STATE OF MICHIGAN

COURT OF APPEALS

ROZANN DENISE MARINELLI, Plaintiff-Appellee,	UNPUBLISHED July 3, 2012
v	No. 303414 Court of Claims
STATE OF MICHIGAN, Defendant,	LC No. 10-000061-MZ
and	
DEPARTMENT OF TRANSPORTATION, Defendant-Appellant.	

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Defendant Michigan Department of Transportation (defendant) appeals as of right from an order denying it summary disposition. Plaintiff filed a negligence claim seeking recovery for injuries received when her car was hit by an "arrow-board" trailer that had detached from a state vehicle. Defendant moved for summary disposition based on governmental immunity, but the trial court held that plaintiff's claim was not barred because the accident fell within the motor-vehicle exception to governmental immunity. We affirm.

Plaintiff alleged that defendant's employee Virble Harris was negligent in his driving and in his failing to secure the arrow-board trailer. Defendant denied negligence and maintained, in part, that plaintiff's claims were barred by governmental immunity. Defendant filed for summary disposition under MCR 2.116(C)(7) and (10), claiming that the arrow-board trailer was not a motor vehicle, Harris was not negligent, and negligent maintenance would not come within the motor-vehicle exception to governmental immunity. Harris was driving a 2004 dump truck and had a commercial driver's license and 11 years' experience in the job. Defendant emphasized that Harris had inspected the trailer, hitch, and safety chain the morning of the accident. Defendant claimed that Harris had been listening to music with the truck's windows up and that he learned of the accident when a motorist advised him that something had come off his truck. Plaintiff argued that a trailer attached to a motor vehicle was part of a motor vehicle and

that a reasonable jury could find that Harris's operation and inspection (a necessary part of operation of the motor vehicle) was negligent.

We first consider whether an arrow-board trailer, once it becomes detached, is a "motor vehicle" such that it falls within the motor-vehicle exception to governmental immunity. We review de novo questions of law, including statutory interpretation, grants and denials of summary disposition, and whether a claim is barred by governmental immunity. See *Chandler v Muskegon Co*, 467 Mich 315, 319; 652 NW2d 224 (2002). Governmental immunity provisions are broadly construed, and statutory exceptions to governmental immunity are construed narrowly. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000).

MCL 691.1405 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 . . . .

The motor-vehicle exception to governmental immunity was analyzed by the Michigan Supreme Court in *Stanton v Battle Creek*, 466 Mich 611, 612, 620; 647 NW2d 508 (2002), wherein the Court held that a forklift was not a motor vehicle under MCL 691.1405. The *Stanton* Court looked to dictionary definitions of "motor vehicle" because the language of the motor-vehicle exception did not define that term. *Stanton*, 466 Mich at 617. The definition most closely effectuating the legislative intent was "an automobile, truck, bus, or similar motor-driven conveyance." *Id*. at 618 (internal citation and quotation marks omitted). The Court noted that a forklift was not similar to an automobile, truck, or bus; instead, it was a piece of industrial construction equipment. *Id*.

The Supreme Court also considered the motor vehicle exception in *Chandler*, 467 Mich at 316, 321-322, wherein the Court held that a plaintiff whose shoulder was injured while attempting to pry open the door of a parked bus that had closed on a person's shoulder did not come within the motor vehicle exception. The court reasoned that the bus was not being operated as a motor vehicle because "operation" encompasses "activities that are directly associated with the driving of a motor vehicle." *Id*. at 321-322.

In *Wesche v Mecosta Co Rd Comm*, 267 Mich App 274, 278; 705 NW2d 136 (2005), the plaintiff was operating a "Gradall," a hydraulic excavating machine. Noting that the machine "resembles a truck and moves like a truck," the panel held that it was a motor vehicle within the meaning of MCL 691.1405. *Wesche*, 267 Mich App at 278. To satisfy the motor vehicle exception, the Court said, the vehicle need not be used primarily for transportation. *Id*.

