# STATE OF MICHIGAN

# COURT OF APPEALS

---

DONA REGAN and BRIAN REGAN,

Plaintiffs-Appellees,

v

WASHTENAW COUNTY BOARD OF COUNTY ROAD COMMISSIONERS,

Defendant-Appellant,

and

DAVID CAVANAUGH,

Defendant.

FOR PUBLICATION
June 10, 2003
9:05 a.m.

No. 219761
Washtenaw Circuit Court
LC No. 97-004017-NI

ON REMAND

---

LEONARD ZELANKO,

Plaintiff-Appellee,

v

WASHTENAW COUNTY BOARD OF COUNTY ROAD COMMISSIONERS,

Defendant-Appellant,

and

RICHARD LEE SHEHAN,

Defendant.

No. 220532
Washtenaw Circuit Court
LC No. 98-009848-CZ

Updated Copy
July 18, 2003

---

Before: Murphy, P.J., and Griffin and Wilder, JJ.

MURPHY, P.J.

This consolidated appeal is before us by order of the Michigan Supreme Court, 468 Mich 851 (2003). The Supreme Court, in lieu of granting leave to appeal, remanded the cases with instructions to reconsider our previous decision[1] in light of the rulings in *Stanton v Battle Creek,* 466 Mich 611; 647 NW2d 508 (2002), and *Chandler v Muskegon Co,* 467 Mich 315; 652 NW2d 224 (2002). On reconsideration, we conclude that the broom tractor in the *Regan* case and the tractor mower in the *Zelanko* case are "motor vehicles" under MCL 691.1405,[2] and that in both cases the motor vehicles were being operated as motor vehicles when the alleged negligence occurred. Moreover, plaintiffs alleged that the operation of the motor vehicles in a negligent manner directly caused injuries for which they seek recovery, thereby properly pleading in avoidance of governmental immunity under the motor-vehicle exception, MCL 691.1405. We therefore, once again, affirm the trial court's denial of defendant's motions for summary disposition.[3]

Our previous opinion in this matter presented the factual circumstances involved in both cases.

> In the Regan case, plaintiff Dona Regan was driving a [van][4] when she collided with a broom tractor owned by defendant road commission and operated by defendant David Cavanaugh, an employee of defendant. The Regans' complaint alleged that the tractor, which was the third vehicle in a five-vehicle convoy performing shoulder maintenance, straddled a fog line and extended several feet into her lane, which caused Regan to move to the left in an effort to pass the tractor, at which time a blinding dust cloud formed and Regan's vehicle and the county vehicle collided. The Regans further alleged that the operator was negligent in failing to pay proper attention to his course of travel and the movement of others on the highway, in failing to keep a sharp and careful look-out, in failing to be observant of conditions, and in failing to keep his tractor constantly under control.
>
> * * *
>
> In the Zelanko case, plaintiff Leonard Zelanko's tractor-trailer rig was struck in the windshield by a piece of tire tread propelled by a tractor mower

---

[1] *Regan v Washtenaw Co Bd of Co Rd Comm'rs*, 249 Mich App 153; 641 NW2d 285 (2002).

[2] MCL 691.1405 provides 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 . . . ."

[3] For purposes of this opinion, we shall refer to the Washtenaw County Board of County Road Commissioners and the Washtenaw County Road Commission as "defendant" in the singular.

[4] In our original opinion we mistakenly stated that Regan was driving a school bus at the time of the collision. *Regan, supra* at 155. Regan, a school-bus driver, was actually driving a van at the time of the collision.

> operated by defendant Richard Lee Shehan, an employee of defendant, after Shehan ran over the tire tread while cutting grass along the side of the highway. The tire tread shattered the windshield and caused injuries to Zelanko. Zelanko alleged that the operator was negligent in failing to operate the tractor with due care and caution, in failing to maintain control of the tractor at all times, in failing to avoid driving over the tire tread, and in failing to keep a sharp lookout so as to avoid injuring Zelanko. [*Regan v Washtenaw Co Bd of Co Rd Comm'rs*, 249 Mich App 153, 155-156; 641 NW2d 285 (2002).]

