

STATE OF MICHIGAN
COURT OF APPEALS

HELIN YOUSIF, as Next Friend of RICHARD
JOSEPH YOUSIF, a Minor,

UNPUBLISHED
October 29, 2009

Plaintiff-Appellee,

v

CITY OF STERLING HEIGHTS,

No. 288302
Macomb Circuit Court
LC No. 2007-002624-NI

Defendant-Appellant.

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

MURRAY, P. J. (*dissenting*).

With all due respect to my esteemed colleagues, I dissent from their opinion affirming the circuit court's order denying defendant's motion for summary disposition. In my view, the Gator involved in the accident is not a motor vehicle for purposes of the motor vehicle exception to statutory governmental immunity, MCL 691.1405. In reviewing the exhibits attached to the appellate briefs, the Gator much more resembles a golf cart that was found not to be a motor vehicle in *Overall v Howard*, 480 Mich 896; 738 NW2d 760 (2007), than it does a motor vehicle. Consistent with the definition of motor vehicle adopted by the Court in *Stanton v City of Battle Creek*, 466 Mich 611, 618; 647 NW2d 508 (2002), the Gator is not an automobile, truck, bus, or similar motor vehicle but is instead more like a golf cart that is not intended to be driven on a roadway and has many of the same limitations in size, capacity, and engineering that a golf cart has.¹ In an attempt to be consistent with existing precedent, I would reverse the trial court's order on the basis of *Overall* and remand for entry of an order granting defendant's motion for summary disposition.

/s/ Christopher M. Murray

¹ The unrefuted evidence shows that the Gator has a maximum speed of 18 miles per hour, does not need to be registered with the Secretary of State, and was not intended for use on or along a roadway.