

STATE OF MICHIGAN
COURT OF APPEALS

DAWN A. CARRIVEAU,

Plaintiff-Appellee,

v

DAVISON SCHOOL DISTRICT #25140,

Defendant-Appellant.

UNPUBLISHED

June 5, 2001

No. 222194

Genesee Circuit Court

LC No. 99-064944-NO

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff seeks to impose liability on the school district because her child was struck by lightning after alighting from a school bus. The trial court ruled that defendant owed a duty to protect the child pursuant to the motor vehicle exception to governmental immunity. MCL 691.1405; MSA 3.996(105).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion decided under MCR 2.116(C)(8), the Court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and thus justify recovery. *Stott v Wayne Co*, 224 Mich App 422, 426; 569 NW2d 633 (1997), aff'd 459 Mich 999 (1999).

A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Busing of students is a governmental function and defendant is immune from tort liability absent an exception to governmental immunity. MCL 691.1407(1); MSA 3.996(107)(1); *Cobb v Fox*, 113 Mich App 249, 257; 317 NW2d 583 (1982). One such exception is that for governmental vehicles. A governmental agency remains 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” owned by the governmental agency. MCL 691.1405; MSA 3.996(105). Because this statute “provides an exception to governmental immunity, it must be narrowly construed.” *Stanton v Battle Creek*, 237 Mich App 366, 371; 603 NW2d 285 (1999).

“[T]here is a legal relationship between a school bus driver and a passenger/student such that the law imposes a legal obligation on the driver for the benefit of the passenger.” *Nolan v Bronson*, 185 Mich App 163, 170 ; 460 NW2d 284 (1990). This relationship imposes a duty on the bus driver to discharge the passenger in a reasonably safe place. *Id.* at 170-171. “The stopping of a school bus for the purpose of discharging passengers, and the bus driver’s duties attendant to the stopping of the school bus, unquestionably constitute operation of a motor vehicle,” *id.* at 177, and thus where a driver discharges passengers “in violation of duties imposed by statute, ordinance, and rules and regulations,” the claim comes within the motor vehicle exception. *Id.* at 178.

The place where plaintiff’s child was discharged was reasonably safe in general; that is, there were no obvious dangers in the area apart from the temporary danger created by the storm. Defendant did not owe a general duty to protect students from the remote risk posed by the possibility of a lightning strike, *Dykema v Gus Macker Enterprises, Inc.*, 196 Mich App 6; 492 NW2d 472 (1992); *Hames v State*, 808 SW2d 41, 45 (Tenn, 1991), and the child’s injury was not proximately caused by the bus driver’s violation of any duties imposed by statute, ordinance, rules, or regulations relating to the operation of the bus or safety of passengers. Because the child’s injury did not result from the negligent operation of the bus, plaintiff’s claim did not fall under the motor vehicle exception to governmental immunity.

Reversed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly