STATE OF MICHIGAN

COURT OF APPEALS

LINDA J. KLEINSCHMIDT,

Plaintiff-Appellant,

v

GILLIG CORPORATION,

Defendant,

and

RONALD WILLIAMS,

Defendant-Appellee.

UNPUBLISHED
December 21, 2010

No. 289706
Washtenaw Circuit Court
LC No. 07-000080-NI

LINDA KLEINSCHMIDT,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN REGENTS,

Defendant-Appellee.

No. 289748
Court of Claims
LC No. 08-000057-MZ

Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

These consolidated cases arise from an auto accident in which defendant Williams, an employee of defendant University of Michigan Regents, rear-ended plaintiff's car while driving

a university-owned bus. Plaintiff appeals an order of the trial court granting summary disposition to both defendants.[1] We affirm.

I.

On January 5, 2005, plaintiff was stopped at a red light on eastbound Jackson Road in Ann Arbor, Michigan. As she waited at the light, her vehicle was struck from behind by a bus driven by Williams. Her car was propelled forward. When it stopped, it was struck a second time. Williams is a heavy equipment mechanic employed by the University of Michigan. His duties consist largely of maintaining a number of the university's buses. On the day of the accident, he had completed work on a bus and was taking it for a test drive. Williams is licensed to drive buses, and regularly performed test drives as part of his employment.

Williams's route took him along eastbound Jackson Road. The road was slippery and covered with snow, and the speed limit was 35 miles per hour. Williams claims that he never exceeded about 25 miles per hour and had already slowed to 15 miles per hour as he approached the intersection where plaintiff was stopped. Williams applied the brakes with what he believed was ample room to completely stop the bus. He claims, however, that the antilock brakes failed to operate correctly. Realizing the danger, Williams sounded the horn and applied the emergency brake, but was unable to avoid colliding with plaintiff's vehicle. Williams testified that the bus was traveling five miles per hour or less when it struck plaintiff's vehicle.

After the accident, Williams spoke to plaintiff to see if she was injured. She told Williams that she was alright and did not mention having sustained any injuries. Williams also stated that plaintiff did not have any observable injuries. Plaintiff claims that within days she realized that her injuries, including a disk herniation, depression, headaches, jaw pain, concentration problems, and pain and suffering, were more serious than she had thought at the time of the accident, and resulted in a serious impairment of a body function.

When he investigated the failure of the antilock brakes, Williams discovered that the air lines for the rear brakes were installed backwards, as were the speed sensors for the front wheels. Williams was responsible for performing the preventive maintenance on the bus and had inspected the bus before driving it on the day of the accident. Williams was supposed to check the air lines on the bus every 6,000 miles, but admitted that he must have overlooked that because if he had checked them, he would have noticed that they were improperly installed.

Plaintiff filed suit against Williams and the University of Michigan in Washtenaw Circuit Court on January 27, 2007. The claims against the university were dismissed without prejudice for lack of jurisdiction. She refiled the claim in the court of claims on June 10, 2008, and the cases were consolidated in the circuit court. Thereafter, Williams moved for summary disposition arguing that there was no genuine issue of material fact whether he had committed

---

[1] Plaintiff stipulated to dismissal of her claims against defendant Gillig Corporation, and Gillig Corporation is not part of this case on appeal.

gross negligence, and that plaintiff failed to state a claim by failing to plead gross negligence. The trial court held that no reasonable juror could find defendant grossly negligent, and granted the motion. The University of Michigan also moved for summary disposition, claiming that plaintiff's suit was barred by the statute of limitations and by MCL 600.6431, which required plaintiff to give notice of her claim within six months of its accrual. The trial court found that plaintiff had failed to comply with the notice statute, and granted summary disposition in favor of the university.

II.

We review de novo a grant of summary disposition for lack of genuine issue of material fact. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is justified if the evidence, viewed in the light most favorable to the nonmoving party, reveals a lack of any genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). There is a genuine issue of material fact when the evidence might lead reasonable minds to disagree. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

An employee of a government agency, such as a public university, is generally immune from tort liability for injuries caused in the course of his employment. MCL 691.1407(2). This immunity does not protect the employee, however, if his gross negligence causes the injury. MCL 691.1407(2)(c). Gross negligence in this context means "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Id.* Whether conduct constitutes gross negligence is generally an issue for the trier of fact. *Tarlea v Crabtree*, 263 Mich App 80, 88; 687 NW2d 333 (2004). Summary disposition may nonetheless be appropriate if no reasonable juror could conclude that the defendant acted with gross negligence. *Jackson v Saginaw County*, 458 Mich 141, 146-147; 580 NW2d 870 (1998).

