If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

ABC, a minor, by Next Friends KAYLA BRISENO and JOHN CRUMLEY,

Plaintiffs-Appellants,

v

HOLT PUBLIC SCHOOLS and CHRISTINE LYNN MCPHARLIN,

Defendants-Appellees.

UNPUBLISHED
October 23, 2026
9:20 AM

No. 374898
Ingham Circuit Court
LC No. 23-000755-NI

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

While driving a school bus for defendant Holt Public Schools (Holt), defendant Christine Lynn McPharlin struck and seriously injured ABC, a minor child who had recently gotten off McPharlin's bus. Plaintiffs, ABC's parents, filed this action against Holt and McPharlin alleging negligence, gross negligence, owner's liability, and vicarious liability. Plaintiffs appeal by right the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(7) and (C)(10). For the reasons set forth below, we conclude that the trial court erred by granting defendants' motion. Accordingly, we reverse and remand for further proceedings.

I. FACTUAL BACKGROUND

On the day of the accident, McPharlin worked as a substitute bus driver for Holt. ABC was seven years old. McPharlin dropped off ABC at his assigned bus stop, and he followed the bus along its route on his bicycle. The bus's onboard video camera system showed ABC riding his bicycle alongside the bus on the driver's side. At one point when the bus was stopped, ABC got off his bicycle and approached the driver's side of the bus. He jumped up and down, waving at the children on the bus. He then got back onto his bicycle and continued following alongside the bus on the driver's side for a short time before the accident occurred.

Because a parent was not at one of the stops on McPharlin's route, she had to turn the bus around and go back to that stop to drop off a child. To do that, McPharlin had to turn left onto Schippell Street instead of continuing to drive straight on Harding Avenue, as was the usual route.

As McPharlin turned left, ABC continued riding his bicycle straight on Harding Avenue. The bus struck ABC, who was knocked to the ground and run over by the back tires of the bus. McPharlin pulled the bus over to the side of the road, contacted dispatch, and requested an ambulance. She remarked to the children on the bus, "He ran into my bus when I was turning," and "I think he thought I was going straight like I always do." She also stated, "Why did he come off that curb," and "He cannot race the bus." She told the dispatcher and an unidentified witness who was passing by that ABC had been following the bus on his bike. Shortly thereafter, she told a police officer that she saw ABC on his bike when the bus was stopped, and she looked around afterward and did not see him, "so I turned." ABC suffered serious injuries because of the accident.

Plaintiffs filed this action alleging negligence, gross negligence, owner's liability, and vicarious liability against McPharlin and Holt. During her deposition, McPharlin testified she did not see ABC on his bicycle before the accident, and the first time she saw him was when the accident occurred. Defendants moved for summary disposition under MCR 2.116(C)(7) and (10). They argued that McPharlin's conduct did not constitute negligence or gross negligence as a matter of law. Because her conduct did not amount to gross negligence that was the proximate cause of ABC's injuries, they maintained McPharlin was entitled to governmental immunity under MCL 691.1407(2) of the governmental tort liability act (GTLA), MCL 691.1401 *et seq*. Defendants also argued that because McPharlin's conduct did not constitute negligence, the motor-vehicle exception to governmental immunity under MCL 691.1405 was inapplicable, entitling Holt to summary disposition. In addition, defendants maintained that ABC was more than 50% at fault for the accident.

The trial court granted defendants' motion. The court determined that the evidence failed to show that McPharlin acted in a negligent or grossly negligent manner or that her conduct was the proximate cause of ABC's injuries. The court further determined that a reasonable jury could not conclude that McPharlin was more at fault than ABC for his injuries. This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Ray v Swager*, 501 Mich 52, 61-62; 903 NW2d 366 (2017). We also review de novo as a question of law the applicability of governmental immunity. *Id*. at 61. "Summary disposition is appropriate under MCR 2.116(C)(7) when a claim is barred by immunity granted by law." *Norman v Dep't of Transp*, 338 Mich App 141, 146; 979 NW2d 390 (2021). In deciding a motion under subrule (C)(7), the trial court considers the documentary evidence that the parties submit in the light most favorable to the party opposing the motion. *Citizens Ins Co of America v Univ Physician Group*, 319 Mich App 642, 648; 902 NW2d 896 (2017). "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." *Norman*, 338 Mich App at 146-147. Dismissal is inappropriate if questions of fact exist. *Id*.

