

STATE OF MICHIGAN
COURT OF APPEALS

KIM R. CLARK, Personal Representative of the
Estate of GARRETT CARLSON, Deceased,

UNPUBLISHED
October 26, 2004

Plaintiff-Appellee,

v

MICHAEL JOSEPH HANDZIAK,

No. 248842
Montcalm Circuit Court
LC No. 02-001128-NI

Defendant-Appellant.

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant Michael Handziak appeals as of right the trial court's order denying his motion for summary disposition on the basis of governmental immunity and granting the motion of plaintiff Kim R. Clark, personal representative of the estate of Garrett Carlson, deceased, for partial summary disposition in this wrongful death action. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Handziak, a building construction superintendent for the State of Michigan Office of Management and Budget, was driving from his home to a work site when he became distracted by an oncoming vehicle and struck a bicycle being ridden by Carlson, who was eleven years old. Clark filed suit alleging that Handziak's conduct was grossly negligent and proximately caused Carlson's death. Handziak moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that he was entitled to governmental immunity because he was an employee of a governmental agency and was acting within the course of his employment and the scope of his authority when the accident occurred. Clark sought partial summary disposition pursuant to MCR 2.116(C)(9) and (10), arguing that Handziak was not entitled to immunity. The trial court denied Handziak's motion and granted partial summary disposition in favor of Clark, concluding that Handziak was not acting within the course of his employment or the scope of his authority when the accident occurred. The trial court declined to rule on the issue of whether Handziak acted in a grossly negligent manner.

II. Governmental Immunity

A. Standard of Review

We review a trial court's decision on a motion for summary disposition de novo.¹

B. Legal Standards

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage."² Whether a governmental employee was acting within the course of his employment depends on the existence of an employment relationship and "the circumstances of the work environment created by that relationship, including the temporal and spatial boundaries established."³ Whether a governmental employee was acting within the scope of his authority depends upon the reasonable power delegated to the employee to accomplish the business of his employer under the circumstances.⁴

C. Driving To Work

As a general rule, an employee who is merely driving to work is not considered to be within the scope of his employment.⁵ Here, the undisputed evidence showed that at the time of the accident, Handziak had not yet started his workday. He was driving from his home to his assigned work site.⁶ To conclude under the facts of this case that Handziak was acting within the course of his employment would render the general rule set out in cases such as *Camburn* nugatory.

Handziak's reliance on *Alex v Wildfong*⁷ is misplaced. In that case, the defendant, a volunteer firefighter, was involved in an accident while driving his personal vehicle to the scene of a fire. Apparently, the jury determined that the defendant was acting within the course of his employment and the scope of his authority at the time of the accident. However, the issue on appeal was whether the defendant's potential liability should be evaluated under MCL 691.1407 or MCL 257.401(1). *Wildfong* does not stand for the proposition that a governmental employee

¹ *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

² MCL 691.1407(2)(c).

³ *Backus v Kauffman (On Rehearing)*, 238 Mich App 402, 407-408; 605 NW2d 690 (1999).

⁴ *Id.* at 409-410.

⁵ See, e.g., *Camburn v Northwest School Dist/Jackson Comm Schools (On Remand)*, 220 Mich App 358, 365; 559 NW2d 370 (1996) (worker's compensation context).

⁶ Cf. *Backus*, *supra*, at 408-410.

⁷ *Alex v Wildfong*, 460 Mich 10; 594 NW2d 469 (1999).

who is driving to a work site is acting within the course of his employment or the scope of his authority.

Moreover, no evidence showed that Handziak had any particular authority to carry out his employer's business while driving to his work site. Therefore, the trial court did not err in concluding that no evidence showed that Handziak was acting within the course of his employment or the scope of his authority at the time of the accident.⁸ The trial court correctly denied Handziak's motion for summary disposition and granted Clark's motion for partial summary disposition on the ground that Handziak was not entitled to governmental immunity.

We decline to address Handziak's argument that his actions did not constitute gross negligence. Our review is limited to issues actually decided by the trial court.⁹

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

⁸ *Backus, supra*.

⁹ *Preston v Dep't of Treasury*, 190 Mich App 491, 498; 476 NW2d 455 (1991).