# STATE OF MICHIGAN

# COURT OF APPEALS

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TORETHA WILSON,

Plaintiff-Appellant,

v

CITY OF DETROIT d/b/a DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

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UNPUBLISHED
January 30, 2001

No. 219777
Wayne Circuit Court
LC No. 98-833907-NO

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and (8). We affirm.

Plaintiff alleged that defendant's employee sexually harassed her when she boarded a City of Detroit bus. In Count I of her complaint, plaintiff alleged that defendant was negligent in its hiring and training of employees, and its failure to warn plaintiff of the risk of harm. Count II of the complaint alleged that defendant discriminated against her on the basis of her sex in violation of the Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* In lieu of filing an answer, defendant moved for summary disposition under MCR 2.116(C)(7) and (8). Defendant asserted that the governmental tort immunity act, MCL 691.1401 *et seq.*; MSA 3.996(101) *et seq.*, barred plaintiff's claim, and that plaintiff failed to allege facts to support her conclusion that she was denied access to public services and accommodation under the Civil Rights Act. The trial court agreed and granted defendant's motion.

This Court reviews de novo a grant of summary disposition. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 177; 579 NW2d 906 (1998). When the motion is brought pursuant to MCR 2.116(C)(7), we review the pleadings, together with all the documentary evidence, in the light most favorable to the plaintiff to determine whether the defendant established that it was entitled to governmental immunity. *Wade v Dep't of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). Plaintiff argues that the motor vehicle exception to governmental immunity applied to her case. We disagree.

Although governmental agencies are generally immune from tort liability pursuant to MCL 691.1407; MSA 3.996(107), such immunity does not extend to injuries that arise out of the negligent operation of a motor vehicle:

> 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 . . . . [MCL 691.1405; MSA 3.996(105).]

The purpose underlying the motor vehicle exception to governmental immunity is to ensure that injured persons have redress against the owner of the vehicle – the state. *Haberl v Rose*, 225 Mich App 254, 258; 570 NW2d 664 (1997); *Trommater v Michigan*, 112 Mich App 459, 467; 316 NW2d 459 (1982). The grant of governmental immunity contained in MCL 691.1407(1); MSA 3.996(107)(1) is broad, whereas the exceptions to governmental immunity are narrow. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000).

We must decide whether plaintiff's alleged injuries resulted from the negligent operation of a motor vehicle. We conclude that they did not. The gravamen of the complaint is that plaintiff's alleged injuries resulted from the sexual harassment that she suffered at the hands of defendant's employee, not from the "negligent operation" of a motor vehicle. Instead, defendant's motor vehicle was the mere situs of plaintiff's alleged injuries. Reviewing the pleadings in a light most favorable to plaintiff, we conclude that defendant was entitled to immunity from plaintiff's claim.

Plaintiff next contends that the trial court erred in finding that she had not sufficiently alleged that she was denied access to public services and accommodations under the Civil Rights Act. We disagree.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the pleadings alone. *Meyer v City of Center Line*, 242 Mich App 560, 572; 619 NW2d 182 (2000). All factual allegations in support of the claim are accepted as true, as well as any inferences that can be drawn from the facts. *Id.* A mere statement of a pleader's conclusions, without any allegations of fact on which they may be based, is not sufficient to state a cause of action. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). The motion should be granted only when no factual development could possibly justify a right of recovery. *Meyer*, *supra* at 572-573.

MCL 37.2302; MSA 3.548(302) provides in pertinent part:

> Except where permitted by law, a person shall not:
>
> (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

The essence of a sex discrimination civil rights suit is disparate treatment on the basis of gender. *Radke v Everett*, 442 Mich 368, 379; 501 NW2d 155 (1993); *Schellenberg v Rochester, Michigan, Lodge No 2225 of the Benevolent & Protective Order of Elks of the United States of America*, 228 Mich App 20, 34; 577 NW2d 163 (1998). Plaintiff's claim alleges that defendant's violation of the Civil Rights Act was accomplished through the actions of defendant's employee. Sexual harassment is a subset of sex discrimination. *Koester v City of Novi*, 458 Mich 1, 11; 580 NW2d 835 (1998); MCL 37.2103(i); MSA 3.548(103)(i). Sexual harassment includes:

> [U]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
>
> (i) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing.
>
> (ii) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, public accommodations or public services, education, or housing.
>
> (iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment. [MCL 37.2103(i); MSA 3.548(103)(i).]

In *Kassab v Michigan Basic Property Ins Ass'n*, 441 Mich 433, 439-441; 491 NW2d 545 (1992), our Supreme Court concluded that where a complaint did not allege denial of access to public services or accommodations, it was beyond the scope of the legislative purpose underlying the Civil Rights Act to provide redress to the plaintiff. Similarly, in *Dockweiler v Wentzell*, 169 Mich App 368, 372-373; 425 NW2d 468 (1988), this Court affirmed the trial court's judgment summarily dismissing the plaintiff's claim where she did not allege a denial of public services.

After reviewing the complaint in a light most favorable to plaintiff, we conclude that she did not sufficiently allege a denial of public services sufficient to state a claim under MCL 37.2302; MSA 3.548(302). The complaint generally alleged that defendant's employee's sexual harassment denied her the enjoyment of public services; however her complaint lacked sufficient facts to support the claim. Plaintiff did not allege that submission to the bus driver's conduct was a term or condition of receiving public accommodations or services, or that submission to or rejection of the conduct was a factor in any decision affecting her access to a public accommodations service. Nor did she allege that the conduct had the purpose or effect of substantially interfering with her access to public accommodations or services. Mere conclusions, unsupported by allegations of fact, do not suffice to state a cause of action. *Butler v*

*Ramco-Gershenson*, 214 Mich App 521, 534; 542 NW2d 912 (1995), quoting *Eason*, *supra* at 263.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper