysis partially rested on factual assumptions that are still open to dispute. For example, Funk’s ultimate conclusion—that Nichols caused the crash by failing to “appropriately detect the ambulance, which had sufficient detection cues” because of its flashing lights and siren—was based on Baugh’s deposition testimony that the ambulance lights were activated. However, this fact is clearly in dispute based on Nichols’s contradictory testimony.

See *id.* at 638 (“[W]hile police cars, ambulances, and fire trucks operating with lights and sirens may proceed through a red light . . . they must do so only after ensuring that it is, in fact, safe to do so.”).

Given the multiple questions of fact regarding Baugh’s conduct when he entered the intersection, the trial court appropriately determined that the issue of gross negligence required jury resolution. See *Doughery*, 340 Mich App at 345 (noting that “questions regarding whether a governmental employee’s conduct constituted gross negligence are generally questions of fact for the jury”) (quotation marks and citation omitted).

As in the initial appeal, defendants’ reliance on emergency-vehicle exemptions in the Michigan Vehicle Code (MVC), MCL 257.1 *et seq.*, does not compel a different result. These provisions allow the driver of an authorized emergency vehicle to “[p]roceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation,” MCL 257.603(3)(b), and “[e]xceed the prima facie speed limits so long as he or she does not endanger life or property,” MCL 257.603(3)(c). Relevant here, these provisions are only applicable “when the vehicle is equipped with at least 1 lighted lamp displaying a flashing, oscillating, or rotating red or blue light visible under normal atmospheric conditions . . .” MCL 257.603(4). Again, there are factual disputes regarding whether the ambulance lights were engaged, whether Baugh exceeded the speed limit, and whether Baugh slowed down as necessary for safe operation when he entered the intersection. These disputes impact whether Baugh can even invoke the application of MCL 257.603(3), making it an inappropriate basis for summary disposition.

While defendants cite cases for the proposition that immunity should apply unless a government employee’s conduct is “shockingly reckless,” that is not the controlling standard. Gross negligence is statutorily defined as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(8)(a). Plaintiff presented sufficient evidence to survive summary disposition on this issue. In light of the factual disputes outlined above, a reasonable juror could conclude that Baugh acted recklessly and demonstrated a substantial lack of concern for resulting injuries by failing to ensure the intersection was clear before driving through a red light without his ambulance lights engaged, especially where Baugh was transporting a “priority 1 patient” to the hospital at night.

Defendants compare the instant case to *Hester v Brabbs*, unpublished per curiam opinion of the Court of Appeals, issued August 15, 2019 (Docket No. 343927), p 1, where this Court affirmed a trial court’s grant of summary disposition under MCR 2.116(C)(7).³ In that case, a University of Michigan employee was driving a university vehicle in the course of his employment when he rear ended a vehicle occupied by the plaintiff, causing a minor collision. *Id.* In concluding that the plaintiff did not establish a genuine issue of material fact concerning gross negligence, the trial court observed, “According to the record evidence, the damage to the vehicles was minimal and there were no obvious injuries, indicating that defendant’s speed did not show a reckless disregard for injuries.” *Id.* at 3. The collision described in *Hester* sharply contrasts with

³ See *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017) (noting that although “unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless consider such opinions for their instructive or persuasive value”).

the facts of this case. In this case, the intensity of the crash caused the ambulance to roll over onto its side. Plaintiff alleges that Delana passed away as a result of her injuries. Baugh himself tore a ligament in his wrist as a result of the collision, which required him to take six months off of work. Given the severity of the accident at issue, *Hester* provides no meaningful basis for comparison.

Affirmed.

/s/ Mariam S. Bazzi

/s/ Sima G. Patel

/s/ Matthew S. Ackerman