

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS WRAY and CATHY L. WRAY,

Plaintiffs-Appellants,

v

CITY OF LANSING,

Defendant-Appellee.

UNPUBLISHED

March 15, 2007

No. 272868

Ingham Circuit Court

LC No. 05-001409-CH

Before: Fort Hood, P.J., and White and Borrello, JJ.

WHITE, J. (*concurring*).

I agree that dismissal of the constitutional claim was proper because plaintiffs failed to establish a deprivation of due process.

Regarding plaintiffs' remaining claims, I note that plaintiffs sued only the City and not the individuals alleged to have been grossly negligent. Rather, plaintiffs assert that defendant City of Lansing is vicariously liable for the gross negligence of various individual employees. I conclude that dismissal of the vicarious liability claims based on gross negligence and conversion was proper because the individuals were engaged in a governmental function, MCL 691.1407(2)(b), and the gross negligence limitation on governmental immunity applies only to employees of, officers of, members of, or volunteers for governmental agencies, and not to the governmental agency itself. *Gracey v Wayne County Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), citing MCL 691.1407(2), overruled in part on other grounds *American Transmissions v Attorney General*, 454 Mich 135, 143; 560 NW2d 50 (1997).

/s/ Helene N. White