

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DALE L. SMITH, Next Friend of JUAN  
RODELA, JR., a Minor,

UNPUBLISHED  
November 15, 2005

Plaintiff-Appellee,

v

No. 254876  
Lenawee Circuit Court  
LC No. 99-008459-NO

PARENTS & TEACHERS TOGETHER, a/k/a  
PATT, and RICK MCNEIL, MELISSA RENNER,  
and MICHELLE PALPANT,

Defendants-Appellants,

and

KRISTEN ISOM, JAMES HARTLEY, DEBI  
WAGNER, LORI COLE, and JUDY HAYES,

Defendants.

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Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Defendant-appellants<sup>1</sup> appeal as of right from the circuit court's order denying their motion for summary disposition on the ground of governmental immunity. We reverse the order denying the motion for summary disposition, and remand for entry of an order granting defendants' motion for summary disposition. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Procedures

This Court summarized the underlying facts in an earlier opinion in this case:

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<sup>1</sup> We will refer to appellants as defendants throughout this opinion.

On January 25, 1999, plaintiff's next friend, then two-year-old Juan Rodela, Jr., was allegedly injured while he was under care provided by Parents and Teachers Together (PATT), which was conducting a meeting at Madison Junior High School that Juan's mother was attending. Juan was struck in the head by a student who was practicing a cheerleading maneuver. Thereafter, plaintiff brought this action against the principal of the school, Debi Wagner, and the cheerleading coach, Lori Cole, alleging negligence and gross negligence related to the provision of such childcare services, including because it was rendered in the vicinity of practicing cheerleaders.

Subsequently, plaintiff amended his complaint to include as defendants PATT, Rick McNeil as president of PATT, Melissa Renner and Michelle Palpant as representatives of PATT and members of its "babysitting committee," Kristen Isom as head of the athletic office for Madison Schools, James Hartley as superintendent of Madison Schools, and Judy Hayes as the adult advisor for the "Service Learning Class." Plaintiff alleged that PATT, McNeil, Renner, Palpant, Hartley, Wagner, and Hayes were negligent and grossly negligent with regard to their "operation of a child care center" and associated provision of childcare services. Plaintiff alleged that Isom and Cole were negligent and grossly negligent for permitting cheerleading activities in the vicinity of children. [*Smith v Parents & Teachers Together*, unpublished opinion per curiam of the Court of Appeals, issued June 26, 2003 (Docket No. 236214), slip op at 1.]

The trial court initially granted summary disposition to all defendants on the ground that they were entitled to governmental immunity and that none of the alleged negligence rose to the level of gross negligence.<sup>2</sup> This Court affirmed in connection with the defendants who were employees of the school district, but reversed in connection with PATT and the individual defendants affiliated with it. *Id.*, slip op at 4-5.

On remand, the PATT defendants presented additional evidence and authorities to show that they did indeed come under the protections of the governmental immunity statute. The trial court expressed agreement with defendants' position, but interpreted this Court's earlier opinion as foreclosing further consideration of that issue. The trial court therefore denied defendants' motion, and this appeal followed. We conclude that the trial court understandably refrained from deciding this question anew on summary disposition, but ultimately erred in failing to grant defendants' motion.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). A motion for summary disposition based on governmental immunity is decided by examining all documentary evidence submitted by the parties, accepting all well-pleaded allegations as true,

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<sup>2</sup> See MCL 691.1407.

and construing all evidence and pleadings in the light most favorable to the nonmoving party. *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004).

Governmental agencies are generally immune from tort liability for actions taken in furtherance of governmental functions. MCL 691.1407(1). Immunity also extends to every “officer and employee of a governmental agency . . . while in the course of employment or service . . . .” MCL 691.1407(2). An exception exists where the state agent’s conduct constitutes “gross negligence that is the proximate cause of the injury . . . .” MCL 691.1407(2)(c). In this case, the trial court concluded that there was no gross negligence below, and this Court unambiguously affirmed that aspect of the decision. *Smith*, slip op at 4. The question that remains is whether the PATT defendants have shown on remand that PATT and its members are entitled to governmental immunity.<sup>3</sup>

A public school district is a “level of government,” or more precisely a “political subdivision,” for purposes of governmental immunity. *Nalepa v Plymouth-Canton Community School Dist*, 207 Mich App 580, 587; 525 NW2d 897 (1994), *aff’d* without “indicating . . . agreement with the reasoning set forth in the Court of Appeals opinion” sub nom *Nalepa v Encyclopedia Britannica Educational Corp*, 450 Mich 934 (1995); MCL 691.1401(b). MCL 380.485(2)(a) states that the “board of a first class school district shall . . . [p]rovide for an autonomous school-community organization in each school within the school district,” which “shall be open to all parents and other residents of the school attendance area.” The PATT defendants point to evidence that the Madison School District organized PATT in fulfillment of its statutory duties, that the district funds PATT in part, that PATT places its money in the district’s general account, and that PATT provides services to a plethora of school related activities. The PATT defendants argue that PATT is a component of the district along with the district’s sports programs, school newspaper, and student council.

On our *de novo* review of the record, we conclude that defendants are entitled to assert governmental immunity, as the PATT falls within the statutory definitions and the individual defendants were volunteers acting on behalf of a governmental agency. MCL 691.1407(2). Specifically, a governmental agency is defined as, *inter alia*, a political subdivision, MCL 691.1401(d), while a political subdivision is defined to include school districts, as well as “a . . . authority authorized by law or formed by 1 or more political subdivisions.” MCL 691.1401(b). The PATT is an authority established by a political subdivision (the school district) by virtue of MCL 380.485(2), which requires a first-class school district to “[p]rovide for an autonomous school-community organization in each school within the school district.”

The undisputed evidence shows that the PATT was established pursuant to the mandate of MCL 380.485(2). Additionally, the undisputed evidence establishes that the PATT functions

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<sup>3</sup> We recognize the somewhat contradictory provisions of our prior opinion. However, we believe that our holding did not preclude a further analysis, based on additional evidence, of the question of whether defendants were entitled to a defense of governmental immunity.

as intended, as it provides fundraising for school related items and functions, and the school district provides financial accounts for the organization.<sup>4</sup> That the PATT makes independent decisions on how to spend the money raised for a school is consistent with the autonomy it is given by statute. Therefore, PATT is entitled to governmental immunity. Additionally, the remaining individual defendants were undisputedly acting as volunteers for PATT during the course of the acts at issue in this case, and are only liable if their conduct was grossly negligent. MCL 691.1407(2).

Because our prior opinion concluded that there was no evidence of gross negligence as defined by statute, *Smith, supra*, slip op at 4, we hold that defendants were entitled to statutory immunity. We therefore reverse the trial court's order denying defendants' motion for summary disposition, and remand for entry of an order granting defendants' motion for summary disposition. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray

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<sup>4</sup> Plaintiff's suggestion that the PATT also supports organizations other than the school is without merit. The testimony was that the PATT would financially sponsor school groups who were engaged in collective efforts on behalf of charitable organizations, for example, students participating in Walk America. Thus, the only reason PATT made a contribution to a charitable cause was because of student participation in the event.