STATE OF MICHIGAN

COURT OF APPEALS

LOLETTA REYNOLDS, Next Friend of DAKARIA WILLIAMS, Minor,

Plaintiff-Appellant,

v

DETROIT PUBLIC SCHOOLS and SHARON WEST,

Defendants-Appellees,

and

DR. BITTLE and MS. WALLACE,

Defendants.

UNPUBLISHED
June 12, 2008

No. 276369
Wayne Circuit Court
LC No. 05-520235-NO

Before: O'Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition. We affirm.

In early 2005, plaintiff's son, Dakaria Williams, attended Parker Elementary School, a part of the Detroit Public School (DPS) system, where defendant Sharon West was the principal. Two classmates of Williams twice assaulted him while at school, on January 25, 2005 and February 1, 2005. Plaintiff then filed this action alleging claims of negligence, gross negligence, and breach of contract.[1] Plaintiff subsequently dismissed her negligence and breach of contract claims. Defendants sought summary disposition of the remaining gross negligence count pursuant to MCR 2.116(C)(7) and (8), on the basis that they were immune from liability. The

[1] The record contains no evidence that defendants Bittle and Wallace ever received service of process, and neither defendant appeared in the action. An action is deemed dismissed with respect to a defendant who is not served with process within the life of the summons and has not voluntarily submitted to the court's jurisdiction. MCR 2.102(E)(1).

circuit court agreed, finding as a matter of law that plaintiff's allegations failed to establish gross negligence.

Plaintiff now challenges the circuit court's summary disposition ruling, which we review de novo. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). The circuit court did not specify pursuant to which subrule it found summary disposition warranted, but because the court plainly considered documentary evidence submitted by the parties, we find review appropriate pursuant to MCR 2.116(C)(7). "Under MCR 2.116(C)(7), summary disposition is proper when a claim is barred by immunity granted by law." *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). In reviewing a (C)(7) motion, "[w]e consider 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*., citing MCR 2.116(G)(5).

Whether governmental immunity applies involves a question of law that we also review de novo. *Pierce v City of Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005). A governmental agency has immunity from tort liability when engaged "in the exercise or discharge of a governmental function." MCL 691.1407(1). A school district qualifies as a governmental agency. MCL 691.1401(b) and (d). A governmental function "is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f). The operation of a public school system constitutes a governmental function, *Lee v Highland Park School Dist*, 118 Mich App 305, 308; 324 NW2d 632 (1982), as does the operation of a public school, *Stringwell v Ann Arbor Pub School Dist*, 262 Mich App 709, 712; 686 NW2d 825 (2004), and the screening, hiring, and supervision of teachers. *Willoughby v Lehrbass*, 150 Mich App 319, 346-347; 388 NW2d 688 (1986); *Bozarth v Harper Creek Bd of Ed*, 94 Mich App 351, 353; 288 NW2d 424 (1979). Under these well-established principles, DPS has immunity from tort liability for its alleged gross negligence, and the trial court correctly dismissed plaintiff's tort action against it pursuant to MCR 2.116(C)(7).

An employee of a governmental agency is immune from tort liability for an injury to a person that the employee caused while in the course of employment if (1) the employee "is acting or reasonably believes he or she is acting within the scope of his or her authority," (2) the "governmental agency is engaged in the exercise or discharge of a governmental function," and (3) the employee's "conduct does not amount to gross negligence that is the proximate cause of the injury." MCL 691.1407(2).[2] In other words, "[a] governmental employee is not immune from tort liability for injuries to persons caused by the employee while in the course of employment if the employee's actions amount to gross negligence that is the proximate cause of the injury." *Stanton v City of Battle Creek*, 237 Mich App 366, 374; 603 NW2d 285 (1999), aff'd 466 Mich 611; 647 NW2d 508 (2002).

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[2] This section does not impose liability on the governmental agency itself, only on its officers, employees, members, and volunteers. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), overruled in part on other grounds by *American Transmissions, Inc v Attorney Gen*, 454 Mich 135, 142-143; 560 NW2d 50 (1997).

Gross negligence means "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Gross negligence exists if an objective observer could reasonably conclude from watching an actor that the actor exhibited a lack of concern for the safety of those in his charge. *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004). Gross negligence has also been described as "almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks." *Id.* The issue of gross negligence may be determined by summary disposition only where, viewing the evidence in the light most favorable to the plaintiff, reasonable minds could not differ that the conduct at issue does not constitute gross negligence. *Jackson v Saginaw Co*, 458 Mich 141, 146-147; 580 NW2d 870 (1998).

The record in this case reflects that two classmates, Terrell and Shaquan, first attacked Williams on January 25, 2005, and did so again on February 1, 2005. Williams denied in his deposition that he informed his teacher or the principal about the altercations. Plaintiff testified that she reported the January 25, 2005 incident two days later to West's secretary because West was not in her office. Plaintiff theorized that had West timely investigated the initial incident and taken remedial action, the February 1 incident would not have occurred.

Plaintiff did not depose West, but in an affidavit West averred that she had no knowledge of the January 25, 2005 attack, either from Williams's teacher, Madeline Wallace, or "any other employee at Parker Elementary School." West denied knowing that Williams suffered any injury before February 1, 2005, the day of the second altercation. The mere fact that plaintiff reported the incident to West's secretary does not establish that she in turn relayed plaintiff's message to West. Plaintiff simply presented no evidence tending to establish that West knew or should have known about the January 25, 2005 altercation.[3]

Given the absence of any evidence tending to prove West's knowledge about the January 25, 2005 altercation, or about any tensions between Williams and other children, we conclude that no reasonable person could find West negligent, much less grossly negligent, for failing to

[3] Even were we to consider Wallace's unsworn statement, which amounts to inadmissible hearsay, MCR 2.116(G)(6), it does not reference that she ever informed West of any problems that Williams had with other children. Furthermore, even assuming that Williams had some difficulty with Terrell or another child at Barton Elementary two years earlier, this fact does not tend to prove that West should have been aware of Williams's problem with Terrell and Shaquan at Parker Elementary; plaintiff presented no evidence that West had any prior affiliation with the Barton school, or any other basis for knowing about the two-year-old tensions at Barton Elementary.

investigate the January 25, 2005 altercation and prevent the February 1, 2005 attack. Consequently, the circuit court properly granted West summary disposition of the gross negligence count pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher