STATE OF MICHIGAN

COURT OF APPEALS

DONA REGAN and BRIAN REGAN,

Plaintiffs-Appellees,

v

WASHTENAW COUNTY BOARD OF COUNTY ROAD COMMISSIONERS,

Defendant-Appellant,

and

DAVID CAVANAUGH,

Defendant.

FOR PUBLICATION
January 11, 2002
9:00 a.m.

No. 219761
Washtenaw Circuit Court
LC No. 97-004017-NI

LEONARD ZELANKO,

Plaintiff-Appellee,

v

WASHTENAW COUNTY BOARD OF COUNTY ROAD COMMISSIONERS,

Defendant-Appellant,

and

RICHARD LEE SHEHAN,

Defendant.

No. 220532
Washtenaw Circuit Court
LC No. 98-009848-CZ

Updated Copy
March 15, 2002

Before: Murphy, P.J., and Griffin and Wilder, JJ.

MURPHY, P.J.

In these consolidated cases, defendant Washtenaw County Board of County Road Commissioners appeals by leave granted the trial courts' orders denying its motions for summary disposition. The trial courts held that there were genuine issues of material fact regarding the question whether the conduct engaged in by defendant's employees involved the negligent operation of a motor vehicle, which would trigger the exception to governmental immunity found in MCL 691.1405. We affirm and remand.

In the Regan case, plaintiff Dona Regan was driving a school bus when she collided with a broom tractor owned by defendant road commission and operated by defendant David Cavanaugh, an employee of defendant. The Regans' complaint alleged that the tractor, which was the third vehicle in a five-vehicle convoy performing shoulder maintenance, straddled a fog line and extended several feet into her lane, which caused Regan to move to the left in an effort to pass the tractor, at which time a blinding dust cloud formed and Regan's vehicle and the county vehicle collided. The Regans further alleged that the operator was negligent in failing to pay proper attention to his course of travel and the movement of others on the highway, in failing to keep a sharp and careful lookout, in failing to be observant of conditions, and in failing to keep his tractor constantly under control.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), and the trial court granted Cavanaugh's motion, finding that no reasonable trier of fact could conclude that he engaged in gross negligence;[1] however, the court denied the road commission's motion, finding that the allegations in the complaint could lead to a finding that the broom tractor was negligently operated, and that there were questions of fact regarding whether the alleged actions fell within MCL 691.1405.

In the Zelanko case, plaintiff Leonard Zelanko's tractor-trailer rig was struck in the windshield by a piece of tire tread propelled by a tractor mower operated by defendant Richard Lee Shehan, an employee of defendant, after Shehan ran over the tire tread while cutting grass along the side of the highway. The tire tread shattered the windshield and caused injuries to Zelanko. Zelanko alleged that the operator was negligent in failing to operate the tractor with due care and caution, in failing to maintain control of the tractor at all times, in failing to avoid driving over the tire tread, and in failing to keep a sharp lookout so as to avoid injuring Zelanko.

Defendants Shehan and the road commission moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), and the trial court granted Shehan's motion, finding that no reasonable trier of fact could conclude that he engaged in gross negligence;[2] however, the court denied the road commission's motion, apparently finding that there was a genuine issue of material fact under MCL 691.1405.

This Court reviews de novo motions for summary disposition brought pursuant to MCR 2.116(C)(7). *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). Summary disposition is proper when a claim is barred because of immunity granted by law. *Id.* To survive

[1] The Regans have not challenged the trial court's dismissal of the action against Cavanaugh.

[2] Zelanko has not challenged the trial court's dismissal of the action against Shehan.

a motion for summary disposition based on governmental immunity, the plaintiff must allege facts giving rise to an exception to governmental immunity. *Id.* This Court considers all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. *Id.*

Immunity from tort liability is granted to governmental agencies, their employees, and offices by MCL 691.1407(1), which provides, in part, that "[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." An exception to the general rule of governmental immunity is provided in MCL 691.1405:

> 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 Legislature's grant of immunity from tort liability in MCL 691.1407(1) to governmental agencies is to be interpreted broadly and exceptions to this rule are to be narrowly drawn and strictly construed. *Richardson v Warren Consolidated School Dist*, 197 Mich App 697, 699; 496 NW2d 380 (1992).

Defendant relies on *Peterson v Muskegon Co Bd of Co Rd Comm'rs*, 137 Mich App 210; 358 NW2d 28 (1984), in which the plaintiff was injured when his vehicle struck a patch of snow and ice. Defendant's reliance on *Peterson* is misplaced because the case is distinguishable from the present case. In *Peterson*, the plaintiff filed suit claiming that the snow and ice had been negligently plowed off an overpass and onto the highway before the plaintiff came upon the scene. *Id.* at 211-212. On appeal, this Court, affirming the trial court's dismissal of the action on different grounds, stated:

> The proper question, therefore, is whether, under all the facts alleged by a plaintiff, the injuries suffered by the plaintiff may, in fact, be said to have resulted from the negligent operation of a motor vehicle. Under the facts alleged in this case, we find that the trial court correctly concluded that plaintiff had not sufficiently alleged such an injury. The gravamen of plaintiff 's complaint is not that a snowplow was negligently operated, but rather that snowplowing was negligently performed. The complaint does not sufficiently allege that the accident and subsequent injury to plaintiff were caused by the negligent operation of the snowplow. [*Id.* at 213-214.]

Here, plaintiffs alleged that the accident and subsequent injuries were caused by the negligent operation of motor vehicles.

Defendant's reliance on *Michigan N R Co v Auto-Owners Ins Co*, 176 Mich App 706; 440 NW2d 108 (1989), is also misplaced. There, this Court applied the test enunciated in *Peterson* in the context of a no-fault automobile insurance case, where the plaintiff was injured when its train derailed after crossing a pile of dirt left on the tracks by a county employee who had earlier

plowed over the railroad crossing. *Id.* at 707-708, 712. Addressing the issue whether the accident arose out of the ownership, operation, maintenance, or use of a motor vehicle, this Court held:

> [I]t was not the operation of defendant's vehicle that caused the accident, but the residual effect of the act of plowing or grading the road. This distinction is crucial to the resolution of this issue. The operation of the blade truck was not the cause of plaintiff's property damage. Rather, it was the end result of the act of plowing the road that caused the train to derail. Therefore, plaintiff's damages do not arise out of the ownership, operation, maintenance or use of a motor vehicle and are not covered by the no-fault act. [*Id.* at 712-713.]

Here, once again, the alleged facts are distinguishable because plaintiffs alleged that the operation of the road commission's vehicles caused the injuries, and not that the injuries were caused by the end result of defendant's actions.

In *Williams v Citizens Mut Ins Co of America*, 94 Mich App 762, 764-765; 290 NW2d 76 (1980), this Court, addressing the same no-fault provision as in *Michigan N R Co*, noted that the causal connection between the operation of a vehicle and the injury cannot be extended to something distinctly remote, and each case depends on its own facts. Here, the alleged cause of the injuries, the operation of motor vehicles, cannot be said to be indirectly and remotely related to the claimed injuries, if in fact the injuries were caused by the negligent operation of a motor vehicle.

In *Robinson v Detroit*, 462 Mich 439, 445; 613 NW2d 307 (2001), our Supreme Court, addressing the parameters of civil liability of governmental agencies and police officers when a police chase results in injuries or death,[3] stated:

> We agree with *Fiser v Ann Arbor*, 417 Mich 461; 339 NW2d 413 (1983), that an officer's physical handling of a motor vehicle during a police chase, can constitute "negligent operation . . . of a motor vehicle" within the motor vehicle exception. However, plaintiffs' injuries did not, as a matter of law, result from the operation of the police cars where the police cars did not hit the fleeing car or physically cause another vehicle or object to hit the vehicle that was being chased or physically force the vehicle off the road or into another vehicle or object. [Omission in original.]

The *Robinson* Court continued by stating that "[c]onversely, if an innocent person is injured as a result of a police chase because a police car physically forces a fleeing car off the road or into another vehicle or object, such person may seek recovery against a governmental agency pursuant to the motor vehicle exception . . . ." *Robinson, supra* at 445, n 2. The

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[3] In *Robinson, supra* at 447-449, a consolidation of two cases, the plaintiffs were passengers in vehicles that were attempting to elude police. The vehicles, in which the plaintiffs were riding, eventually crashed into a house and into a nonpolice vehicle. *Id.*

plaintiffs' claims in *Robinson* were rejected because the allegations in their respective complaints alleged that the police failed to operate their vehicles in a safe, prudent, and reasonable manner, without alleging that the police vehicles hit the fleeing car or otherwise physically forced the fleeing car off the road or into another vehicle or object. *Id.* at 456.

Here, as distinguishable from *Robinson*, plaintiffs have alleged injuries resulting from the negligent operation of motor vehicles by road commission employees, where it is alleged that the operation of a county vehicle caused Dona Regan's vehicle to directly collide with the county vehicle,[4] caused Dona Regan's vehicle to attempt to maneuver around the county vehicle before the vehicles collided,[5] and caused an object, the tire tread, to directly strike Zelanko's vehicle.[6] The injuries allegedly resulted from the collision in Regan and the impact of the tire tread in Zelanko. Therefore, the present facts fit directly within the situations conceived of by our Supreme Court in *Robinson* that would give rise to the motor vehicle exception found in MCL 691.1405.

We respectfully disagree, for the reasons stated above, with the dissent's contention that plaintiffs' complaints failed to allege injuries that resulted from the negligent operation of a government vehicle, and that there was merely a casual link between the operation of the vehicle and plaintiffs' injuries. Plaintiffs alleged a direct and physical link between the operation of the county vehicles and plaintiffs' injuries. We do not believe that *Robinson* stands for the proposition that the words "resulting from" have some magical quality that must be used in drafting a complaint in avoidance of governmental immunity.[7] Rather, the gravamen of

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[4] Paragraph ten of the Regans' complaint alleged that "Mrs. Regan's van struck the back of the Defendant WCRC tractor at a slow speed . . . ." Paragraphs 15 and 17 of the Regans' complaint alleged that the operator was negligent in failing to pay proper attention to his course of travel and the movement of others on the highway, in failing to keep a sharp and careful lookout, in failing to be observant of conditions, and in failing to keep his tractor constantly under control, and that the negligence caused the alleged injuries.

[5] Paragraph eight of the Regans' complaint alleged that "[c]oncerned about both oncoming traffic and the cars behind her, Mrs. Regan moved to the left slightly to negotiate her way through the curve and past the tractor." The Regans had alleged in paragraph six of the complaint that defendant's vehicle was extending several feet into her lane.

[6] Paragraph eleven of Zelanko's complaint alleged that defendant Shehan "caused the tractor and attached lawnmower which he was operating to drive over a piece of rubber, causing the lawnmower to throw the piece of rubber tire into the air and strike and shatter the windshield of [Zelanko's] motor vehicle."

[7] In *Robinson, supra* at 457, n 14, the Court noted that MCL 691.1405 does not entail a proximate cause "but for" analysis; rather, the focus must be on whether the injuries resulted from the negligent operation of a motor vehicle. The *Robinson* Court did not make any statement directing that the words "resulting from" must be specifically used in a complaint. Here, although plaintiffs did not use the words "resulting from" in their respective complaints, it is clear that the complaints alleged facts sufficient to satisfy the "resulting from" requirement of MCL 691.1405. We reiterate that a party must only allege facts giving rise to an exception to governmental immunity. *Fane, supra* at 74. We also note, in light of our holding, that we find it unnecessary to address any possible conflict between this Court's focus on "causation" in

(continued…)

plaintiffs' complaints was that the alleged injuries resulted from the negligent operation of motor vehicles.

In a case factually similar to the present cases, our Supreme Court in *Bakun v Sanilac Co Rd Comm*, 419 Mich 202, 204, 208; 351 NW2d 810 (1984), held that the defendant was liable for the negligent operation of its motor vehicle where the plaintiff 's truck was struck by a county vehicle while that vehicle was spreading salt on the highway and where the plaintiff alleged that the vehicle was operated in a negligent manner.

As in *Bakun*, the operation of a motor vehicle by a governmental employee is typically in a setting where a governmental function is being undertaken; the question here is not whether governmental immunity precludes liability for the exercise of the governmental function, but whether the allegations in plaintiffs' complaints allege injuries resulting from the negligent operation of a motor vehicle, thereby triggering the exception found in MCL 691.1405. Any other interpretation would render meaningless the Legislature's decision to enact MCL 691.1405, the statute that creates an exception to governmental immunity for negligent operation of a government-owned vehicle by an officer, agent, or employee of the governmental agency.[8] We believe that the allegations in both complaints were sufficient to give rise to an exception to governmental immunity pursuant to MCL 691.1405.

Whether the operation of the motor vehicles was negligent and resulted in plaintiffs' injuries is for the trier of fact to decide.[9] The trial court properly denied defendant's motions for summary disposition.

Affirmed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

Griffin, J., concurred.

/s/ William B. Murphy
/s/ Richard Allen Griffin

(…continued)

Peterson, Michigan N R Co, and *Williams, supra,* and *Robinson's* rejection of proximate cause analysis.

[8] When reviewing the language of a statute, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory. *Wickens v Oakwood Healthcare System,* 465 Mich 53, 60; 631 NW2d 686 (2001).

[9] If underlying issues of fact exist regarding whether a party is entitled to immunity granted by law, it is proper for the jury to decide those facts. See *Vargo v Sauer,* 457 Mich 49, 52, 72; 576 NW2d 656 (1998); see also *Phinney v Perlmutter,* 222 Mich App 513, 524; 564 NW2d 532 (1997).