STATE OF MICHIGAN

COURT OF APPEALS

STACEY HELFER, Next Friend of AMBER SEILICKI, Minor,

Plaintiff-Appellee,

v

CENTER LINE PUBLIC SCHOOLS, and DEANNA LYNN MULRENIN,

Defendants/Third-Party Plaintiffs-Appellants,

and

MICHELLE SLOAT,

Defendant/Third-Party Defendant.

UNPUBLISHED
June 20, 2006

No. 265757
Macomb Circuit Court
LC No. 2004-003161-NI

Before: White, P.J., Whitbeck, C.J., and Davis, J.

WHITBECK, C.J. (*dissenting*).

I respectfully dissent. Because I conclude that the government vehicle in this case did not directly place the injury-causing object into motion and that none of Mulrenin's actions, albeit arguably grossly negligent, were *the* proximate cause of Amber Seilicki's injury, I would reverse.

I. The Motor Vehicle Exception

The majority interprets the language, "resulting from the negligent operation . . . of a motor vehicle"[1] to hold that "the government vehicle must directly compel the injury-causing accident."[2] According to the majority, "it is sufficient for the government vehicle to cause an

---

[1] MCL 691.1405.

[2] *Ante* at ___.

injury by placing some object in motion, and that object then injures the plaintiff."[3] The majority then provides, for example, the situation where a police car rams another vehicle off the road and into a pedestrian, or the situation where a government vehicle drives over debris, causing the debris to fling into the air and strike another vehicle. According to the majority, Mulrenin therefore placed into motion the vehicle that hit Seilicki by deactivating the bus's warning lights. However, in my opinion, this conclusion contradicts the majority's own examples. In both situations the majority cites, the government vehicle came into direct physical contact with the injury-causing object and, in each example, that direct physical contact forced the injury-causing object into motion. In this case, however, there was *no* direct physical contact between the bus and the vehicle that hit Seilicki, nor was there direct contact between Seilicki and the bus. Therefore, I would conclude that Seilicki's injury did not result from the negligent operation of the bus.

II. Governmental Employee Immunity

MCL 691.1407(2) provides in relevant part that a government employee is immune from tort liability for injuries to a person caused by the employee while in the course of employment if the following are met:

> (a) The . . . employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The . . . employee's . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Thus, if (a) and (b) have been met, as they plainly are in this case, "a governmental employee may be liable for grossly negligent conduct if that conduct is 'the proximate cause of the injury or damage.'"[4]

"'Gross negligence' means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."[5] "[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence. . . . To hold otherwise would create a jury question premised on something less than the statutory standard."[6]

> [T]he phrase "the proximate cause," as used in MCL 691.1407(2)(c), is not synonymous with "a proximate cause," and . . . to impose liability on a

---

[3] *Id.*

[4] *Curtis v Flint*, 253 Mich App 555, 562-563; 655 NW2d 791 (2002).

[5] MCL 691.1407(7)(a).

[6] *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

> governmental employee for gross negligence, the employee's conduct must be "the one most immediate, efficient, and direct cause preceding an injury."[7]

While plaintiff arguably presented evidence that Mulrenin was grossly negligent, this was plainly not the proximate cause of Seilicki's injuries.

I agree with that majority that, pursuant to MCL 257.1855(b), Mulrenin was required to activate the red flashing lights while Seilicki exited and crossed the street. Here, there is disputed evidence whether Mulrenin had activated any of the bus's flashing lights at the time of the accident. Nevertheless, Mulrenin admitted that the red flashing lights were not activated when Seilicki exited the bus. In addition, there was testimony that (1) Seilicki was crying and pleading with Mulrenin to let her ride the bus and became angry and embarrassed after being told to exit the bus and that (2) Mulrenin was Seilicki's everyday bus driver at the time of the incident and was therefore likely aware that Seilicki was about to cross the street because Seilicki stated that she did every time she exited the bus. Viewing the testimony in a light most favorable to plaintiff, she has arguably presented evidence that Mulrenin was grossly negligent, that is, that Mulrenin's conduct was reckless and demonstrated a substantial lack of concern for whether an injury to Seilicki would result.

However, it is manifest that none of Mulrenin's actions or inactions were "the one most immediate, efficient, and direct cause preceding"[8] Seilicki's injury. As Seilicki acknowledged, she attempted to run across the street without looking for cars. Seilicki's crossing of the street in this manner was plainly a more immediate, efficient, and direct cause of her injury than Mulrenin having instructed her to leave the bus. Further, although there was deposition testimony indicating that Mulrenin may have also told Seilicki to cross the street, that same testimony indicates that Seilicki failed to immediately heed this instruction. Thus, again, Seilicki's decision to cross the street at the moment when she did was *the* immediate, efficient, and direct cause of her injury. While plaintiff invokes the potential for children to act impulsively, nothing in the language of MCL 691.1407(2) or the controlling case law suggests that the voluntary act of a child cannot constitute "the proximate cause" of injury. Therefore, the trial court erred in failing to grant summary disposition in favor of Mulrenin with regard to governmental employee immunity.

I would reverse and remand for entry of judgment in favor of defendants.

/s/ William C. Whitbeck

---

[7] *Curtis*, *supra* at 563, quoting *Robinson v Detroit*, 462 Mich 439, 458-459, 462; 613 NW2d 307 (2000).

[8] *Curtis*, *supra* at 563.