STATE OF MICHIGAN

COURT OF APPEALS

DOUGLAS SCOTT MISKO,

Plaintiff-Appellee/Cross-Appellant,

v

GROSSE ILE TOWNSHIP, GROSSE ILE PUBLIC WORKS DIRECTOR, GROSSE ILE RECREATION DIRECTOR, and GROSSE ILE PLANNING COMMISSION DIRECTOR,

Defendants-Appellants/Cross-Appellees,

and

WILLIAM DENNIS KOSEBA, MARTIN BEEKER, JR., COUNTY OF WAYNE, GROSSE ILE AIRPORT COMMISSION, GROSSE ILE AIRPORT MAINTENANCE DIRECTOR, GROSSE ILE AIRPORT COMMISSION COMMISSIONER, and WAYNE COUNTY PUBLIC SERVICES DIRECTOR,

Defendants.

UNPUBLISHED
November 19, 2002

No. 227665
Wayne Circuit Court
LC No. 99-901427-NI

DOUGLAS SCOTT MISKO,

Plaintiff-Appellee/Cross-Appellant,

v

GROSSE ILE AIRPORT COMMISSION, GROSSE ILE AIRPORT MAINTENANCE DIRECTOR, and GROSSE ILE AIRPORT COMMISSION COMMISSIONER,

Defendants-Appellants/Cross-Appellees,

No. 227684, 228464
Wayne Circuit Court
LC No. 99-901427-NI

and

WILLIAM DENNIS KOSEBA, MARTIN BEEKER, JR., TOWNSHIP OF GROSSE ILE, COUNTY OF WAYNE, GROSSE ILE PUBLIC WORKS DIRECTOR, GROSSE ILE RECREATION DIRECTOR, GROSSE ILE PLANNING COMMISSION DIRECTOR, and WAYNE COUNTY PUBLIC SERVICES DIRECTOR,

Defendants.

DOUGLAS SCOTT MISKO,

Plaintiff-Appellee,

v

No. 229505
Wayne Circuit Court
LC No. 99-901427-NI

MARTIN BEEKER, JR.,

Defendant-Appellant,

and

WILLIAM DENNIS KOSEBA, TOWNSHIP OF GROSSE ILE, COUNTY OF WAYNE, GROSSE ILE AIRPORT COMMISSION, GROSSE ILE PUBLIC WORKS DIRECTOR, GROSSE ILE AIRPORT MAINTENANCE DIRECTOR, GROSSE ILE RECREATION DIRECTOR, GROSSE ILE PLANNING COMMISSION DIRECTOR, GROSSE ILE AIRPORT COMMISSION COMMISSIONER, and WAYNE COUNTY PUBLIC SERVICES DIRECTOR,

Defendants.

Before: Whitbeck, C.J. and Sawyer and Kelly

PER CURIAM.

In docket numbers 227665 and 227684, defendants Grosse Ile Township, Grosse Ile Public Works Director, Grosse Ile Recreation Director, Grosse Ile Planning Commission Director, Grosse Ile Airport Commission, Grosse Ile Public Maintenance Director, and Grosse

Ile Airport Commission Commissioner appeal by leave granted the trial court's denial of their motion for summary disposition on the ground of governmental immunity.

In docket number 228464, defendants Grosse Ile Airport Commission, Grosse Ile Public Maintenance Director, and Grosse Ile Airport Commission Commissioner appeal by leave granted the trial court's denial of their motion for rehearing of trial court's decision in the summary disposition motion.

In docket number 229505, defendant Martin Beeker, Jr. appeals by leave granted the trial court's ruling that snowmobiles are not excluded from the definition of motor vehicle for the purposes of MCL 257.401(1). He further appeals the trial court's finding that he is considered the "owner" of the snowmobile.

We affirm in part and reverse in part.

I. Pertinent Facts and Procedural History

This case arises from a snowmobile accident that occurred on the ice of Gibraltar Bay. The property on which the accident occurred is referred to as the Grosse Ile Municipal Airport and Industrial Park. The property contains an airport and an office park including a tennis club, rental hall and lounge, sundry manufacturing companies, horse stables, a steel assembly business, and a dry goods retail outlet.

After a day of ice fishing, plaintiff met some friends for a party on Round Island near Gibraltar Bay. At some point, plaintiff and defendant William Koseba decided to take a snowmobile ride across the ice on Gibraltar Bay. Koseba had purchased the snowmobile from his brother-in-law, defendant Beeker, some thirteen months before, although neither Koseba nor Beeker notified the Secretary of State of the sale. Koseba operated the snowmobile and plaintiff rode as a passenger.

In the bay are "pilings," poles that are remnants of an old Navy boathouse and marina that had a pier extending from the property into Gibraltar Bay. The unmarked pilings are located approximately twenty to forty feet off of the airport property in Gibraltar Bay. Because the pilings are not marked by a reflective surface or otherwise, they are very difficult to see. Additionally, visibility of the pilings above the water's surface depends upon the water level in the Great Lakes.[1] Thus, there are times when the pilings are completely submerged far beneath the water's surface.

On the day of the accident, the pilings were above the water. When Koseba drove across the ice, he lost control of the snowmobile and hit one of the pilings. Plaintiff's leg was crushed between the snowmobile and pilings.

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[1] The Detroit River connects Gibraltar Bay to the Great Lakes.

Plaintiff filed suit against defendant Grosse Ile Township, defendant Grosse Ile Airport Commission, various executive level employees employed by the airport,[2] defendant Koseba, and defendant Beeker, in various counts sounding in negligence, gross negligence, and nuisance.

Both municipal defendants and all individual municipal defendants moved for summary disposition asserting governmental immunity. In response, plaintiff argued that the pilings constituted a nuisance per se which he asserts is a recognized exception to governmental immunity. The trial court noted the "fractured" opinions from our Supreme Court concerning whether nuisance per se is a valid exception to governmental immunity. However, because it found that the pilings served no useful purpose, the trial court found a genuine issue of material fact as to whether the pilings constituted a nuisance per se sufficient to overcome governmental immunity.[3] Additionally, upon consideration of the evidence, the trial court found testimony to establish that the individual municipal defendants should have been aware of the hazard posed by the pilings. Because the individual municipal defendants failed to act to reduce the risk, the trial court found a contested issue upon which reasonable minds could differ as to whether the individual municipal defendants were guilty of gross negligence sufficient to survive summary disposition. Accordingly, the trial court dismissed all of plaintiff's claims save for his nuisance per se and gross negligence claims.

Defendant Beeker also moved for summary disposition arguing that MCL 257.401 (the "owner's liability statute") does not apply to snowmobiles. Beeker also argued that he is not liable for plaintiff's injuries upon a negligent entrustment theory because Beeker did not own the snowmobile at the time the accident occurred.

Initially, after considering the legislative evolution of MCL 257.401, the trial court concluded that snowmobiles were excluded from the statute and that plaintiff could not state a claim against Beeker pursuant to MCL 257.401(1). However, the trial court denied summary disposition finding that Beeker conceded the existence of factual issues on plaintiff's negligent entrustment claim.

Both plaintiff and Beeker moved for reconsideration. First, Beeker argued that he did not concede during oral argument that material factual issues existed relative to plaintiff's negligent entrustment claim. After reviewing the transcript of the oral argument, the trial court iterated that Beeker only addressed the issue of ownership and completely ignored the larger issue of whether Beeker "controlled" the snowmobile at the time of the accident for purposes of plaintiff's negligent entrustment theory. Consequently, the trial court affirmed its prior determination.

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[2] For ease of reference, Grosse Ile Township and Grosse Ile Airport Commission will be referred to as "the municipal defendants." Grosse Ile Public Works Director, Grosse Ile Recreation Director, Grosse Ile Planning Commission Director, Grosse Ile Airport Maintenance Director, and Grosse Ile Airport Commission Commissioner will be referred to as "the individual municipal defendants."

[3] Although not raised on appeal, the trial court also granted defendants summary disposition on plaintiff's trespass-nuisance theory finding that plaintiff could not demonstrate the requisite intrusion onto private property under any possible factual development.

Second, plaintiff argued that the trial court erred in finding that a snowmobile was not a "motor vehicle" pursuant to MCL 257.401(1). Upon reconsideration of the statutory architecture, the trial court agreed. Accordingly, the trial court granted plaintiff's motion for reconsideration and reversed its prior determination thus allowing plaintiff to employ MCL 257.401(1) to state a claim against Beeker as the "owner" of the snowmobile.

This Court granted defendants' applications for leave to appeal and consolidated the cases.