Merely alleging that a defendant could have taken further safety measures is not sufficient to find gross negligence. *Tarlea*, 263 Mich App at 90. Rather, gross negligence requires

> almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks. It is as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety or welfare of those in his charge. [*Id.*]

Evidence of simple negligence does not raise a question of fact concerning gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122; 597 NW2d 817 (1999).

Plaintiff first argues that Williams committed gross negligence by failing to discover the defect in the brakes. Williams testified that the regular inspections performed on the buses every 6,000 miles would have revealed the defect if he had carried them out properly. Although this failure to thoroughly perform his duties may well amount to simple negligence, it does not evidence recklessness or a lack of concern for possible injuries. There were no reports of prior problems with the brakes on this bus, or even on the other buses defendant maintained, which might have given defendant reason to be especially careful when inspecting the brakes.

Plaintiff also argues that it was grossly negligent for Williams to drive the bus over snowy roads. She argues that Williams was not a trained bus driver, but the record shows that he was licensed to drive buses and had regularly performed test drives on busses of this type. Plaintiff's liability expert opined that it was grossly negligent to perform a test drive under the weather conditions that were present on January 5, 2005, and that Williams should have waited until the next day or done the test drive somewhere else. However, plaintiff provides no evidence that the conditions were expected to improve by the next day. Further, snowy roads are not an uncommon condition in early January in Michigan. It would be illogical to hold Williams negligent for performing the test drive on snowy roads when the bus would certainly encounter similar conditions in the normal course of duty.

The manner in which Williams drove the bus also cannot be said to amount to gross negligence. Williams stated that he never exceeded 25 miles per hour and had already slowed to 15 miles per hour as he approached the intersection where plaintiff was stopped. Plaintiff does not dispute his statement that he should have had plenty of time to stop the bus. Williams also honked the horn and used the emergency brake in an attempt to avoid the collision. This conduct does not amount to gross negligence.

All of the facts taken in the light most favorable to the plaintiff may demonstrate a factual question as to whether Williams was negligent, but not whether he was grossly negligent. Because a reasonable person could not find that Williams committed gross negligence, summary disposition under both MCR 2.116(C)(7) (governmental immunity) and (C)(10) (no genuine issue of material fact) was appropriate.[2]

Plaintiff next argues that MCL 600.6431, which requires a plaintiff to provide notice of her intent to file a claim within six months of the incident giving rise to the cause of action, is unconstitutional under the due process and equal protections clauses. We disagree. Generally speaking, legislation is constitutional under both clauses if it has a "rational basis," meaning that it is rationally related to a legitimate government purpose. *Phillips v Mirac, Inc*, 470 Mich 415, 431-433, 436; 685 NW2d 174 (2004). Moreover, as this Court noted in *Kenefick v City of Battle Creek*, 284 Mich App 653, 658; 774 NW2d 925 (2009):

> This Court need only determine if there is "any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993). This finding may be based on "rational speculation unsupported by evidence or empirical data." *Id.* at 316, 113 S.Ct. 2096. "[I]n other words, the challenger must 'negative *every conceivable basis* which might support' the legislation." *TIG Ins. Co., Inc. v. Dep't of Treasury*, 464 Mich. 548, 557-558, 629

---

[2] Because we find that the trial court properly dismissed plaintiff's claim against Williams, we need not address his argument that plaintiff failed to state a claim against him under MCR 2.116(C)(8).

N.W.2d 402 (2001), quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973) (emphasis added).

The governmental tort liability act (GTLA) , MCL 691.1401 *et seq*., broadly protects government agencies from tort liability where the agency "is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1); see also *Rowland v Washtenaw Co Rd Comm'n*, 477 Mich 197, 202; 731 NW2d 41 (2007). The GTLA provides several exceptions under which injured parties may sue governmental agencies, but it also restricts the ability to sue in certain ways. In this case, MCL 691.1405 allows suits against state agencies for negligence claims arising from the operation of state owned vehicles, and MCL 600.6431, the aforementioned notice provision, requires 6 months notice of plaintiff's intent to file her claim.

Applying a rational basis test to MCL 600.6431, we conclude that plaintiff fails to meet her burden to establish that the notice provisions therein are not rationally related to a legitimate government purpose. While acknowledging that the *Rowland* Court found a notice provision for highway defect claims constitutional, plaintiff nevertheless asserts that the reasoning advanced by the *Rowland* Court is inapplicable to the statute at issue in this case. In particular, plaintiff argues that there was no need for notice in order to facilitate investigation in the instant case because the university knew of the accident already. However, the fact that the university might have been aware of an occurrence in this particular case does not render the statute unconstitutional. It is certainly conceivable that the state might not be aware of an occurrence that could give rise to a claim, and the requirement that a claimant give the state notice has a legitimate purpose, to facilitate the investigation of the incident in a case in which the incident had not been reported. In addition, in the present case, while the university was aware of an occurrence, it was not aware that anyone had been injured in the accident, such that a claim might arise from the incident. At the scene, plaintiff assured Williams that she was not hurt, and there was no significant damage to her car. Thus, while the university knew that an accident had occurred, it did not have notice that plaintiff was likely to bring a claim against it, and therefore, the university had no incentive to investigate the severity of plaintiff's injuries, begin looking for eyewitnesses, or otherwise prepare for litigation.

In addition, plaintiff overlooks other reasons cited by the *Rowland* Court for finding a rational basis. The Court stated that notice requirements give government agencies some protection against unjust and unscrupulous claims by requiring the claimant to provide definite information to the defendant while the evidence is still fresh. *Rowland*, 477 Mich at 211. The statutes benefit taxpayers, who bear the burden of any unjust judgments. *Id.* Notice also provides the government time to create reserves to pay any judgments, and can force the claimant to decide how to proceed. *Id.* at 212. The notice requirement in this case is rationally related to a number of goals, including assisting the government in preparing for litigation. Therefore, MCL 600.6431 is constitutional.

Given that the statute is constitutional, the question remains how to apply it. The primary goal of statutory interpretation is to determine the intent of the legislature. *United Parcel Service, Inc v Bureau of Safety & Regulation*, 277 Mich App 192, 202; 745 NW2d 125 (2007). Where a statute contains plain language, the legislature is presumed to have intended the meaning plainly expressed. *Rowland*, 477 Mich at 219.

The statute in this case plainly states that for claims of personal injury, a plaintiff must "file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action." MCL 600.6431(3). Moreover, the notice must be "signed and verified by the claimant before an officer authorized to administer oaths." MCL 600.6431(1). Plaintiff concedes that the Michigan Supreme Court has strictly applied other notice statutes, and does not argue that the statutory language is in any way ambiguous. See *Rowland*, 477 Mich at 219; see also *Ells v Eaton Co Rd Comm'n*, 480 Mich 902; 739 NW2d 87 (2007). Therefore, plaintiff must show that she either filed a notice of intent to sue or actually filed suit with the court of claims by July 5, 2006.

There is no evidence that plaintiff filed a letter with the clerk of the court of claims. Plaintiff merely states that she sent a letter to an unspecified "court in Lansing," but there is no evidence that the clerk of the court of claims ever received anything from plaintiff. Additionally, plaintiff does not claim that she verified the letter "before an officer authorized to administer oaths." Plaintiff eventually filed suit in the court of claims, but the accident occurred on January 5, 2005, and plaintiff did not file suit in the court of claims until June 10, 2008, well outside the time limit prescribed in the statute. Plaintiff thus failed to comply with the terms of MCL 600.6431, her suit is therefore barred, and the trial court properly granted the university's motion for summary disposition on this ground.[3]

We therefore affirm the trial court's order granting summary disposition in favor of both defendants.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens

[3] Since we find that the trial court properly granted summary disposition based on MCL 600.6431, we need not reach the University of Michigan's argument that plaintiff's claim is also barred by the statute of limitations.