STATE OF MICHIGAN

COURT OF APPEALS

DOROTHY MINTER,

Plaintiff-Appellee,

V

CITY OF GRAND RAPIDS and JOHN EDWARD-RHEEM WETZEL,

Defendants-Appellants.

UNPUBLISHED
November 1, 2005

No. 255321
Kent Circuit Court
LC No. 03-005719-NI

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

Defendants appeal from the trial court's order denying their motion for summary disposition. Plaintiff was injured when defendant Wetzel, a Grand Rapids Police officer, struck her with his police cruiser. The trial court found, as defendants argued, that MCL 691.1407 and its standard of gross negligence applies to Wetzel in this case. Defendants also asserted governmental immunity and requested summary disposition. The court denied that request, finding that there were issues of material fact regarding whether Wetzel acted with gross negligence. We affirm.

At the time of the incident, Wetzel was alone in his vehicle, following another cruiser on the way to support an officer engaged in a foot pursuit. When the two cruisers arrived at the appointed intersection, the other cruiser took the only available parking spot. Wetzel disengaged his siren and flashing light and slowed his vehicle, near the intersection, to a speed of one or two miles an hour. He then heard over the radio that support was needed to the east. To get there, he needed to turn left. He reactivated his lights, but not his siren, and turned left.

Parked vehicles obstructed Wetzel's view of the intersection. According to a crash report, although Wetzel did not surpass the speed limit, he accelerated to about fourteen miles an hour at the point of impact with plaintiff; he did this in a span of about forty feet. Plaintiff was legally crossing the road and Wetzel admitted fault. She sued him and the City of Grand Rapids to recover for her injuries.

This first issue before this Court is whether defendants may appeal the trial court's order as of right as a final order. See MCR 7.203(A)(1). A final order is defined under MCR 7.202 in several ways. The relevant definition for purposes of this civil appeal is "[a]n order denying

governmental immunity to a governmental party, including a governmental agency, official, or employee[.]" MCR 7.202(6)(v).[1]

This Court, in *Newton v Michigan State Police*, 263 Mich App 251, 257; 688 NW2d 94 (2004), held that MCR 7.202(7)(a)(v) (the former citation for MCR 7.202[6][v]) does not allow an immediate appeal of a denial of summary disposition if immunity is raised under MCR 2.116(C)(7) but the motion is actually disposed of under MCR 2.116(C)(10) for stating an insufficient factual case. Defendants argue that *Newton* does not apply here because, unlike in *Newton*, the lower court in this case expressly stated that the motion was brought on governmental immunity grounds and granted an automatic stay of proceedings under MCR 7.209(E)(4) (a rule that applies if MCR 7.202[6][v] has been invoked) after its order. We agree.

In *Newton,* although governmental immunity was successfully raised as a defense by an earlier individual defendant, *Newton, supra* at 255, the order at issue on appeal concerned whether the defendant police department had acted with simple negligence under MCL 691.1405. *Newton, supra* at 256. The lower court's ruling was specifically based on whether there were issues of fact concerning the defendant police department's simple negligence, and the lower court expressly indicated that its ruling was not based on the law of governmental immunity. *Id.* at 256, 259. The present case is different. The court in this case found that there were questions of material fact regarding the gross negligence of Wetzel, and this determination went to the heart of whether governmental immunity applied. Moreover, by invoking the automatic stay provision of MCR 7.209(E)(4), the court provided further evidence that the order denying summary disposition was, essentially, an order denying governmental immunity. MCR 702(6)(v) provides for an appeal as of right in this case.

The parties next dispute whether MCL 691.1405 or MCL 691.1407 applies to Wetzel's conduct.[2] The standard of liability hinges on which statute applies, because under the former the standard is ordinary negligence and under the latter it is gross negligence. According to 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 . . . .

According to MCL 691.1407(2):

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[1] The interpretation of court rules is subject to de novo review on appeal. *St George Greek Orthodox Church of Southgate, Mich v Laupmanis Assocs, PC*, 204 Mich App 278, 282; 514 NW2d 516 (1994).

[2] This Court reviews de novo a trial court's decision with regard to a motion for summary disposition. *Miller v Farm Bureau Mutual Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996). We also review questions of statutory interpretation de novo. *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 16; 651 NW2d 356 (2002).

> 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 . . . 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.

The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Haworth, Inc v Wickes Mfg Co*, 210 Mich App 222, 227; 532 NW2d 903 (1995). The first place to look in determining intent is the specific language of the statute. *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004). "The fair and natural import of [the] terms [employed], in view of the subject matter of the law, governs." *Ford Motor Co v Bruce Twp,* 264 Mich App 1, 7; 689 NW2d 764 (2004).

The plain language of the statutes distinguishes between lawsuits against governmental agencies and lawsuits against individual officers acting for the government. Wetzel was sued for conduct he undertook within the scope of his duties as a police officer. MCL 691.1407 therefore applies and the standard of conduct is gross negligence. See also *Newton, supra* at 253-255.

Plaintiff argues that in *Robinson v City of Detroit*, 462 Mich 439; 613 NW2d 307 (2000), the Court applied the ordinary negligence standard to an individual police officer's conduct. However, the *Robinson* Court noted that, when a police officer is being sued *in his individual capacity*, the *gross* negligence standard applies. See *id.* at 458. The trial court in this case did not err in finding that MCL 691.1407 and its standard of gross negligence apply to Wetzel individually.

Defendants argue that plaintiff's complaint was insufficient because it did not allege gross negligence. A plaintiff must plead a claim in avoidance of governmental immunity. *Mack v Detroit*, 467 Mich 186, 198; 649 NW2d 47 (2002). Here, plaintiff had to allege gross negligence in order to avoid governmental immunity in her claim against Wetzel. MCL 691.1407(7)(a) defines gross negligence as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

In Michigan, the purpose of a complaint "is to give notice of the nature of the claim sufficient to permit the opposite party to take a responsive position." *Simonson v Michigan Life Ins Co*, 37 Mich App 79, 83; 194 NW2d 446 (1971). Plaintiff's complaint gave defendants sufficient notice of the nature of her cause of action. Indeed, we conclude that by following the word "negligently" with the words "carelessly and recklessly" in the complaint, she made clear that more than ordinary negligence was involved. She also alleged "willful disregard for the safety of others . . . ." Furthermore, she alleged in her complaint facts that could support a claim of gross negligence: failure to observe pedestrian conditions and control the vehicle, traveling at an unreasonable rate of speed, failure to yield the right of way, failure to stop, and failure to alter

the vehicle's course. Finally, the fact that defendants in their answer raised the issue of immunity reveals that they were aware of the general contours of the action that they faced. The trial court did not err in finding that the pleadings were sufficient for plaintiff to state a cause of action under MCL 691.1407.

Defendants next argue that no reasonable factfinder could conclude that Wetzel acted with gross negligence. The trial court did not agree, and we find no basis for reversal. Again, gross negligence under MCL 691.1407(2) is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." According to this Court, "[g]enerally, once a standard of conduct is established, the reasonableness of an actor's conduct under the standard is a question for the factfinder, not the court. *Tallman v Markstrom*, 180 Mich App 141, 144; 446 NW2d 618, 620 (1989).

Defendants concede in their brief that if the standard were ordinary negligence, there would be a jury question. A reasonable jury could also find that Wetzel acted with gross negligence. Rapid acceleration and making a blind turn at an intersection where one can expect pedestrians to be located straddles the line between ordinary and gross negligence. The facts are balanced in such a way that reasonable minds could differ, which means that a reasonable jury could find gross negligence. The trial court did not err in denying defendants' motion for summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Alton T. Davis