II. Standard of Review

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10) collectively. This Court reviews motions for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Pursuant to MCR 2.116(C)(7), summary disposition is appropriate when a claim is barred by governmental immunity. *Maiden, supra* at 118. A party relying on MCR 2.116(C)(7) need not file supportive material and the party opposing the motion need not respond in kind. *Id*. Indeed, "[t]he contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Id*. at 119. However, if the moving party submits documentary evidence such as affidavits, depositions, or admissions in support, the trial court *must* consider the material." *Id*. (emphasis added); see also MCR 2.116(G)(5). A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 7; 614 NW2d 169 (2000).

A motion brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Int'l Brotherhood of Electrical Workers, Local 58 v McNulty*, 214 Mich App 437, 443-444; 543 NW2d 25 (1995). Where a plaintiff's claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery," summary disposition pursuant to MCR 2.116(C)(8) is appropriate. *Id*. When a trial court rules on this motion, it may only consider the pleadings and may not consider affidavits, depositions, or any other documentary evidence. MCR 2.116(G)(5).

Conversely, a motion brought pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the underlying complaint. *Maiden, supra* at 120. In addressing such a motion, the inquiry is whether, looking at all of the evidence in a light most favorable to the nonmoving party, there are genuine factual issues presented upon which reasonable minds may differ. *Id.* Where the proffered evidence fails to establish a genuine issue of any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

This Court also reviews de novo issues involving statutory construction. *Haliw v City of Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001).

III. Nuisance Per Se

Plaintiff and the municipal defendants present arguments regarding whether nuisance per se constitutes a viable exception to governmental immunity after the Legislature enacted the

Governmental Tort Liability Act (GTLA), MCL 691.1407. However, even assuming that a nuisance per se exception to governmental immunity is viable, we find summary disposition for the municipal defendants is appropriate because plaintiff failed to present sufficient evidence to establish a genuine issue of material fact as to whether the pilings were a nuisance per se.

A nuisance per se is "an activity or condition which constitutes a nuisance at all times and under all circumstances, without regard to the care with which it is conducted or maintained." *Palmer v Western Michigan University*, 224 Mich App 139, 144; 568 NW2d 359 (1997), quoting *Li v Feldt (After Second Remand)*, 439 Mich 457, 476-477; 487 NW2d 127 (1992). A nuisance per se is not predicated on the want of care, but is unreasonable by its very nature. *Li, supra* at 477.

Here, the pilings are not intrinsically unreasonable and are not a nuisance at all times under all circumstances. The pilings are capable of existing in a state in which they do not pose a nuisance to the public at all. The pilings became dangerous only upon Koseba's failure to maintain control over his snowmobile. As such, the trial court erred in denying the defendants' motion for summary disposition on this basis.

IV. Gross Negligence

The individual municipal defendants argue the trial court erred in finding genuine factual issues as to whether they acted in a grossly negligent manner sufficient to defeat governmental immunity. We agree.

Governmental employees acting within the scope of their employment are immune from tort liability absent grossly negligent conduct. *Maiden, supra* at 122. Pursuant to MCL 691.1407(2), immunity bars tort liability if all of the following conditions are met:

> (a) The [employee] is acting or reasonably believes [he] is acting within the scope of [his] authority.
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> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
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> (c) The [employee's] conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Ordinary negligence will not suffice to create genuine factual issues sufficient to defeat summary disposition. *Maiden, supra* at 122-123. Incumbent upon plaintiff therefore, is to present evidence of conduct that is "so reckless" that it evidences a "lack of concern for whether injury results." *Maiden, supra* at 123. Anything less would "create a jury question premised on something less than the statutory standard." *Id.*

In the instant case, plaintiff alleges that the individual defendants knew or should have known about the existence of the pilings in the bay and that they posed a significant hazard to those that use the bay for recreational purposes. Plaintiff argues further that the defendants'

failure to remove the pilings or otherwise warn of their presence constituted a reckless disregard for plaintiff's safety.

In support of his position, plaintiff submitted the affidavit of James Dabb. However, a review of Dabb's affidavit reveals little more than conclusory statements and legal conclusions. Essentially, Dabb's affidavit contains all of the requisite *elements* necessary to establish gross negligence, but otherwise fails entirely to identify the specific *conduct* that evinces such recklessness as to impart a lack of concern for whether injury results.

Plaintiff also relies on the deposition testimony of Lyle Eastom Sr., an airport maintenance employee. However, Eastom's testimony reveals, at best, that in 1972 or 1973, he apprised his foreman of the existence of the pilings. However, Easton stated that he did not tell anyone else thereafter. Although Eastom also indicated that, in 1996, he spoke with the Army Corps of Engineers (the Corps) about removing the pilings based on his belief that they posed a safety risk, plaintiff failed to demonstrate that the airport manager, Jon Stout, heard or partook in the conversation or otherwise acknowledged the alleged danger. Plaintiff attempts to impute knowledge to Stout by way of a conversation that Eastom had with a representative from the Corps wherein Stout stood within a ten-foot radius. Even considering the evidence in a light most favorable to plaintiff, the evidence submitted does not create a genuine factual issue upon which reasonable minds could differ with regard to whether defendants' conduct constituted gross negligence sufficient to survive summary disposition.

Even if defendants' conduct could be considered "reckless," plaintiff must also establish, pursuant to MCL 691.1407(2)(c), that defendants' conduct was "the proximate cause" of plaintiff's injuries as most recently defined by our Supreme Court in *Robinson v City of Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). In *Robinson*, the Court defined "the proximate cause" as the cause that is the "most immediate, efficient, and direct cause, of the injury or damage . . . ." *Id.*

Even before the accident, plaintiff knew that the pilings were in the bay at the south tip of the airport. Plaintiff explained that, at the time of the accident, he and Koseba were driving in circles on Gibraltar Bay. According to plaintiff, Koseba would turn and "throttle up or just get up a little speed" and then turn around. Although plaintiff testified that Koseba was not driving "too fast," he nevertheless admitted that from his point of view, he could not see the speedometer and thus did not know how fast Koseba "throttled up." Furthermore, the headlight on the snowmobile provided approximately ninety feet of visibility. As a passenger, plaintiff saw the piling at about this distance before impact. Despite this distance, Koseba did not retain sufficient control over the snowmobile to stop or otherwise avoid the piling after it came into view. Applying the *Robinson* definition of proximate cause to the facts of this case, it was Koseba's failure to maintain control over the snowmobile that proximately caused the accident resulting in plaintiff's extensive injuries, not the mere existence of the pilings in the bay.

Therefore, the trial court erred by finding a genuine factual issue as to whether the individual defendants' conduct rose to the level of gross negligence. Further, pursuant to *Robinson*, plaintiff cannot, as a matter of law, establish that defendants proximately caused any of his injuries.

V. Proprietary Function Exception To Governmental Immunity

In his cross-appeal, plaintiff argues the trial court erred in granting summary disposition of plaintiff's claim that defendants[4] were engaged in a proprietary function by operating the airport for which governmental immunity is not available.[5] We disagree.

As a threshold matter, the acquisition, operation and maintenance of airports are governmental functions. MCL 259.126; *General Aviation, Inc v Capital Region Airport Authority*, 224 Mich App 710, 713; 569 NW2d 883 (1997). Thus, it is incumbent on plaintiff to plead and prove facts to overcome the presumption of immunity. *Mack v City of Detroit*, 467 Mich 186, 199-201; ___ NW2d ___ (2002), quoting *McCann v Michigan*, 398 Mich 65, 77 n 1; 247 NW2d 521 (1976) (opinion of Ryan, J.).[6]

In this case, plaintiff's complaint contains the following averment:

> "35. At all pertinent [times] [sic] Defendants Township of Grosse Ile and Grosse Ile Airport Commission engaged in a proprietary, non-governmental function in the operation, control and maintenance of the Grosse Ile Airport and its property, including Gibraltar Bay."

Plaintiff's conclusory allegation is indeed a far cry from setting forth specific facts to plead in avoidance of governmental immunity. Therefore, summary disposition was appropriate pursuant to MCR 2.116(C)(7) and (8).

Moreover, summary disposition was also appropriate pursuant to MCR 2.116(C)(10). Beyond the allegation in the complaint, plaintiff only points the affidavit of Victor Wrotslavsky[7]

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[4] Defendants Grosse Ile Airport Commission, Grosse Ile Director of Airport Maintenance, and Grosse Ile Commissioner of Grosse Ile Airport Commission, in response to plaintiff's cross-appeal, adopted by reference the arguments and exhibits contained in appeal No. 227665, that being the response submitted by defendants Township of Grosse Ile, Grosse Ile Director of Public Works, Grosse Ile Director of Recreation, and Grosse Ile Director of Planning Commission. Consequently, the term "defendants" as employed in this section refers to all the above-specified defendants.