Under the above cases, the vehicle in the present case, considered as a whole, was being used and operated as a motor vehicle. See also *Grabler v Allen*, 109 P3d 1047, 1050 (Colo App, 2005) ("when, as here, a motor vehicle and trailer are joined together and are traveling down a highway, the combined vehicle is perceived by others as one vehicle because the combined vehicle accelerates, turns, and slows down as one unit"). We cannot conclude that simply because the trailer detached from the truck the unit thereby lost its character as a motor vehicle.

In *White v American Deposit Inc Co*, 732 So2d 675 (La App 3d Cir, 1999), the court dealt with whether a boat trailer that had become detached was a motor vehicle under a private insurance policy. The court reasoned:

> The fact that the boat and trailer became detached and crossed the median . . . does not render the boat "not in tow" . . . . The boat and trailer were moving, and since the trailer had no power of its own, the movement was attributable to the towing vehicle. Hence, even if the boat was not in tow at the point of impact, the damages . . . arose out of the use of a motor vehicle and were directly related to the towing of the boat and trailer. [*Id*. at 677.]

The trial court's holding here—that the arrow-board trailer and truck to which it was attached were a "motor vehicle" within the motor-vehicle exception to governmental immunity—is in line with case law and with common sense. The truck was not similar to a forklift— it was designed to be operated on public streets and highways—and when the trailer separated from the truck and struck plaintiff's vehicle, it had not lost its character as part of a motor vehicle. Defendant has cited no applicable authority to support the opposite view. A "motor vehicle" within the meaning of MCL 691.1405 was in issue.

Defendant contends that there was no evidence that Harris negligently operated the motor vehicle.[1] We note that plaintiff is correct that defendant's motion was filed and heard before the end of the discovery period. The discovery period was set to end on June 30, 2011. Defendant filed its motion for summary disposition on February 24, 2011, and it was heard on March 23, 2011. Plaintiff has stated that she had not yet had parts of the trailer analyzed by an expert. One of the purposes of the inspection would be to ascertain when and how each of the welds to the prongs of the trailer hitch failed, and what effect this would have had on the operation of the truck. Granting summary disposition on the negligence issue would have been premature. "Generally, a motion for summary disposition under MCR 2.116(C)(10) is premature when discovery on a disputed issue has not been completed." *Colista v Thomas*, 241 Mich App 529, 537; 616 NW2d 249 (2000). Over three months of discovery remained when the trial court

[1] Plaintiff argues that under MCR 7.202(6)(a)(v), defendant's appeal is limited to the governmental immunity issue and does not include whether the driver was negligent. MCR 7.202(6)(a)(*v*) states that a "final judgment" includes "an order denying governmental immunity to a . . . governmental agency, official, or employee under MCR 2.116(C)(7) or an order denying a motion for summary disposition under MCR 2.116(C)(10) based on a claim of governmental immunity . . . ." Plaintiff cites MCR 7.203(a)(1), which states that "[a]n appeal from an order described in MCR 7.202(6)(a)(iii) – (v) is limited to the portion of the order with respect to which there is an appeal of right." Plaintiff cites *Pierce v Lansing*, 265 Mich App 174, 182; 694 NW2d 65 (2005), wherein this Court concluded that in an appeal as of right from an order denying governmental immunity, the Court lacked the authority to consider issues other than governmental immunity. Here, whether Harris was negligent is not a distinct question from whether defendant is entitled to governmental immunity. Indeed, the motor-vehicle exception to governmental immunity applies only if the driver was negligent.

considered defendant's motion for summary disposition, and it would have been unfair to deprive plaintiff of the opportunity to continue discovery concerning disputed issues. Further discovery and expert testimony may have uncovered further evidence concerning negligent operation and negligent inspection.[2]

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

[2] Defendant admits that there was a duty to inspect the vehicle. We further note that the trial court was premature in applying the doctrine of *res ipsa loquitor*, see, e.g., *Jones v Porretta*, 428 Mich 132, 150; 405 NW2d 863 (1987), given that discovery had not been completed. However, this error is not consequential in the present appeal because further discovery will take place on remand.