STATE OF MICHIGAN

COURT OF APPEALS

HELIN YOUSIF, as Next Friend of RICHARD JOSEPH YOUSIF, a Minor, Plaintiff-Appellee, v CITY OF STERLING HEIGHTS, Defendant-Appellant.	UNPUBLISHED October 29, 2009 No. 288302 Macomb Circuit Court LC No. 07-002624-NI

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order denying its motion for summary disposition based on the motor vehicle exception to governmental immunity, MCL 691.1405. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At issue in this case is whether the vehicle involved, a "Gator" utility tractor, is a "motor vehicle" within the scope of the statutory exception:

> 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 [the Michigan Vehicle Code]. [MCL 691.1405.]

In *Stanton v Battle Creek*, 466 Mich 611, 616; 647 NW2d 508 (2002), our Supreme Court held that the exception's reference to the definitions provided in the Michigan Vehicle Code, MCL 257.1 *et seq*, applied only to the word "owner," and did not provide for a statutory definition of "motor vehicle." Instead, the Court consulted dictionaries and applied "an automobile, truck, bus, or similar motor-driven conveyance" as the proper definition, noting that a narrow definition provided the correct interpretation of an exception to governmental immunity. *Id*. at 618. Although the Court noted some dictionaries' definitions included phrases such as "for use on streets or highways," it did not include this limitation in crafting its definition. In addition, *Stanton* Court's analysis did not mention that the vehicle, a forklift, was not being driven on a street or highway at the time of the accident, nor that it was not designed to travel on streets. Instead, the Court simply concluded the forklift was "a piece of industrial

construction *equipment*" and was "not similar to an automobile, truck, or bus." *Id*. (emphasis in original). After *Stanton*, this Court held that a broom tractor, a tractor mower, and a hydraulic grader are all motor vehicles subject to the exception. *Regan v Washtenaw Co Bd of Co Rd Comm'rs (On Remand)*, 257 Mich App 39; 667 NW2d 57 (2003); *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274; 705 NW2d 136 (2005), overruled in part on other grds *Kik v Sbraccia*, 272 Mich App 388; 726 NW2d 450 (2006) (conflict panel), rev'd in part, aff'd in part *Wesche v Mecosta Co Rd Comm*, 480 Mich 75; 746 NW2d 847 (2008) (affirming *Wesche*). But, when this Court held that a golf cart driven by an athletic trainer at a football game was a motor vehicle in *Overall v Howard*, unpublished opinion per curiam of the Court of Appeals, issued April 26, 2007 (Docket No. 274588) ("*Overall I*"), our Supreme Court reversed "for the reasons stated in the Court of Appeals dissenting opinion." *Overall v Howard*, 480 Mich 896 (2007) ("*Overall II*"). That dissenting opinion noted the exception is to be construed narrowly, and then stated:

> [T]he vehicles at issue in *Wesche* and *Regan* were motor-vehicle-like conveyances that were designed for operation on or alongside the roadway, and each of these conveyances generally resembled an automobile or truck. In contrast, the forklift at issue in *Stanton* was not similar to an automobile, bus, or truck, and was not designed for operation on or alongside the roadway. I conclude that the golf cart in the instant case more closely resembled the forklift at issue in *Stanton* than it did the conveyances at issue in *Wesche* and *Regan*. [*Overall I*, slip op at pp 1-2, Jansen, J, dissenting.]

In the present case, defendant argues that the Gator utility tractor is like the golf cart in *Overall*, while plaintiff argues it is more like the vehicles in *Regan* and *Wesche*. The Gator was being used as a trailer shuttle to transport festivalgoers visiting downtown Sterling Heights. The streets were closed off, and people would use the shuttle to get from the parking area to the festival area via public roads that had been closed to public traffic for the festival. Plaintiff fell off the passenger trailer and was injured when the driver allegedly turned too sharply. Defendant argues that the Gator is similar in size and appearance to a golf cart, is not required to be registered with the Secretary of State (like a golf cart), has a top speed of 18 miles per hour that precludes it from being driven in high-speed traffic, and was being used in the same way defendant was also using golf carts to transport passengers. These shuttle vehicles were not driven to the festival when the roads were open; they were transported on another vehicle. Defendant further argues that the trial court erroneously ignored the holding in *Overall*, stating that, "the Supreme Court, by virtue of adopting the Court of Appeals' dissent, held that a golf cart is not a motor vehicle for purposes of the exception to governmental immunity." The Gator was not designed for use on public roadways and cannot travel at speeds comparable to other motor vehicles. This was not a motor vehicle accident, defendant argues, and the Gator's operation did not endanger a motorist on the public highway, unlike the situations in *Regan* and *Wesche*. In response, plaintiff reiterates the argument that the Gator was driven and operated in a way identical to that of a car, bus, or truck. It was not being used like a piece of equipment like a forklift.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Statutory interpretation is a question of law that we also consider de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

We agree with plaintiff that the Gator in this case is a motor vehicle falling within the statutory exception. Binding case law has applied the exception fairly consistently, precluding liability where the vehicle was being used more as a piece of equipment than as a means of transportation. Indeed, the *Stanton* definition emphasis's the vehicle's transportational purpose rather than where it is being operated, and although *Stanton* quoted dictionary definitions that mentioned use on highways, in the end, the Court stated:

> The definition of a "motor vehicle" as "an automobile, truck, bus, or similar motor-driven conveyance" is the narrower of the two common dictionary definitions. Therefore, we apply it to the present case. A forklift—which is a piece of industrial construction *equipment*—is not similar to an automobile, truck, or bus. Thus, the motor vehicle exception should not be construed to remove the broad veil of governmental immunity for the negligent operation of a forklift. [*Stanton*, *supra* at 618, emphasis in original.]

Nothing in the statute or in *Stanton* or later cases indicates that the vehicle's top speed, size, appearance, or powertrain are of significance when applying the statute.

Under our binding case law, the Gator is a motor vehicle. It was transporting passengers from one location to another, just like a shuttle bus. Although it was smaller and less powerful than a regular bus, nothing in the statute indicates that such considerations are controlling.

We affirm. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ Stephen L. Borrello