

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PAMELA ANN RANGLES and PAUL RANGLES,

Plaintiffs-Appellees,

v

CITY OF DETROIT,

Defendant-Appellant.

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UNPUBLISHED

January 17, 1997

No. 186200

LC No. 94-430941 NO

Before: MacKenzie, P.J., and Wahls and Markey, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's denial of its motion for summary disposition in this negligence/governmental immunity case. We reverse.

Two City of Detroit EMS technicians, LaTonya Hudson and Robert Boroski, responded to a call of a "man down" in Detroit. When they arrived at the location, they left the vehicle in order to render assistance. They left the engine running and the doors unlocked. Although the vehicle was equipped with an anti-theft device, neither Hudson nor Boroski activated the device. Hudson and Boroski put the "man down" into the back of the EMS vehicle during the course of their treatment.

As they were questioning this man, an unauthorized individual entered the cab of the vehicle and started driving it down the street. When the vehicle stopped at a red light, Hudson and Boroski jumped out and called the authorities. Eventually, a police chase ensued which involved vehicles from the City of Detroit and from the Michigan State Police. The driver of the EMS vehicle deliberately struck a Michigan State Police vehicle before losing control and striking a vehicle driven by plaintiff Pamela Ann Randles.

Defendant argues that the trial court erred in denying its motion for summary disposition. We agree. MCL 691.1405; MSA 3.996(105) 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, as defined in [the Motor Vehicle Code.]

Although the term “negligent operation” is not limited to the actual driving of a vehicle upon a highway, it does not include the act of leaving an EMS ambulance running, unattended, and unlocked. *Kuzinski v Boretti*, 182 Mich App 177, 179-180; 451 NW2d 859 (1989). Here, there is no genuine issue of material fact that plaintiffs’ injuries resulted from the negligent operation of the EMS vehicle by an officer, agent, or employee of a governmental agency. Rather, plaintiffs’ injuries were caused by the operation of the EMS vehicle by the thief. *Id.*, p 180. *Kuzinski* is directly on point, and bars plaintiffs’ claim.

This case is distinguishable from *Nolan v Bronson*, 185 Mich App 163; 460 NW2d 284 (1990). In that case, the bus driver had been aware for several days that students were getting off the bus through an emergency exit in the rear of the bus in violation of Michigan law. *Id.*, pp 166, 173. The decedent in that case, who left the bus through the emergency exit, was killed attempting to cross the street. *Id.*, p 167. At all relevant times, the bus driver in *Nolan* was operating and in control of the bus. Here, in contrast, at the time that plaintiff Pamela Ann Randles was injured, a thief was operating the EMS vehicle. To the extent that it could have been argued in *Nolan* that it was the student’s negligent operation of the emergency exit door that caused her death, that argument was negated by the bus driver’s knowledge that the emergency exit was being used in that way. Here, of course, defendant did not know that the EMS vehicle would be stolen.

Plaintiffs attempt to distinguish *Kuzinski* by arguing that Boroski and Hudson did not leave the vehicle unattended. More specifically, plaintiffs contend that Boroski and Hudson were operating the vehicle since they were treating a patient in the rear of the truck. This is a distinction without a difference. Plaintiffs have not presented any genuine issue of material fact that Boroski and Hudson were negligent in treating the patient. Rather, the sole negligence alleged was their leaving the vehicle running and unlocked without activating the anti-theft device. This does not constitute “negligent operation” for purposes of the motor vehicle exception to governmental immunity. *Kuzinski, supra*, pp 179-180. Accordingly, the trial court erred by denying defendant’s motion for summary disposition.

Reversed.

/s/ Barbara B. MacKenzie

/s/ Myron H. Wahls

/s/ Jane E. Markey