STATE OF MICHIGAN

COURT OF APPEALS

ALEX C. TATE, Plaintiff-Appellant, v CITY OF GRAND RAPIDS, Defendant-Appellee.	FOR PUBLICATION May 29, 2003 9:00 a.m. No. 236251 Kent Circuit Court LC No. 00-009969-NO Updated Copy July 7, 2003

Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

WHITBECK, C.J. (*concurring*).

I concur in the result reached by the majority. I write separately to express a somewhat different method of analysis, leading to the same result.

I. Basic Facts And Procedural History

As set out in the majority opinion, this case involves plaintiff Alex C. Tate's suit against defendant city of Grand Rapids for injuries he sustained when a police dog, owned by the city through its police department, bit him. As the majority opinion states, it is uncontested that Tate did not provoke the attack by the police dog. Thus, the issue is whether MCL 287.351 (the dog-bite statute) prevails over MCL 691.1401 (the governmental tort liability act or the GTLA). The trial court held that the dog-bite statute did not take precedence over the GTLA and granted summary disposition to the city on the basis of the governmental immunity granted by the GTLA.

II. Standard Of Review

We review de novo a trial court's grant of summary disposition to determine whether the moving party was entitled to judgment as a matter of law.[1] Similarly, we review de novo the determination of whether governmental immunity applies under the dog-bite statute as a question of law.[2]

[1] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[2] *Baker v Waste Mgt of Michigan, Inc*, 208 Mich App 602, 605; 528 NW2d 835 (1995).

III. A "Necessary Inference"

Tate's arguments in this case—and to some extent the majority opinion—focus on the language of the GTLA in determining which statute takes precedence. In my view, the primary inquiry should be directed at the language of the dog-bite statute. In *Ballard v Ypsilanti Twp*,[3] the Michigan Supreme Court held that the GTLA may only be waived or abrogated "'by an express statutory enactment or by necessary inference from a statute.'"[4]

The dog-bite statute contains no reference to the government or its employees; this rules out an express abrogation. Accordingly, the question becomes whether the dog-bite statute by "necessary inference" abrogated the general doctrine of governmental immunity. There is some support for the view that the dog-bite statute abrogates the doctrine of governmental immunity contained in the GTLA in that provocation is the only defense to a claim under the dog-bite statute. Arguably, therefore, this would render the defense of governmental immunity inapplicable. However, the cases that have followed this line of reasoning have done so in the context of *parental* immunity, not governmental immunity, and they have reached this conclusion, in part, because of the general trend toward abrogating the doctrine of parental immunity.[5]

I also note that the dog-bite statute does not define "owner of the dog" to *exclude* the government. However, when faced with a somewhat similar situation with respect to the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq.*, the Supreme Court held that there was effective abrogation because the WPA governs "employers" and defines "employer" to *include* the state.[6] Here, the converse is true; the definition of "owner of the dog" does *not* include the government. Reasoning by reverse analogy, I would, therefore, conclude that there is no "necessary inference" to be drawn from the fact that the definition of "owner of the dog" does not expressly exclude the government.

For these reasons, I see nothing in the dog-bite statute that would lead to the "necessary inference" that it abrogated the general doctrine of governmental immunity contained in the GTLA. Accordingly, I would affirm on this ground.

/s/ William C. Whitbeck

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[3] *Ballard v Ypsilanti Twp*, 457 Mich 564, 574; 577 NW2d 890 (1998).

[4] *Id.* at 574, quoting *Mead v Pub Service Comm*, 303 Mich 168, 173; 5 NW2d 740 (1942).

[5] See, e.g., *Thelen v Thelen*, 174 Mich App 380, 386; 435 NW2d 495 (1989).

[6] *Anzaldua v Band*, 457 Mich 530; 578 NW2d 306 (1998).