A motion under MCR 2.116(C)(10) tests the factual support of the plaintiff's complaint. *Anderson v Transdev Servs, Inc*, 341 Mich App 501, 506; 991 NW2d 230 (2022). Like a motion under subrule (C)(7), in reviewing a motion under subrule (C)(10), this Court considers the pleadings, affidavits, depositions and other evidence in the light most favorable to the nonmoving party. *Hanlin v Saugatuck Twp*, 299 Mich App 233, 239; 829 NW2d 335 (2013). Summary

disposition is appropriate if the evidence fails to establish a genuine issue of material fact for trial, and the moving party is entitled to judgment as a matter of law. *Houston v Mint Group, LLC*, 335 Mich App 545, 557; 968 NW2d 9 (2021).

III. GROSS NEGLIGENCE

Plaintiffs first challenge the trial court's determination that McPharlin was entitled to governmental immunity under MCL 691.1407(2). "[G]overnmental agencies and their employees are generally immune from tort liability under the [GTLA]." *Beals v Michigan*, 497 Mich 363, 365; 871 NW2d 5 (2015). MCL 691.1407(2) provides an exception to governmental immunity in certain circumstances and states, in relevant part:

> Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment . . . if all of the following are met:
>
> (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. [Emphasis added.]

Thus, MCL 691.1407(2)(c) provides an exception to governmental immunity "when a governmental employee's conduct is both (1) grossly negligent and (2) the proximate cause of an injury." *Beals*, 497 Mich at 365 (quotation marks and citation omitted). MCL 691.1407(8)(a) defines "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

The record demonstrates a factual dispute regarding whether McPharlin acted with gross negligence. She testified at her deposition that she did not see ABC on his bicycle before the accident. At the accident scene, however, she repeatedly stated that ABC had been following the bus on his bike and trying to "race the bus." Therefore, the record shows that McPharlin observed ABC on his bike at some point as she continued on her route after dropping him off. She also remarked that he must have thought she was going to continue driving straight on Harding Avenue, as she normally did, instead of turning left on Schippell Street. She testified that she checked her mirrors before she turned and did not see ABC on his bike, but plaintiffs submitted an affidavit from their traffic crash reconstruction expert, Timothy P. Robbins, stating that McPharlin would have been able to see ABC in the roadway if she had used her mirrors. Therefore, factual disputes existed. A factual dispute precludes summary disposition under MCR 2.116(C)(7). *Norman*, 338 Mich App at 146-147.

Because McPharlin was aware that ABC was riding his bicycle in the area, and was following the bus, she was required to be vigilant about him. We find M Civ JI 10.07 (Conduct Required for Safety of Child) particularly appropriate in the circumstances of this case. That instruction states:

> The law recognizes that children act upon childish instincts and impulses. If you find the defendant knew or should have known that a child or children were or were likely to be in the vicinity, then the defendant is required to exercise greater vigilance and this is a circumstance to be considered by you in determining whether reasonable care was used by the defendant.

McPharlin admitted that she was aware ABC was in the vicinity. At the accident scene, she remarked, "Why did he come off that curb?" She also remarked that he had been following the bus, in fact stating that he had been racing the bus. As the jury instruction recognizes, children may act on impulse. Because McPharlin did not know where ABC was when she decided to turn, but she knew he was in the area, she was required to exercise greater vigilance. The jury may consider that circumstance in determining whether, and to what extent, McPharlin acted negligently.

The trial court also erred by determining as a matter of law that McPharlin was not the proximate cause of ABC's injuries when there exists a factual dispute regarding that issue. In *Robinson v Detroit*, 462 Mich 439, 458; 613 NW2d 307 (2000), our Supreme Court determined that the phrase "the proximate cause" in MCL 691.1407(2)(c) does not mean " 'a proximate cause.' " The Court further stated, "The phrase 'the proximate cause' is best understood as meaning the one most immediate, efficient, and direct cause preceding an injury." *Id*. at 459.

In *Ray*, 501 Mich at 63, our Supreme Court explained proximate cause:

> Proximate cause is an essential element of a negligence claim. It involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences. Proximate cause is distinct from cause in fact, also known as factual causation, which requires showing that but for the defendant's actions, the plaintiff's injury would not have occurred. Courts must not conflate these two concepts. . . . [A] court must find that the defendant's negligence was a cause in fact of the plaintiff's injuries before it can hold that the defendant's negligence was the proximate or legal cause of those injuries. In a negligence action, a plaintiff must establish both factual causation, i.e., the defendant's conduct in fact caused harm to the plaintiff, and legal causation, i.e., the harm caused to the plaintiff was the general kind of harm the defendant negligently risked. If factual causation cannot be established, then proximate cause, that is, legal causation, is no longer a relevant issue. [Quotation marks and citations omitted.]

The Court further stated:

> It is not uncommon that more than one proximate cause contributes to an injury. However, under the GTLA, we have held that when assessing whether a

> governmental employee was "the proximate cause" of the plaintiff's injuries, a court must determine whether the defendant's conduct was the one most immediate, efficient, and direct cause of the injury. [*Id*. at 65 (quotation marks, citations, and ellipsis omitted).]

In this case, a reasonable jury could conclude that McPharlin's conduct was the proximate cause of ABC's injuries. Although ABC was riding his bicycle in the roadway, as M Civ JI 10.07 recognizes, children may "act upon childish instincts and impulses." McPharlin was aware that ABC was following the bus on his bike and did not know where he was before she turned. She acknowledged that ABC probably thought she was going to continue driving straight instead of turning. A reasonable jury could determine that McPharlin's conduct in turning the bus and deviating from the typical route when she was unaware of ABC's whereabouts was the one most immediate and direct cause of ABC's injuries. Therefore, the trial court erred by concluding as a matter of law that McPharlin was not the proximate cause of his injuries.

IV. MOTOR-VEHICLE EXCEPTION TO GOVERNMENTAL IMMUNITY

Plaintiffs next argue that the trial court erred by granting summary disposition in favor of Holt on the basis that McPharlin was not negligent. The motor-vehicle exception is one of six exceptions to governmental immunity. *West v Dep't of Nat Resources*, 333 Mich App 186, 191; 963 NW2d 602 (2020). The exception states that "[g]overnmental 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. A prima facie claim of negligence requires a plaintiff to establish "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Finazzo v Fire Equip Co*, 323 Mich App 620, 635; 918 NW2d 200 (2018).

Defendants argue that McPharlin owed no duty to ABC because he was unlawfully in the roadway. However, under MCL 257.648(1), McPharlin had a duty to ensure that she could execute her turn safely before she turned the bus. MCL 257.648(1) states, "The operator of a vehicle or bicycle upon a highway, before stopping or turning from a direct line, shall first determine that the stopping or turning can be made in safety and shall give a signal as required in this section." A reasonable fact-finder could conclude, for the reasons previously discussed, that McPharlin breached her duty to determine whether she could safely turn the bus. See *McDuffie v Neal*, ___ Mich ___, ___; 21 NW3d 205, 207-208 (2025) (although the fact-finder could determine that the decedent acted unlawfully by passing the defendant's truck on the right, the jury could also conclude that the truck driver failed to ensure he could safely turn right before he did so). There exists a factual dispute regarding whether McPharlin was negligent.

Finally, plaintiffs challenge the trial court's determination that no reasonable jury could conclude that McPharlin was more at fault than ABC. MCL 500.3135(2)(b) of the no-fault act, MCL 500.3101 *et seq*., precludes an award of damages "in favor of a party who is more than 50% at fault." Similarly, MCL 600.2959 provides that "noneconomic damages shall not be awarded" to a person whose "percentage of fault is greater than the aggregate fault of the other person or persons." A material factual dispute exists regarding whether ABC's percentage of fault is greater than that of McPharlin. "It is well-established under Michigan law that minors are not held to the same standard of care as adults." *Bragan ex rel Bragan v Symanzik*, 263 Mich App 324, 328; 687

NW2d 881 (2004). "The age of seven is significant because traditionally age seven has been treated as a 'dividing line' in Michigan." *Estate of Goodwin by Goodwin v Northwest Mich Fair Ass'n*, 325 Mich App 129, 159-160; 923 NW2d 894 (2018) (citation omitted). While children under age seven are presumptively incapable of negligence, "the capabilities of children older than seven pose a question of fact for the jury, which is to determine it on the basis of whether the child had conducted himself as a child of his age, ability, intelligence and experience would reasonably have been expected to do under like circumstances." *Id*. at 160 (quotation marks and citation omitted). Because ABC was seven years old when the accident occurred, he was on the "dividing line" in Michigan regarding his possible negligence. Accordingly, the trial court erred by determining that a reasonable jury could not conclude that McPharlin was more at fault than ABC in causing his injuries.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Sima G. Patel
/s/ Michael J. Kelly
/s/ Kristina Robinson Garrett