# STATE OF MICHIGAN

# COURT OF APPEALS

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| FRED ST. ONGE and KAREN ROSS,<br><br>Plaintiffs-Appellants,<br><br>v<br><br>RAMONA G. SMITH,<br><br>Defendant-Appellee. | UNPUBLISHED<br>May 17, 2016<br><br>No. 324878<br>Marquette Circuit Court<br>LC No. 14-052104-NI |

Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

This case arises from an accident involving a vehicle occupied by plaintiffs Fred St. Onge and Karen Ross, and a State of Michigan vehicle driven by defendant Ramona G. Smith, an employee of the Department of Licensing and Regulatory Affairs (LARA). Plaintiffs' complaint alleged that Smith negligently turned left without yielding to oncoming traffic and struck their vehicle. Defendant moved for summary disposition, asserting that the Governmental Tort Liability Act (GTLA), MCL 691.1410 *et seq*., bars plaintiffs' personal injury claims. The circuit court agreed with defendant, and so do we. We affirm.

I

Defendant's state employment requires her to survey nursing homes as part of an "up north team," based in Gaylord. When defendant travels to the nursing homes she is assigned to inspect, she drives a vehicle owned by the State of Michigan. Inspections conducted in the Upper Peninsula often consume several days, necessitating that defendant spend overnights in a hotel.

At approximately 4:00 p.m. on Friday, September 9, 2011, defendant completed an inspection of a nursing home in Negaunee. Because defendant's work hours are from 8:00 a.m. to 5:00 p.m., she was permitted to stay in a hotel that evening rather than driving home. Defendant selected a hotel in Munising. On her way there, at approximately 4:25 p.m., defendant turned left on US-41 in front of plaintiffs' oncoming car.

Plaintiffs sued defendant, alleging that as a result of the collision they suffered serious injuries. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), contending that she was entitled to the immunity afforded under MCL 691.1407(2). The trial court granted defendant's motion, and plaintiffs now appeal that ruling.[1]

II

We review de novo a circuit court's grant of summary disposition under MCR 2.116(C)(7). *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). We also review de novo a circuit court's ruling on the availability of governmental immunity. *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 578; 808 NW2d 578 (2011).

The GTLA affords governmental employees engaged in the exercise or discharge of a governmental function with broad immunity from tort liability. Specifically, MCL 691.1407(2) provides, in relevant part, that:

> Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person or damage to property caused by the officer [or] employee . . . while in the course of employment or service . . . while acting on behalf of a governmental agency if all of the following are met:
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> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
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> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
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> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Plaintiffs raise a three-pronged challenge to defendant's immunity claim. First, plaintiffs allege that defendant was not acting "in the course of employment or service" when the accident occurred. Plaintiffs further assert that defendant was not "acting within the scope of her authority" or "in the exercise or discharge of a governmental function" at the time of the crash.[2] All three contentions essentially boil down to one central argument: driving to a hotel was not a job requirement or an element of defendant's service as a governmental employee. We do not interpret MCL 691.1407(2) so narrowly.

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[1] Plaintiffs filed a separate suit against the State of Michigan in the Court of Claims based on MCL 691.1405. This Court held that plaintiffs had filed a defective notice of intent to sue, and ordered the case dismissed. *St Onge v Michigan*, unpublished opinion per curiam of the Court of Appeals, issued June 11, 2015 (Docket No. 320800).

[2] Plaintiffs concede that defendant was not grossly negligent.

Our analysis of plaintiffs' first argument is guided by this Court's opinion in *Niederhouse v Palmerton*, 300 Mich App 625, 633; 836 NW2d 176 (2013), in which we set forth "the necessary considerations for a course of employment" determination as follows: "(1) the existence of an employment relationship, (2) the circumstances of the work environment created by the employment relationship, including the temporal and spatial boundaries established, and (3) the notion that the act in question was undertaken in furtherance of the employer's purpose." (Quotation marks and citation omitted.)

The parties agree that defendant had an employment relationship with LARA, a government agency. Unrebutted evidence substantiated that defendant's job required her to drive to various nursing homes in northern Michigan to perform inspections, and that her employer expected her to stay in hotels when on surveying trips in the Upper Peninsula. That the state assigned defendant a car to use during travel to and from nursing homes solidifies that this travel constituted an integral part of defendant's job responsibility. We find it beyond question that defendant's travel to and from nursing homes and hotels furthered the state's purpose. "Where the employer provides a vehicle, guarantees transportation, reimburses identifiable travel expenses, or provides an identifiable sum for travel time, it is probable that the employer has contracted for the employee's travel and that . . . the travel itself is employment." *Pappas v Sport Servs, Inc*, 68 Mich App 423, 429; 243 NW2d 10 (1976). Thus, the evidence established that defendant's travel fell within the "temporal and spatial boundaries" of her employment, and that she was acting in the course of her employment when the accident occurred.

Plaintiffs posit that pursuant to the Workers' Disability Compensation Act (WDCA), MCL 418.301 *et seq.*, "[t]he general rule [is] that injuries sustained by an employee while going to or coming from work are not compensable[.]." *Bowman v RL Coolsaet Constr Co*, 477 Mich 976; 725 NW2d 49 (2006). There is an exception to this rule encompassing travel conducted for "a dual purpose combining employment-related business needs with the personal activity of the employee." *Bowman v RL Coolsaet Constr Co*, 275 Mich App 188, 191; 738 NW2d 260 (2007) (quotation marks and citation omitted). Regardless of whether that exception would apply here, the WDCA clearly does not. The considerations relevant to determining whether defendant was acting in the course of her employment are those supplied by *Niederhouse.* Defendant meets those criteria.

Nor are we persuaded that defendant was acting outside the "scope of her authority" at the time of the accident. "Scope of authority" is defined as " '[t]he reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business.' " *Backus v Kauffman (On Rehearing)*, 238 Mich App 402, 409; 605 NW2d 690 (1999), quoting *Black's Law Dictionary* (7th ed), p 1348. Defendant was driving a state-owned vehicle to a hotel after completing a nursing home inspection. The state assigned defendant a vehicle for the specific purpose of travel to and from nursing homes. Thus, defendant had explicit authority to use the vehicle, and acted within the scope of her authority by doing so. That defendant's written job description did not include driving is entirely irrelevant as she was authorized and expected to use the vehicle for the purpose of travel to a hotel.

Lastly, plaintiffs contend that because LARA's governmental function includes inspecting nursing homes but not driving to and from them, defendant was not engaged in the

exercise or discharge of a governmental function when the accident occurred. Once again, plaintiffs' focus is too narrow.

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(b). "To determine whether a governmental agency is engaged in a governmental function, the focus must be on the general activity, not the specific conduct involved at the time of the tort." *Pardon v Finkel*, 213 Mich App 643, 649; 540 NW2d 774 (1995). Defendant's travel to and from the nursing home was necessary to enable the inspection, and therefore implicitly mandated by law. Accordingly, defendant was discharging a governmental function at the time of the accident.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Michael J. Kelly