[5] Plaintiff also raises many procedural issues relative to defendants' summary disposition motion. After review, we find them to without merit.

[6] In *Mack*, our Supreme Court explicitly overruled *McCummings v Hurley Medical Center*, 433 Mich 404; 446 NW2d 114 (1989) to the extent that *McCummings* designated governmental immunity as an affirmative defense. *Mack, supra* at 201.

[7] Wrotslavsky, presumably an accountant, attested that revenue generated from airport and from the operation of the "industrial park" is invested in "non-aviation related assets" and would thus suggest that the operation of the airport is proprietary. The affidavit is dated April 25, 2000. However, a review of the lower court record reveals that for whatever reason, plaintiff did not submit the affidavit in reply to plaintiff's response to defendants' motion for summary disposition. Thus, the trial court did not have the benefit of this documentary evidence.
(continued…)

in an attempt to demonstrate that defendants were engaged in a non-governmental, proprietary function by operating the airport. However, even considering this evidence in a light most favorable to plaintiff, plaintiff fails to raise a genuine factual issue upon which reasonable minds could differ. Therefore, trial court did not err in granting defendants summary disposition.

VI. Snowmobiles and The Owner's Liability Statute

We also find the trial court did not err in determining a snowmobile is a "motor vehicle" for purposes of the owner's liability statute, MCL 257.401(1).

The primary goal of statutory interpretation is to give effect to the Legislature's intent. *In re Messer Trust*, 457 Mich 371, 379-380; 579 NW2d 73 (1998). To discern Legislative intent, this Court looks first to the specific language employed in the statute. *Charboneau v Beverly Enterprises, Inc*, 244 Mich App 33, 40; 625 NW2d 75 (2000). Where a statute is plain and unambiguous, judicial construction is neither required nor permitted, as the Legislature intends that which it clearly expresses. *Id.*

MCL 257.401 provides, in relevant part:

> (1) This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle . . . . The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her . . . immediate member of the family.
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> * * *
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> (6) *As used in subsections (3), (4), and (5)*, "motor vehicle" means a self-propelled device by which a person or property many be transported upon a public highway. Motor vehicle does not include a bus, power shovel, road machinery, agricultural machinery, or other machinery or vehicle not designed primarily for highway transportation. Motor vehicle also does not include a device that moves upon or is guided by a track. [Emphasis added.]

The trial court disagreed with defendants who argued that the language in the final line of subsection (6) excludes snowmobiles from the statute. The trial court reasoned that the phrase "move upon or guided by a track," refers to devices that move along a stationary track such as a

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(…continued)

Apparently, plaintiff submitted the Wrotslavsky affidavit after oral argument on May 5, 2000, and after the trial court rendered its May 16, 2000, opinion and order. Additionally, the record does not reveal that plaintiff submitted the affidavit pursuant to any request from the trial court.

railroad car, as opposed to the track upon which a snowmobile may operate. However, the trial court held that pursuant to other language in subsection (6), a snowmobile was not a motor vehicle because it was not "designed primarily for highway transportation." Thus, the trial court initially found that a snowmobile is not considered a "motor vehicle" for purposes of claims brought pursuant to MCL 257.401(1).

In his motion for reconsideration, plaintiff argued that subsection (6) only applied to subsections (3), (4), and (5) as specifically stated in the statute. Upon reconsideration, the trial court agreed and reversed its prior decision reasoning that the exempting language contained in the very first sentence of subsection (6) required that the specific definition of "motor vehicle" contained in the following two sentences only applied to subsections (3), (4), and (5) and did not apply generally to the entire statutory scheme. Accordingly, the trial held that plaintiff could state a claim involving a snowmobile under MCL 257.401(1).

We agree with the trial court's decision on reconsideration. By its specific language, subsection (6) applies only to subsections (3), (4) and (5). Additionally, MCL 257.33 defines a "motor vehicle" as "every vehicle that is self-propelled . . . ." Also, pursuant to MCL 257.79, a "vehicle" is defined as "every device in, upon, or by which any person or property is or *may be* transported or drawn upon a highway, except devices exclusively moved by human power or used exclusively upon stationary rails or tracks . . . ." (Emphasis added.) To be sure, a snowmobile is indeed a "self-propelled" device upon which persons or property "may be transported . . . upon a highway" and is thus a "motor vehicle" for purposes of the Motor Vehicle Code, MCL § 257.1 *et seq*. See *Montgomery v Department of Natural Resources*, 172 Mich App 718, 722; 432 NW2d 414 (1988) (stating, "a snowmobile may be defined as a motor vehicle because it is not propelled by human power.") Consequently, we hold that that trial court did not err in determining that a snowmobile is a "motor vehicle" for the purposes of MCL 257.401(1).

VII. Transfer of Ownership

Beeker also argues the trial court erred in denying summary disposition on plaintiff's claim for violation of the owner's liability statute on a negligent entrustment theory. We agree.

The owner's liability statute provides for a cause of action against an owner of a motor vehicle arising from the negligent operation of that vehicle by an authorized user. *DeHart v Joe Lunghamer Chevrolet, Inc*, 239 Mich App 181, 185; 607 NW2d 417 (2000). As the *DeHart* court articulated, "[t]he purpose of the statute is to place the risk of damage or injury on the owner, the person who has ultimate control, as well as on the person who is in immediate control." *Id*. To effectuate this purpose, the term "owner" as employed in the Motor Vehicle Code is broadly construed. *Goins v Greenfield Jeep Eagle, Inc*, 449 Mich 1, 5; 534 NW2d 467 (1995) (quotation omitted). Therefore, for the purposes of the Motor Vehicle Code, "owner" includes persons who: "(1) have exclusive control over the vehicle for at least thirty days, (2) are named on the legal title of the vehicle, or (3) are conditional vendees, lessees or mortgagors with immediate right to possession." *Id*. In accord with this expansive definition, "[t]here may be several owners of a motor vehicle, within the Michigan Vehicle Code, with no one owner possessing 'all the normal incidents of ownership'" *Id*.

Beeker argues that defendant Koseba was the "owner" because all of his interest in the snowmobile was transferred to Koseba thirteen months before the accident. In support of his

position, Beeker proffered documentation evidencing that he signed the registration transferring his interest in the snowmobile to defendant Koseba for a valuable consideration. A review of the registration reveals that Koseba signed the registration and provided his current address, identifying himself as the new owner. Finally, as the owner, Koseba purchased insurance coverage for the snowmobile. Plaintiff did not come forth with any evidence to suggest that the sale was not bona fide or that Beeker retained "ultimate control" over the snowmobile. *DeHart, supra* at 185. Therefore, there is no genuine issue of material fact upon which reasonable minds could differ which would render Beeker the "owner" of the snowmobile on the date of the accident.

Plaintiff alternatively argues that as far as the state was concerned, Beeker still owned the snowmobile because (1) Beeker failed to notify the state of the transfer of ownership, as required by statute and (2) Koseba failed to seek issuance of a new certificate of registration, as also required by statute. We disagree.

MCL 324.82114 regulates the sale of snowmobiles and provides in pertinent part:

> (1) The owner of a snowmobile shall notify the department of state within 15 days if the snowmobile is . . . sold, or an interest in the snowmobile is transferred either wholly or in part to another person, or if the owner's address no longer conforms to the address appearing on the certificate of registration. The notice shall consist of a surrender of the certificate of registration.
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> * * *
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> (3) The transferee of a snowmobile registered under this part, within 15 days after acquiring the snowmobile, shall apply to the department of state for issuance of a new certificate of registration for the snowmobile. . . . *Upon receipt of the application and fee, the department of state shall issue a new certificate of registration for the snowmobile to the new owner. Unless the application is made and the fee paid within 15 days of transfer of ownership, the snowmobile is without certificate of registration, and a person shall not operate the snowmobile until a valid certificate of registration is issued*. [Emphasis added.]

Contrary to plaintiff's argument, the statute only provides that if the transferee fails to apply for a registration certificate, the transferee may not *operate* the snowmobile. See also MCL 324.82103(1) (stating, "a snowmobile shall not be operated unless the owner first obtains a certificate of registration and registration decal.") Furthermore, a mere technical statutory violation, without more, is not dispositive on this issue considering that "'courts have been reluctant to find lesser defects, even those involving statutory violations, fatal to the transfer of ownership.'" *Goins, supra* at 10, quoting *Allstate Ins Co v Demps*, 133 Mich App 168, 174; 348 NW2d 720 (1984).

Accordingly, the trial court erred by denying defendant Beeker summary disposition on plaintiff's owner's liability claim premised on a theory of negligent entrustment.

Affirmed in part and reversed in part.[8]

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly

[8] Because of our resolution of these issues, we need not address the municipal defendants other arguments on appeal.