STATE OF MICHIGAN

COURT OF APPEALS

C. DAVID PENN,

Plaintiff-Appellee,

v

SCHOOLCRAFT COLLEGE FOUNDATION,

Defendant-Appellant,

and

CITY OF LIVONIA,

Defendant.

UNPUBLISHED
November 16, 1999

No. 207802
Wayne Circuit Court
LC No. 97-723299 NO

Before: Talbot, P.J., and Neff and Saad, JJ.

PER CURIAM.

Defendant Schoolcraft College Foundation (hereafter "defendant") appeals by leave granted from the orders of the trial court denying its motions for reconsideration and for summary disposition pursuant to MCR 2.116(C)(7). We reverse.

I

Plaintiff was enrolled in defendant's Fire Academy class, which was held at a training facility owned and operated by the City of Livonia.[1] On September 23, 1996, plaintiff was engaged in a training exercise which required one of the trainees, "Ms. Brown," to carry plaintiff in her arms while lowering herself and plaintiff down a ladder. A third trainee was placed on the ladder, three or four rungs down from Brown and plaintiff, and was instructed to move down the ladder in tandem with Brown. Two more trainees were placed at the foot of the ladder to support it. While being lowered down the ladder by Brown, plaintiff was dropped several feet onto a blacktop surface; he sustained injuries to his wrist and arm.

Plaintiff brought suit against defendant, alleging that its failure to follow proper instruction methods and to use adequate safety equipment constituted negligence or gross negligence. Defendant moved for summary disposition of plaintiff's claim pursuant to MCR 2.116(C)(7), arguing that it was governmentally immune and that plaintiff had failed to plead an applicable exception. The trial court denied defendant's motion, indicating that "community colleges are sued all the time."

II

This Court reviews a summary disposition determination de novo as a question of law. *Poffenbarger v Kaplan*, 224 Mich App 1, 6; 568 NW2d 131 (1997); *Lindsey v Harper Hosp*, 213 Mich App 422, 425; 540 NW2d 477 (1995). Summary disposition may be granted under MCR 2.116(C)(7) for a claim barred because of immunity granted by law. *Dampier v Wayne Co*, 233 Mich App 714, 720; 592 NW2d 809 (1999). When reviewing a grant of summary disposition based on governmental immunity, we consider all documentary evidence submitted by the parties. *Id*. This Court accepts the plaintiff's well-pleaded allegations as true and construes them in the plaintiff's favor, unless contradicted by the affidavits or other documentation submitted by the movant. *Baks v Moroun*, 227 Mich App 472, 477 n 2; 576 NW2d 413 (1998); *Sills v Oakland General Hosp*, 220 Mich App 303, 307; 559 NW2d 348 (1996). To survive a motion for summary disposition under MCR 2.116(C)(7), the plaintiff must allege facts justifying the application of an exception to governmental immunity. *Dampier*, *supra* at 720-721.

A

The governmental tort liability act, MCL 691.1401 *et seq*.; MSA 3.996(101) *et seq*., provides for broad immunity from tort liability for governmental agencies engaged in governmental functions. *Glancy v Roseville*, 457 Mich 580, 584; 577 NW2d 897 (1998). MCL 691.1407(1); MSA 3.996(107)(1) provides:

> Except as otherwise provided in this act, all governmental agencies shall be immune from tort liability in all cases wherein the government agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act shall not be construed as modifying or restricting the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

The term "governmental function" is to be broadly construed, and the statutory exceptions thereto are to be narrowly construed. *Kerbersky v Northern Michigan Univ*, 458 Mich 525, 529; 582 NW2d 828 (1998).

Plaintiff concedes that defendant, a community college, is a governmental agency to which MCL 691.1407(1); MSA 3.996(107)(1) applies.[2] However, plaintiff argues that the gross negligence exception to governmental immunity applies. A governmental employee is not immune from tort liability for personal injuries caused by the employee during the course of employment if the employee's actions amount to gross negligence that is the proximate cause of the injury. MCL 691.1407(2)(c); MSA 3.996(107)(2)(c); *Stanton v Battle Creek*, ___ Mich App ___; ___ NW2d ___ (Docket No.

205614, issued 8/31/99), slip op p 4. "Gross negligence" is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c); MSA 3.996(107)(2)(c); *Stanton*, *supra* at 4.

Plaintiff's complaint alleges that defendant's conduct was grossly negligent. However, the gross negligence exception to governmental immunity does not apply to the governmental agencies themselves; rather, it applies to "officer[s]," "employee[s]," volunteer[s]," and "member[s]" of governmental agencies. MCL 691.1407(2); MSA 3.996(107)(2); *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), overruled in part on other grounds *American Transmissions, Inc v Attorney General*, 454 Mich 135, 141-143; 560 NW2d 50 (1997). Accordingly, the gross negligence exception to governmental immunity is inapplicable to defendant, and defendant is entitled to summary disposition of plaintiff's claim.

B

Plaintiff additionally argues, for the first time on appeal, that the proprietary function exception to governmental immunity applies to defendant. Governmental immunity does not bar a suit against a governmental agency for bodily injury arising out of the "performance of a proprietary function." MCL 691.1413; MSA 3.996(113); *Russell v Dep't of Corrections*, 234 Mich App 135, 138; 592 NW2d 125 (1999). A proprietary function is "any activity . . . conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees." MCL 691.1413; MSA 3.996(113); *Russell*, *supra* at 138.

Plaintiff's bare assertion on appeal that defendant's Fire Academy class "was conducted primarily for the purpose of producing a profit" is insufficient to warrant affirmation of the trial court's order denying defendant's motion for summary disposition. In order to survive a motion for summary disposition under MCR 2.116(C)(7), the plaintiff must allege facts in his complaint warranting application of an exception to governmental immunity. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 134; 545 NW2d 642 (1996); *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 621 n 34; 363 NW2d 641 (1984); *Dampier*, *supra* at 720-721. Plaintiff's complaint contains no allegations supporting a finding that defendant was engaged in a proprietary function at the time of plaintiff's injury. Moreover, plaintiff did not argue at any time below that the proprietary function exception was applicable. Accordingly, summary disposition is appropriate. *Id*.

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Henry William Saad

[1] The trial court granted defendant City of Livonia's motion for summary disposition, and it is not a party to this appeal.

[2] See MCL 691.1401(d); MSA 3.996(101)(d) ("governmental agency" includes a "political subdivision[]" of the state) and MCL 691.1401(b); MSA 3.996(101)(b) ("political subdivision" includes a "community college district"). See also *Carmack v Macomb Co Community College*, 199 Mich App 544, 547; 502 NW2d 746 (1993) (the defendant community college "was entitled to governmental immunity"); *Abrams v Schoolcraft Community College*, 178 Mich App 668, 669; 444 NW2d 533 (1989) (affirming trial court's order granting summary disposition in favor of the defendant community college on the basis of governmental immunity).