

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

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SHERRY SMITH, as Next Friend of MONIQUE  
HOWELL, a Minor,

UNPUBLISHED  
October 28, 2008

Plaintiffs-Appellees,

v

FLINT MASS TRANSPORTATION  
AUTHORITY,

No. 280837  
Genesee Circuit Court  
LC No. 06-084744-NI

Defendant-Appellant.

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Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

Defendant appeals from the trial court's denial of defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm.

The minor plaintiff slipped and fell on what she believed to be ice which had accumulated on the platform or step of a bus operated by defendant. The bus was allegedly parked directly next to, and flush with, a two-foot pile of snow, into which passengers were forced to step, as there was no space between the snow pile and the bus's platform.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Tort immunity is granted to governmental agencies pursuant to MCL 691.1407(1), which provides:

Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

It is undisputed that defendant is a governmental agency that was engaged in a governmental function by providing public transportation.

There are six exceptions to this blanket immunity, under which a governmental agency may be liable in tort. *Lash v Traverse City*, 479 Mich 180, 195 n 33; 735 NW2d 628 (2007). One such exception is the motor vehicle exception, MCL 691.1405. That exception provides:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

A bus is a motor vehicle within the meaning of this section. *Stanton v Battle Creek*, 466 Mich 611, 618; 647 NW2d 508 (2002). This section applies to the negligent operation of a government owned motor vehicle, but the mere *involvement* of such a motor vehicle is not sufficient to obviate immunity. *Peterson v Muskegon County Bd of Road Comm'rs*, 137 Mich App 210, 214; 358 NW2d 28 (1984). “The language ‘operation of a motor vehicle’ means that the motor vehicle is being operated *as* a motor vehicle.” *Chandler v County of Muskegon*, 467 Mich 315, 320; 652 NW2d 224 (2002) (emphasis in original). “The ‘operation of a motor vehicle’ encompasses activities that are directly associated with the driving of a motor vehicle.” *Id.* at 321.

Plaintiff first alleges that governmental immunity is avoided because she slipped on the icy platform or step while exiting a government owned bus. In *Martin v Rapid Inter-Urban Transit P'ship*, 480 Mich 936; 740 NW2d 657 (2007), our Supreme Court held that, “[t]he loading and unloading of passengers is an action within the ‘operation’ of a shuttle bus.” In *Martin*, the plaintiff slipped on an icy step while exiting the bus. In the instant case, the minor plaintiff slipped and fell while exiting a government owned bus, because of the driver’s alleged failure to maintain the steps in a reasonably safe condition. The step or platform was reportedly icy, causing the minor plaintiff to slip and fall and break her hip. Based on our Supreme Court’s decision in *Martin*, the trial court’s denial of summary disposition was not erroneous.

Plaintiff argues in the alternative that the positioning of the bus next to a two-foot pile of snow to unload passengers constituted negligence on the driver’s behalf, and because loading or unloading passengers falls under the “operation” of a motor vehicle, parking negligently to unload passengers constituted negligent operation. Again, according to *Martin*, unloading passengers constitutes ‘operation’ of a motor vehicle, and if unloading passengers directly into a large snow bank can be said to be negligent, this surely constitutes negligent operation of a motor vehicle.

Both theories of liability set forth by plaintiff concern an injury occurring during, and as a result of, the operation of a government-owned motor vehicle, and as such, plaintiff’s claim falls under the motor vehicle exception to governmental immunity. Both theories allege negligence in the unloading of passengers, an activity that is included under the definition of “operation” of a motor vehicle. There is, at the very least, a genuine issue of material fact, sufficient to affirm the trial court’s denial of defendant’s motion for summary disposition.

Affirmed.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood