

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

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MARILYN THOMPSON,

Plaintiff-Appellee,

v

WAYNE COUNTY TREASURER,

Defendant-Appellant,

and

RAYMOND WOJTOWICZ,

Defendant.

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UNPUBLISHED

May 8, 2008

No. 277837

Wayne Circuit Court

LC No. 06-624872-CL

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant-appellant appeals as of right the trial court's order denying its motion for partial summary disposition predicated on governmental immunity. We reverse and remand. This case is being decided without oral argument in accordance with MCR 7.214(E).

I. Facts

Plaintiff was working for defendant as Director of Community Relations when she became aware that several properties in Detroit formerly owned by her late father were subject to foreclosure proceedings for unpaid taxes, and that some of those parcels had in fact been deeded to her. She took action to identify which parcels were hers, and to contest the taxes assessed, but was hindered in her efforts by lack of notice, hospitalizations, and family conflicts. Defendant informed plaintiff that she, as senior management for the office of the Treasurer, was expected not to become delinquent in her property taxes and insisted that she resolve the tax issues within several days. After that deadline passed without plaintiff having achieved such resolution, defendant terminated her employment.

Plaintiff filed suit, alleging racial discrimination in violation of the Civil Rights Act, and wrongful discharge in violation of public policy following from her "exercise of a right conferred

by a well-established legislative enactment or acts in accordance with a statutory right or duty,” referring to her right to contest the assessment of property taxes.

Defendants moved for summary disposition of the wrongful discharge claim on grounds including governmental immunity. The trial court granted the motion with respect to the Wayne County Treasurer himself, defendant Wojtowicz, on the ground that plaintiff had failed to specify tortious conduct on his part,<sup>1</sup> but, referring to plaintiff’s “good public policy argument,” denied the motion in connection with defendant. The court denied a motion for reconsideration with no elaboration.

## II. Governmental Immunity and Public Policy

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, 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); *Travelers Ins Co v Guardian Alarm Co of Michigan*, 231 Mich App 473, 477; 586 NW2d 760 (1998).

Governmental agencies in this state are generally immune from tort liability for actions taken in furtherance of governmental functions. MCL 691.1407(1). “When bringing suit against a state agency, [a] plaintiff must plead in avoidance of governmental immunity.” *Jones v Williams*, 172 Mich App 167, 171; 431 NW2d 419 (1988).

In this case, plaintiff’s complaint includes no language specifically addressing governmental immunity. In opposing summary disposition, however, plaintiff offered general policy argument, and then addressed governmental immunity by asserting that defendants were engaged in a proprietary function. See MCL 691.1413.

### A. Policy

Despite plaintiff’s representations to the contrary, the trial court did not address whether the proprietary function exception to governmental immunity applied, but instead denied summary disposition for defendant on policy grounds, citing *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692; 316 NW2d 710 (1982).

*Suchodolski, supra*, recognized an employer’s prerogative to terminate an at-will employee for any reason, or no reason, but recognized also that an exception existed “based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable.” *Id.* at 695. This includes termination as retaliation for an employee’s “exercise of a right conferred by a well-established legislative enactment.” *Id.* at 696.

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<sup>1</sup> That aspect of the decision below is not at issue in this appeal.

However, because only judicially recognized public policy, not statute, recognizes retaliatory termination in general as an actionable tort, and because that tort thus is not among the statutory exceptions to governmental immunity, retaliatory termination in response to an assertion of property rights is not actionable against a governmental agency. See *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000) (“the immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed” [emphases in original]).

Moreover, a governmental entity cannot be held liable for the intentional torts of its employees. See *Payton v Detroit*, 211 Mich App 375, 393; 536 NW2d 233 (1995). Retaliatory discharge in violation of public policy is obviously intentional conduct. Accordingly, it is not actionable against defendant.

For these reasons, the trial court erred in denying defendant’s motion for summary disposition predicated on governmental immunity on general policy grounds.

### B. Proprietary Function

In her responsive brief on appeal, plaintiff defends the result below only by reiterating the assertion that defendant’s actions fell under the proprietary function exception to governmental immunity.

Governmental immunity does not bar a suit against a governmental agency for property damage arising from performance of a “proprietary function.” MCL 691.1413. A proprietary function is “any activity . . . conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees.” *Id.*

We think it obvious that collection of taxes is an “activity normally supported by taxes.” Indeed, we can hardly imagine a more inherently governmental function. Plaintiff asserts that defendant is collecting taxes on behalf of the City of Detroit, and that surpluses have resulted, and argues that those facts establish a proprietary function producing a pecuniary profit. However, even assuming, without deciding, the truth of those factual assertions, tax collection is not transformed from a fundamentally governmental exercise into a proprietary one simply because different governmental units work together in the matter, or because an occasional surplus happens to result.

For these reasons, we reject plaintiff’s attempt to characterize defendant’s alleged activities as constituting a proprietary function triggering an exception to governmental immunity.

### III. Conclusion

Because plaintiff has failed to plead a valid basis for avoiding governmental immunity, the trial court erred in denying defendant’s motion for partial summary disposition predicated upon it. We hereby reverse that decision and remand this case to the trial court with instructions to grant summary disposition of the wrongful discharge claim based on a violation of public policy to defendant.

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski