

STATE OF MICHIGAN
COURT OF APPEALS

JEANNE OMELENCHUK and KRISTIN
OMELENCHUK, Co-Personal Representatives of
the Estate of George Omelenchuk,

UNPUBLISHED
June 23, 2000

Plaintiffs-Appellants,

v

CITY OF WARREN and WARREN FIRE
DEPARTMENT,

No. 204098
Macomb Circuit Court
LC No. 96-005448-NH

Defendants-Appellees.

ON REMAND

Before: Neff, P.J., and Kelly and Hood, JJ.

MEMORANDUM.

This case is before us on remand from the Supreme Court for consideration of the immunity issue. We reverse and remand.

Plaintiffs argue that the trial court erred in granting summary disposition based on immunity. We agree. Our review of a summary disposition decision is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). MCL 333.20965; MSA 14.15(20965) provides that liability will not be imposed upon an emergency attendant unless the act or omission is the result of gross negligence. Summary disposition is precluded in cases where reasonable jurors could reach different conclusions with regard to whether a defendant's conduct amounted to gross negligence. *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). In the present case, defendants failed to present any documentary evidence to establish that the conduct of the responding paramedics did not constitute gross negligence. The moving party must make and support entitlement to summary disposition with documentary evidence.

MCR 2.116(G)(4), (5). Accordingly, the trial court erred in granting defendants' motion for summary disposition.¹

Reversed.

/s/ Janet T. Neff

/s/ Michael J. Kelly

/s/ Harold Hood

¹ Defendants argue that MCL 333.20965(2); MSA 14.15(20965)(2) of the Emergency Medical Services Act (EMSA) refers to the Governmental Tort Liability Act (GTLA), and therefore, summary disposition was proper pursuant to MCL 691.1407; MSA 3.996(107). MCL 333.20965(2); MSA 14.15(20965)(2) provides that the provision governing gross negligence "does not limit immunity from liability otherwise provided by law for any of the persons listed in subsection (1)." However, review of the legislative intent underlying the Emergency Medical Services Act reveals that the legislation was reenacted with changes because it was scheduled to lapse on September 30, 1989. House Bill Analysis HB 4952, Second Analysis, January 11, 1990. There is no evidence or expressed intention in the legislative analysis to eliminate vicarious liability by incorporating the provisions of the GTLA. *Id.* Defendants' contention is not supported by the legislative history.