

STATE OF MICHIGAN
COURT OF APPEALS

DARREN FINDLING, Special Personal
Representative of the ESTATE OF PHILLIP E.
WADE II,

UNPUBLISHED
December 6, 2012

Plaintiff-Appellant,

v

CITY OF DETROIT and SHEILA FAYE
WILLIAMS,

No. 304657
Wayne Circuit Court
LC No. 10-004443-NI

Defendants-Appellees.

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

JANSEN, P.J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that there was no genuine issue of material fact concerning whether defendant Sheila Williams was grossly negligent. I also concur with the majority's conclusion that much of the evidentiary material proffered in this case was inadmissible hearsay and that the only admissible documentary evidence was Williams's deposition testimony.

However, I respectfully dissent from the majority's conclusion that the deposition testimony created a genuine issue of material fact concerning whether Williams operated her salt truck in a negligent manner for purposes of the motor vehicle exception to governmental immunity, MCL 691.1405. Williams testified that plaintiff's decedent "came from nowhere," quickly approached her salt truck from behind, and attempted to "beat" her to a turnaround lane because she was driving too slowly. Williams testified that she had been checking her mirrors regularly but had never even seen plaintiff's decedent until his vehicle was directly behind hers. At that point, as Williams was turning from southbound Chene onto northbound Chene, plaintiff's decedent collided with the salt truck in the turnaround lane. Williams testified that she "had all the lights on" on her salt truck and that she had used her turn signal before entering the turnaround lane. Specifically, Williams testified that her salt truck was equipped with "spread lights all around," "hazard lights," "left and right lights at the top," "strobe lights on the top," and blinking lights on either side. Williams estimated that she had been driving about eight miles per hour and that plaintiff's decedent had come up behind her at about 35 miles per hour.

I have reviewed Williams's deposition testimony in full. There is no suggestion that Williams was at fault or that Williams was in any way negligent when she drove her salt truck during the period in question. The admissible documentary evidence indicates that plaintiff's decedent collided with Williams, and there is no other admissible evidence to rebut this point. On the basis of the limited, admissible evidence presented below, reasonable minds simply could not conclude that Williams was at fault or that she drove her salt truck in a negligent manner. See *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Accordingly, the motor vehicle exception to governmental immunity cannot apply to create liability on the part of the City of Detroit in this case. See MCL 691.1405 (requiring "negligent operation" of a motor vehicle). I would affirm the trial court's grant of summary disposition for defendants in its entirety.

/s/ Kathleen Jansen