Defendant previously argued to this Court that the trial court erred in denying its motions for summary disposition in the *Regan* and *Zelanko* cases. Defendant maintained that plaintiffs' complaints did not allege injuries arising out of the negligent operation of a motor vehicle, but rather out of negligent street-sweeping and lawn-mowing; therefore, MCL 691.1405 was inoperative. We rejected defendant's argument, noting that the allegations contained in the complaints alleged injuries caused by the negligent operation of the broom tractor and the tractor mower. *Regan, supra* at 155-156, 161 nn 4-6. We ruled that "[p]laintiffs alleged a direct and physical link between the operation of the county vehicles and plaintiffs' injuries," *id.* at 162, and we concluded:

> [T]he operation of a motor vehicle by a governmental employee is typically in a setting where a governmental function is being undertaken; the question here is not whether governmental immunity precludes liability for the exercise of the governmental function, but whether the allegations in plaintiffs' complaints allege injuries resulting from the negligent operation of a motor vehicle, thereby triggering the exception found in MCL 691.1405. Any other interpretation would render meaningless the Legislature's decision to enact MCL 691.1405, the statute that creates an exception to governmental immunity for negligent operation of a government-owned vehicle by an officer, agent, or employee of the governmental agency. We believe that the allegations in both complaints were sufficient to give rise to an exception to governmental immunity pursuant to MCL 691.1405. [*Id.* at 163.]

Against this backdrop, we now review the cases cited by our Supreme Court pursuant to which we are to reconsider our previous ruling. In *Stanton, supra* at 613, the plaintiff was injured when a forklift driven by a city employee rolled forward and struck the plaintiff at a site owned by the city. The sole question before the Supreme Court was "whether a forklift is a 'motor vehicle' within the ambit of the motor vehicle exception to governmental immunity, MCL 691.1405." *Id.* at 612. The Court held that the forklift was not a "motor vehicle" for purposes of the statute. *Id.* The *Stanton* Court, considering various dictionary definitions of the term "motor vehicle," held:

> The definition of a "motor vehicle" as "an automobile, truck, bus, or similar motor-driven conveyance" is the narrower of the two common dictionary definitions. Therefore, we apply it to the present case. A forklift—which is a piece of industrial construction *equipmen*—is not similar to an automobile, truck,

> or bus. Thus, the motor vehicle exception should not be construed to remove the broad veil of governmental immunity for the negligent operation of a forklift. [*Id.* at 618, quoting *Random House Webster's College Dictionary* (2001) (emphasis in original).]

In *Chandler, supra* at 316, the injury forming the basis of the lawsuit occurred while the government's motor vehicle, a bus, was parked in a bus barn for the purpose of cleaning and was not being driven.[5] The Supreme Court focused on the word "operation" as used in MCL 691.1405, and again turned to a dictionary definition.[6] *Chandler, supra* at 319-320. The Court held that the motor-vehicle exception did not apply because the vehicle was not being "operated" when the injury occurred. *Id.* at 322. The Supreme Court ruled:

> Accordingly, aware that we are considering the dictionary definition of the word "operation," as well as construing a governmental immunity statute, which we must construe narrowly, we conclude that the "operation of a motor vehicle" encompasses activities that are directly associated with the driving of a motor vehicle. [*Id.* at 321.]

The Supreme Court held that operation of a motor vehicle means "that the motor vehicle is being operated *as* a motor vehicle." *Id.* at 320 (emphasis in original).

---

[5] The specific facts were as follows:

> Smith drove one of the buses into the barn, turned off the engine, and started to exit through the open bus doors. As he was doing so, however, the bus doors closed on his neck, apparently because he had neglected to release the hydraulic air pressure valve.
>
> The plaintiff had been waiting to clean the bus when he saw the incident. He attempted to pry open the doors and to hold them until someone came to reach through the bus window and release the air valve. Plaintiff injured his shoulder in the process and brought this action against the county. [*Chandler, supra* at 316.]

[6] We are unable to discern which dictionary definition, as between different dictionaries and the various definitions contained in a single text, was implicitly guiding our Legislature when the motor-vehicle exception was first adopted over fifty years ago. Considering the extensive changes in vehicles and transportation over the last half century, there is a likelihood that definitions have evolved. Although we typically attempt to determine the intent of the Legislature that actually adopted a particular act, *Blank v Dep't of Corrections,* 462 Mich 103, 148-149; 611 NW2d 530 (2000)(Markman, J., concurring), the Michigan Supreme Court has clearly determined that the intent of the Legislature in the 1940s can be deciphered *solely* by reference to a particular portion of the definitions specifically contained in the 1997 and 2001 versions of *Random House Webster's College Dictionary. Chandler, supra* at 320; *Stanton, supra* at 617.

Taking into consideration the holdings in *Stanton* and *Chandler*, it can be stated that in order to maintain a suit within the motor-vehicle exception to governmental immunity, § 5, the vehicle must be a motor-driven conveyance similar to an automobile, truck, or bus, and the alleged injuries must be caused by activities that are directly associated with the driving of the motor vehicle. Statutory construction involves an issue of law that this Court reviews de novo. *In re RFF*, 242 Mich App 188, 198; 617 NW2d 745 (2000). With these principles in mind, we now turn to the cases before us.[7]

With respect to whether the broom tractor and tractor mower are "motor vehicles" for purposes of § 5, we find that both vehicles fit the definition enunciated in *Stanton.* Both vehicles are clearly motor-driven conveyances, in that they are motorized and carry or transport operators over the road, or alongside the road, while the operators are performing governmental duties. We respectfully disagree with the dissent's test that the "principal function" of the vehicle must be to transport or carry passengers or property in order to be considered a "motor vehicle" under § 5. Similar language is not found anywhere in the *Stanton* decision or the statute, and the dissent's use of a "principal function" test suggests that a vehicle must be used chiefly for the purpose of transporting persons or property and cannot be used, in any significant manner, for maintenance or other purposes to qualify under § 5. Limiting the definition in this manner would exclude numerous governmental vehicles that traverse Michigan roadways, including snowplows, utility and construction vehicles, and emergency vehicles that are used in a maintenance, improvement, or service capacity.[8] This clearly was not the Legislature's intent in enacting MCL 691.1405. Surely, the Legislature did not intend to preclude liability for negligent actions associated with the operation of a governmental vehicle designed to be driven on or alongside roadways where the vehicle has maintenance and service capabilities.

---

[7] Plaintiffs argue that the issue whether the broom tractor and tractor mower are "motor vehicles" was never raised below or on appeal by defendant, and thus is not properly preserved for review. We agree that the issue was not preserved and typically would not be considered. Nevertheless, we have been specifically directed by the Supreme Court to consider the ruling in *Stanton.* However, we do agree, in some instances, with a statement made by this Court in *Burns v Detroit (On Remand)*, 253 Mich App 608, 616; 660 NW2d 85 (2002), mod 468 Mich 881 (2003), in which, faced with a similar situation, the Court stated that "[w]hile we respect our Supreme Court's authority to raise [an] issue on remand sua sponte, we believe that invoking [the sua sponte] issue to benefit a party who failed to raise the issue would be entirely inappropriate." Because, in light of our ruling, defendant does not benefit from consideration of the issue, and because consideration of the issue would most likely be helpful for purposes of judicial economy in these cases that have been in the appellate system for an extensive period, we shall substantively address the matter.

[8] It is possible, under the dissent's definition, to conclude that a fire engine is not a "motor vehicle" because it is more properly described as a piece of firefighting equipment rather than a vehicle principally used to transport or carry persons or property. We also note that the dissent references definitions found in the Michigan Vehicle Code, MCL 257.1 *et seq.*; however, the *Stanton* Court indicated that reference to the Vehicle Code was improper. *Stanton, supra* at 616. For this reason, we also reject Zelanko's reliance on definitions contained in the Vehicle Code.

Further, the broom tractor and tractor mower are comparable to an automobile, bus, or truck. The broom tractor was driven on the roadway, and was so intended to be operated.[9] In that sense, it is no different than any of the other vehicles specifically identified in *Stanton.* The tractor mower[10] was operated on the shoulder of the roadway and along the sides of the road, and was so intended to be operated.[11] The relationship between the tractor mower, used for mowing the grass along I-94, and the roadway itself is inseparable. As an automobile, bus, and truck are invariably connected to the roadways, so are the tractor mower and broom tractor in the cases at bar. There is no similar connection or relationship between the road and a forklift as was involved in *Stanton.* For purposes of § 5, a tractor owned and operated by a governmental agency being negligently driven on the roadway or alongside the roadway is no different than a utility truck owned and operated by the government being driven in a similar manner on or alongside the road. To create a distinction between the two, in analyzing the statute, would be illogical. A reading of the language used by the Legislature in MCL 691.1405 indicates a desire and purpose, in part, to make roadways as safe for travel as possible by creating liability for governmental vehicles that are operated negligently and that create a danger for citizens as they use those same roadways.[12] That purpose would not be fulfilled by a ruling that the roadway-utilizing broom tractor and tractor mower, which allegedly caused injuries to persons using the roadways, are not motor vehicles. The vehicles in both cases are properly defined as "motor vehicles" under § 5.

With respect to whether the broom tractor and the tractor mower were being operated as motor vehicles resulting in injury under *Chandler,* there is absolutely no question that the motor vehicles were in operation and being driven when the incidents giving rise to the lawsuits occurred, and that the manner of operation was the alleged cause of the injuries. As required by *Chandler,* and pursuant to the complaints, the injuries in both cases were allegedly caused by activities directly associated with the driving of the motor vehicles. *Chandler* is clearly factually distinguishable because the bus in that case was not being driven but was in for cleaning at the time of the injury.

The dissent's conclusion, and defendant's argument, that the alleged injuries did not result from activities directly associated with the driving of motor vehicles but were instead allegedly caused by the negligent use of maintenance equipment, appears to exclude the possibility that so-

---

[9] The broom tractor is a tractor mounted with a broom designed to brush loose dirt and gravel off the road. The operator testified at his deposition that the broom tractor is driven on the pavement, and on the day of the incident, his job was to "sweep the gravel off the road."

[10] The mower is attached to the side of the tractor.

[11] The operator of the tractor mower stated in his deposition that at the time of the incident giving rise to the lawsuit, he was "driving down the paved shoulder of the road."

[12] This purpose is further evidenced by the highway exception to governmental immunity. MCL 691.1402. MCL 691.1402(1) provides that the appropriate governmental agency "shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel."

called maintenance equipment may be driven and operated as vehicles on or alongside the road while at the same time performing maintenance. We recognize that in some instances a distinction must be made between the operation of a motor vehicle and maintenance or construction services being performed by that same vehicle. For example, if a county cement-mixer, while being driven down the road, negligently strikes another vehicle causing injury, it can be said that an injury was caused by a motor vehicle as it was being operated as a motor vehicle; therefore, § 5 would be applicable. However, if the cement-mixer reached its destination at a work site and, while parked, began pouring cement in a negligent manner giving rise to an injury, it cannot be said that an injury was caused by a motor vehicle as it was being operated as a motor vehicle under the precedent in *Chandler*.

Here, the maintenance activities undertaken by the broom tractor and the tractor mower cannot be separated from the operation of the motor vehicles, i.e., the maintenance is directly associated with the driving of the vehicles. The broom tractor sweeps the pavement as it proceeds down the roadway. The tractor mower cuts grass as it proceeds on the shoulder of, or alongside, the roadway. In *Bakun v Sanilac Co Rd Comm*, 419 Mich 202, 203; 351 NW2d 810 (1984), our Supreme Court held that "county road commissions are liable for the negligent operation of their motor vehicles *even though* liability is incurred in connection with the construction, improvement, or maintenance of a state trunk line highway." (Emphasis added.) Since plaintiffs alleged that both vehicles caused injuries because of the manner in which they were driven or operated, it matters not that while the vehicles were driven, maintenance work was also being accomplished.[13] The trial court did not err in denying defendant's motions for summary disposition.

Affirmed.

Griffin, J., concurred.

/s/ William B. Murphy
/s/ Richard Allen Griffin

[13] We acknowledge that some of plaintiffs' allegations of negligent conduct are not directly associated with the driving of a motor vehicle, e.g., negligent entrustment, and those claims cannot survive. However, there are numerous allegations contained in both complaints that the motor vehicles were operated in a negligent manner, thus causing injuries, e.g., failure to pay proper attention to the course of travel, failure to keep the tractor under control, and failure to operate the tractor in a manner so as not to endanger motorists. The dissent does not address these allegations.