STATE OF MICHIGAN

COURT OF APPEALS

ROBERT WILSON and DOROTHY WILSON,

Plaintiffs-Appellants,

v

LAKE COUNTY ROAD COMMISSION and LAWREL TROWBRIDGE,

Defendants-Appellees.

UNPUBLISHED
November 19, 2002

No. 233672
Lake County Circuit Court
LC No. 00-005307-NI

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted the trial court's order granting defendants' motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed suit alleging that Robert Wilson was injured when he was hit by a plume of snow thrown from a defendant Lake County Road Commission snowplow negligently operated by defendant Trowbridge. Dorothy Wilson filed a claim for loss of consortium. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that plaintiffs' allegations did not sound in the negligent operation of a motor vehicle, but rather in the negligent act of snowplowing. The trial court granted the motion. The court agreed with defendants that the operation of the snowplow itself did not result in Robert Wilson's injuries, and that it was negligent snowplowing, rather than the negligent operation of a motor vehicle, that caused the injuries.

We review a trial court's decision on a motion for summary disposition de novo. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996).

Generally, a governmental agency is immune from tort liability for actions taken in furtherance of a governmental function. MCL 691.1407. There are several narrowly drawn exceptions to governmental immunity, including the motor vehicle exception. This exception provides that a governmental agency "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 . . . ." MCL 691.1405.

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition for the reason that the snowplow was being operated within the meaning of MCL 691.1405 when it caused Robert Wilson's injuries. We agree and reverse.

Although not cited by either party, this case is controlled by *Regan v Washtenaw Co Bd of Road Comm'rs*, 249 Mich App 153; 641 NW2d 285 (2002).[1]

In the present case, the snow thrown from the moving snowplow is substantially similar to the dust thrown from the broom tractor and the tire tread thrown from the tractor mower in *Regan*. In this regard, "because plaintiffs alleged that the operation of the road commission's vehicles caused the injuries, and not that the injuries were caused by the end result of defendant's actions," there is no governmental immunity. *Id.* at 159. In addition, for the reasons stated in *Regan, supra* at 158-159, defendants' reliance on *Peterson v Muskegon Co Bd of Co Rd Comm'rs*, 137 Mich App 210; 358 NW2d 28 (1984), is misplaced.

Because the issue on appeal is factually and legally indistinguishable from *Regan*, we reverse and remand for further proceedings consistent with this opinion. MCR 7.215(I)(1).[2] We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter

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[1] On October 28, 2002, defendants' counsel, Jon D. Vander Ploeg, filed a supplemental authority pursuant to MCR 7.212(F) bringing to our attention *Chandler v Co of Muskegon*, ___ Mich ___; ___ NW2d ___ (Docket No. 118811, issued 10/22/2002). However, attorney Vander Ploeg, who was the losing attorney in *Regan*, did not bring this adverse authority to the attention of this panel, as required by MRPC 3.3(a)(3).

[2] MCR 7.215(I)(1) provides:

> Precedential Effect of Published Decisions. A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.