

STATE OF MICHIGAN
COURT OF APPEALS

ADDISON HINES and KAREN HINES,
Individually and as Next Friends of ZAIRE HINES, a
Minor,

UNPUBLISHED
November 30, 1999

Plaintiffs-Appellants,

v

DETROIT BOARD OF EDUCATION and
ANGELA ANTHONY,

No. 212198
Wayne Circuit Court
LC No. 97-719949 NO

Defendants-Appellees.

Before: Jansen, P.J., and Hoekstra and J. R. Cooper*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's grant of summary disposition for defendants on the ground of governmental immunity. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiffs argue that defendants are not governmentally immune for their acts of gross negligence. We disagree. In order to survive a motion for summary disposition, plaintiffs must allege facts sufficient to warrant the application of an exception to governmental immunity. *Codd v Wayne Co*, 210 Mich App 133, 134-135; 537 NW2d 453 (1995). Plaintiffs have not alleged facts sufficient to avoid governmental immunity here.

"Gross negligence" requires more than ordinary negligence. See e.g., *Jackson v Saginaw Co*, 458 Mich 141, 150-151; 580 NW2d 870 (1998); *Haberl v Rose*, 225 Mich App 254, 265-266; 570 NW2d 664 (1997). The defendant's conduct must be so reckless as to demonstrate a substantial lack of concern for whether injury results, such as when a defendant fails to take any steps to avoid a known danger. See, e.g., *Tallman v Markstrom*, 180 Mich App 141; 446 NW2d 618 (1989) (teacher permitted student to use table saw without guarding or safety devices). Here, plaintiffs allege that defendant Anthony was grossly negligent in leaving students in a classroom unsupervised, but plaintiffs'

* Circuit judge, sitting on the Court of Appeals by assignment.

allegations do not indicate that Anthony knew or had any reason to know that one of the students might become assaultive. Indeed, plaintiffs' complaint alleges that the assault was committed "for no reason." Viewing the allegations in the light most favorable to plaintiffs, the circumstances alleged indicate at most only an arguable case of ordinary negligence, not the kind of substantial lack of concern about injury required to establish "gross negligence" as defined by MCL 691.1407(2)(c); MSA 3.996(107)(2)(c).

Plaintiffs' allegations of gross negligence are also insufficient to avoid governmental immunity on behalf of defendant Detroit Board of Education. Because the gross negligence exception to governmental immunity applies only to officers, employees, members, or volunteers of governmental agencies, not to governmental agencies themselves, the Board of Education cannot be held directly liable on the basis of the gross negligence exception. See *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420-421; 540 NW2d 710 (1995), overruled on other grounds *American Transmissions, Inc v Attorney General*, 454 Mich 135, 143; 560 NW2d 50 (1997). Moreover, the Board of Education cannot be held vicariously liable for the gross negligence of its employee if the employee was engaged in a governmental function at the time and no statutory exception applicable to governmental agencies is implicated. See *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 625; 363 NW2d 641 (1984). Here, plaintiffs have not alleged that the general activity in which defendant Anderson or other school employees were engaged at the time of the alleged gross negligence, i.e., the supervision of students, was not a governmental function authorized by law, nor have plaintiffs identified any statutory exception applicable to the governmental immunity of governmental agencies.

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jessica R. Cooper