

STATE OF MICHIGAN
COURT OF APPEALS

CONSTANCE HUMPHRIES,

Plaintiff-Appellant,

v

MT. MORRIS TOWNSHIP, MT. MORRIS
TOWNSHIP POLICE, WALTER GREENHILL,
BOARD OF EDUCATION BEECHER SCHOOL
DISTRICT, JOE FRANKLIN, EMPLOYEES X
AND Y, APRIL JO ROBINSON, and LATRICIA
ROBINSON,

Defendants-Appellees.

UNPUBLISHED
September 20, 2002

No. 233615
Genesee Circuit Court
LC No. 00-067647-NO

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing her claims against the government defendants on the basis of governmental immunity.¹ We affirm.

On the morning of April 29, 1998, plaintiff, a student at Beecher High School, was attacked inside the school by two girls, April Jo Robinson and her sister Latricia Robinson.² The girls used weapons to cut plaintiff's face. The incident occurred in a hallway near the security guard's office.

Plaintiff brought this action against the Beecher School District and Joe Franklin, the school's security guard. Plaintiff also claimed against Mt. Morris Township and Mt. Morris Township Police Officer Walter Greenhill, a full-time liaison police officer assigned to the school district pursuant to a federal grant.³ Plaintiff's complaint alleged ordinary and gross

¹ The use of the term "defendants" in this opinion refers to the government defendants.

² The record suggests that one of plaintiff's attackers was a student at the school, although she was not attending classes on the day of the incident.

³ At the hearing on defendants' motions for summary disposition, plaintiff's counsel conceded that the police department is not a proper party because it is an extension of the township and not a separate governmental entity.

negligence for their failure to provide adequate security. Plaintiff also claimed that the school district breached its covenant to provide security services for her at the school, and also that she was a third party beneficiary of the covenant between the school district and the township for the provision of a liaison police officer to the school district. Specifically, she claimed that defendants failed to adhere to the security provisions in place at the time, such as screening all persons coming onto the premises and directing all visitors to the main office.

The trial court granted defendants' motions for summary disposition of plaintiff's negligence claims on the basis of governmental immunity. The court also granted defendants' motions for summary disposition of plaintiff's claims premised on a contract theory. The court determined that no contracts to provide security existed, and further that plaintiff was not a direct beneficiary of the federal grant, and therefore she had had no cause of action as a third-party beneficiary. Plaintiff appeals both rulings.

This Court reviews de novo motions for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Pursuant to MCR 2.116(C)(7), summary disposition is proper when a claim is barred because of immunity granted by law. *Brown v Genesee County Bd of Com'rs*, 464 Mich 430, 433; 628 NW2d 471 (2001) (Corrigan, C.J.). To survive a motion for summary disposition based on governmental immunity, the plaintiff must allege facts giving rise to an exception to governmental immunity. *Regan v Washtenaw County Bd of County Road Com'rs*, 249 Mich App 153, 157; 641 NW2d 285 (2002). This Court considers all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. *Id.*

"Absent a statutory exception, a governmental agency is immune from tort liability when it exercises or discharges a governmental function." *Brown, supra* at 433-434, citing MCL 691.1407(1). The governmental tort liability act, MCL 691.1401 *et seq.*, "provides immunity from tort liability to governmental employees if, inter alia, the employee's conduct does not amount to gross negligence." *Stanton v City of Battle Creek*, 466 Mich 611, 615; 647 NW2d 508 (2002). The legislative immunity granted to governmental agencies and their employees is interpreted broadly, subject to five narrowly drawn statutory exceptions. *Regan, supra* at 158. "[I]t is the responsibility of the party seeking to impose liability on a governmental agency to demonstrate that its case falls within one of the exceptions." *Mack v Detroit*, ___ Mich ___; 649 NW2d 47 (Docket No. 118468, issued 7/31/02), slip op p 15.

In this case, plaintiff does not allege that any one of the statutory exceptions to governmental immunity applies. Accordingly, the school district and Mt. Morris Township were entitled to summary disposition of plaintiff's negligence claims. In the absence of gross negligence that is the proximate cause of plaintiff's injuries, the individual defendants are also entitled to governmental immunity. MCL 691.1407(2); *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Plaintiff argues that Franklin and Greenhill were grossly negligent in failing to prevent the attack on plaintiff and that their inaction was the proximate cause of her injuries. However, there is no evidence, nor does plaintiff allege, that they had any reason to anticipate an attack upon plaintiff. Plaintiff testified at deposition that she did not expect the attack, nor did she ever alert security personnel to the possibility. Viewing the evidence in the light most favorable to plaintiff, any failure on the part of the security guard or the police officer does not rise to the level of gross negligence, which the statute defines as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Moreover, assuming

arguendo that the individual defendants were grossly negligent, there is no genuine issue of fact that the proximate cause of plaintiff's injuries were the actions of her attackers. See *Robinson, supra* at 462 ("[T]he Legislature provided tort immunity for employees of governmental agencies unless the employee's conduct amounts to gross negligence that is the one most immediate, efficient, and direct cause of the injury or damage, i.e., the proximate cause."). Accordingly, the trial court properly granted summary disposition of plaintiff's tort claims.

We also conclude that defendants were entitled to summary disposition of plaintiff's contract claims. In her first amended complaint, plaintiff alleged that a covenant existed between the school district and the students and their parents to provide for the safety and security of the students, and also that a covenant existed between the school district and Mt. Morris Township for the same purposes. She claims defendant's breach of these covenants resulted in her injuries. Plaintiff also alleges that she was a third party beneficiary of the grant of monies to the school district and the township from the federal government for the provision of security services. Plaintiff contends that defendants' failure to comply with the terms of the grant resulted in her injuries.

Plaintiff fails to show the existence of a contract between the school district and the students and their parents for the provision of adequate security. Her claim that the school district assumed a duty to provide security and failed to adhere to its own procedures sounds in tort, which is barred by governmental immunity. Nor has plaintiff established the existence of a contract between the federal government and the township and the school district, nor between the township and the school district. The record indicates that the township and the school district jointly applied for the federal COPS grant, pursuant to which the township would place two police officers in the school district, which the township did upon receiving the grant. The terms of the grant do not create a contract. In the absence of a contract, plaintiff has no standing to sue as a third-party beneficiary. *Koenig v South Haven*, 460 Mich 667, 675; 597 NW2d 99 (1999).

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder