STATE OF MICHIGAN

COURT OF APPEALS

JOHN WILLIS TIPTON,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION and ANDREW NARANJO,

Defendants-Appellees.

UNPUBLISHED
December 20, 2016

No. 329747
Court of Claims
LC No. 14-000259-MZ

Before: M. J. KELLY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Plaintiff, John Willis Tipton, filed a complaint in the court of claims on November 3, 2014, against defendant Michigan Department of Transportation (MDOT) and its employee, defendant Andrew Naranjo. Plaintiff alleged that defendants were liable for non-economic damages he suffered when a wiring anti-theft device (ATD) fell out of an MDOT pickup truck bed and rolled down a hill onto the roadway and into his lane of travel, causing an unavoidable collision with the ATD. Plaintiff now appeals as of right the September 30, 2015 order of the court of claims granting summary disposition to defendants under MCR 2.116(C)(7) (governmental immunity). We affirm.

I. STATEMENT OF FACTS

The basic facts of this case are undisputed. According to an affidavit signed by defendant Naranjo, on August 9, 2014, he was working for MDOT transporting and installing anti-theft devices (ATDs) into handholds along Michigan roadways in order to deter thieves from stealing underground copper wiring used for lighting on highways. On August 9, 2014, Naranjo loaded eight, round, concrete ATDs onto a pallet in the bed of an MDOT pickup truck to take them for installation near the I-696 and Mound Road interchange. Arriving at his destination, Naranjo parked the truck next to an embankment that sloped downward to the interstate. He turned off the engine, exited the cab, opened the truck's tailgate, and climbed into the bed of the truck to begin unloading the ATDs. As he moved an ATD from the front of the pallet near the cab to the rear of the pallet near the tailgate, the rear portion of the pallet broke. The ATD then slid down the tailgate and out the back of the truck bed, landed on its round edge, and began rolling down the embankment toward I-696. Plaintiff was driving southbound on I-696 in a 1995 Audi when the ATD suddenly rolled into his travel lane, causing an unavoidable collision that, according to

plaintiff, resulted in serious and permanent injuries to his left shoulder, left heel and foot, right forearm and elbow, and left pinky finger. In a three-count complaint, plaintiff alleged that defendant Naranjo acted with gross negligence while offloading the ATDs, and that MDOT was liable under the highway defect exception, MCL 691.1402(1), and motor vehicle exception, MCL 600.6475; MCL 691.1405, to governmental immunity.[1]

In separate motions for summary disposition, defendant MDOT argued that plaintiff failed to show that his damages resulted from the operation of a government motor vehicle, and defendant Naranjo claimed that the facts did not establish that he was grossly negligent. Each of the defendants attached Naranjo's sworn affidavit regarding the facts as described above. In his briefs in opposition to the summary disposition motions, plaintiff also relied on Naranjo's affidavit to establish the pertinent facts surrounding the incident.

The trial court rendered its decision based on the parties' briefs. In a well-reasoned and thorough written opinion, the trial court concluded that the facts of this case did not come within the motor vehicle exception to governmental immunity, and granted summary disposition for MDOT under MCR 2.116(C)(7). The trial court also granted Naranjo's motion for summary disposition, finding the facts "insufficient to conclude that Naranjo's conduct rose to the level of gross negligence" and that reasonable minds could not differ in that regard. Accordingly, the trial court issued the corresponding order from which plaintiff now appeals.

II. ANALYSIS

A. STANDARD OF REVIEW

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[1] In his complaint, plaintiff relied on MCL 600.6475, which provides as follows:

> In all actions brought in the court of claims against the state to recover damages resulting from the negligent operation by an officer, agent or employee of the state of a motor vehicle or an aircraft, other than a military aircraft, of which the state is owner, the fact that the state, in the ownership or operation of such motor vehicle or aircraft, was engaged in a governmental function shall not be a defense to such action. This act shall not be construed to impose upon the state a liability other or greater than the liability imposed by law upon other owners of motor vehicles or aircraft.

MCL 600.6475, of the Revised Judicature Act of 1961, and MCL 691.1405, of the Government Tort Liability Act (GTLA), both address Michigan's exception to governmental immunity for damages "resulting from the negligent operation by" an "officer, agent, or employee . . . of a motor vehicle. . . ." MCL 600.6475 specifically deals with all such actions brought against the state in the court of claims. The operative language in both statutes for purposes of the issues before this Court is identical. The court of claims addressed plaintiff's claim in the context of MCL 691.1405 of the GTLA, which the parties at oral argument focused on as well. Plaintiff later conceded that he did not have a valid claim under the highway defect exception, MCL 691.1402(1).

We review de novo an order granting summary disposition under MCR 2.116(C)(7). *Poppen v Tovey*, 256 Mich App 351, 353; 664 NW2d 269 (2003). In reviewing the order, we consider "the affidavits, depositions, admissions, and other documentary evidence filed by the parties, and determine whether they indicate that defendants are in fact entitled to immunity." *Id.* at 353-354. "If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law." *Id*. at 354.

B. MOTOR VEHICLE EXCEPTION

With certain exceptions, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). One of the exceptions to this general immunity from tort liability is the motor vehicle exception, MCL 691.1405, which provides:

> Governmental agencies 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, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

The parties dispute what it means to "operate" a motor vehicle under MCL 691.1405. The Court first addressed this question in *Orlowski v Jackson State Prison*, 36 Mich App 113; 193 NW2d 206 (1971), whose implicit overruling was recognized by *Martin v Rapid Inter-Urban Transit Partnership*, 271 Mich App 492; 722 NW2d 262 (2006), rev'd 480 Mich 936 (2007). In *Orlowski*, a prison inmate fell out of the back of a prison truck as he was being transported to help contain a fire on prison grounds. *Orlowski*, 36 Mich App at 114. At issue was whether failure to properly latch the tailgate of the truck constituted negligent operation of a motor vehicle. The trial court determined that, even if the driver had been negligent, it was not negligence of the type defined by the statute at issue,[2] and granted summary disposition to the defendants. The plaintiff appealed. The defendants argued on appeal that failure to properly latch the tailgate was not "negligent operation" of the truck because "operation in [the context of 1949 PA 300] means a physical working or manipulation of the mechanism of the vehicle." *Id*. at 116. As this was a question of first impression for the Court, the Court looked to sister jurisdictions and found it "almost universally held that 'negligent operation' may occur even though the vehicle is standing still as long as it is being used or employed in some specific function or to produce some desired work or effect." *Id*. The Court quoted with approval the

[2] The statute at issue was 1949 PA 300, MCL 257.401, which at the time stated in relevant part:

> The owner of a motor vehicle shall be liable for any injury occasioned by the negligent operation of such motor vehicle whether such negligence consists of a violation of the provisions of the statutes of the state or in the failure to observe such ordinary care in such operation as the rules of the common law requires.

following representative explanation from *Chilcote v San Bernardino County*, 218 Cal 444, 445; 23 P2d 748 (1933):

> To be in operation, the vehicle must be in a 'state of being at work' or 'in the active exercise of some specific function' by performing work or producing effects at the time and place the injury is inflicted. [*Orlowski*, 36 Mich App at 116.]

Applying this meaning of "operation" to the facts in *Orlowski*, the Court reasoned:

> At the time and place of the accident the truck was being put to a definite task and was carrying out a desired objective. It is undisputed that the truck was being used for the purpose of transporting the inmates to have them help curtail the fire.
>
> The back of the truck was equipped with a tail gate which could have been properly fastened in order to protect the men from falling out or being thrown from the truck while it was in operation. Plaintiff claims that the operator of the truck had either failed to close the tail gate properly or failed to determine if it was properly closed. Such failure could be considered by the jury in determining the presence of negligence in the operation of a motor vehicle. [*Id*. at 116-117.]

Accordingly, the Court reversed the trial court's decision and remanded the matter for a trial on the merits. *Id*. at 117.

In *Chandler v County of Muskegon*, 467 Mich 315; 652 NW2d 224 (2002), our Supreme Court appears to have rejected the approach taken by *Orlowski*. At issue in *Chandler* was whether recovery under the motor vehicle exception was available for injuries suffered by the plaintiff while he was trying to free a coworker whose neck was trapped in the doors of a county bus. The plaintiff was performing court-ordered community service cleaning buses and trolleys at the Muskegon Area Transit System (MATS). *Id*. at 316. A county employee drove one of the buses into the bus barn, turned off the engine, and started to exit the bus through the open doors, when the doors closed on his neck, "apparently because he had neglected to release the hydraulic air pressure valve." *Id*. The plaintiff saw the accident and attempted to pry open and hold the doors, injuring his shoulder in the process. *Id*. The plaintiff brought an action against the county under MCL 691.1405.

The circuit court granted summary disposition to the defendant county, reasoning that cleaning seats on the bus constituted maintenance, not "operation," of the bus, and that the motor vehicle exception to governmental immunity called for negligent "operation," not negligent "operation or maintenance." *Id*. at 317.

In an unpublished opinion, this Court concluded that the circuit court erred in ruling that the motor vehicle exception did not apply, reasoning in accordance with *Orlowski* that "a bus can be stationary but still be in operation, as long as it is being used or employed in some specific function or to produce some desired work effect." *Thomas Chandler v Co of Muskegon*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 2001 (Docket No. 220435), p 10. This Court found the case to fall within the motor vehicle exception on the

following facts:

> Here, bus 440 was being used in a specific function or to produce some desired effect when Smith operated the hydraulic doors as a means of egress, and in anticipation of the workers entering the bus. Surely, if a bus driver driving a regular county route failed to release the air pressure and an exiting passenger was caught in the doors and injured as a result, as in *Sonnenberg*, *supra*,[3] there would be no question regarding the application of the motor vehicle exception. The negligent operation of the hydraulic doors would satisfy the statutory condition that the plaintiff suffer "bodily injury . . . resulting from the negligent operation by any . . . employee of the governmental agency, of a motor vehicle." MCL 691.1405; MSA 3.996(105).
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> Defendant's argument that because the bus was purchased to transport passengers but had been parked for cleaning at the time of the incident, it was not in a state of being at work, or in the active exercise of some function, or employed to produce some desired work or effect, must fail. The statute does not require that the motor vehicle be involved in any particular activity, only that the injury result from the negligent operation of the motor vehicle. Thus, we fail to see why the exception, which would otherwise be applicable to a door-closing injury, should become inapplicable simply because the bus was not on an established route. [*Id*., at 10-11.]

Our Supreme Court rejected this Court's and the dissenting justice's approach[4] "because their construction of 'operation' would construe the term so broadly that it could apply to

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[3] *Sonnenberg v Erie Metropolitan Transit Authority*, 137 Pa Cmwlth 533; 586 A2d 1026, 1028 (1991) (holding that the motor vehicle exception to governmental immunity applied where a bus door suddenly closed on an exiting passenger because "[t]he movement of parts of a vehicle, or an attachment to a vehicle, is sufficient to constitute 'operation.' ").

[4] Justice Marilyn J. Kelly dissented, stating that operation of a motor vehicle for purposes of the motor vehicle exception to governmental immunity included functions distinct from but inherent in and necessary to driving the vehicle, and that the Court should include these functions within its reading of the statutory exception to governmental immunity. *Chandler*, 467 Mich at 322. Operation of the hydraulic doors to allow the driver to exit the bus is one such function. *Id*. Consequently, Justice Kelly would have affirmed this Court's decision that the motor vehicle exception applied to the facts of the case. *Id*. With regard to the rule established in *Orlowski*, Justice Kelly said:

> Confronted with providing a definition [of "operation"], our Court of Appeals in *Orlowski v Jackson State Prison*, adopted the interpretation of "negligent operation" accepted by most other jurisdictions. As a consequence, for over thirty years Michigan courts have followed the rule that "negligent operation" may occur even though the vehicle is standing still as long as it is being used or employed in some specific function or to produce some desired work or effect.

virtually any situation imaginable in which a motor vehicle is involved regardless of the nature of its involvement." *Chandler*, 467 Mich at 321. The Supreme Court concluded that "the 'operation of a motor vehicle' encompasses activities that are *directly associated with the driving of a motor vehicle*." *Id*. at 321 (emphasis added). Applying the facts to the law, the Supreme Court said,

> [T]he injury to plaintiff did not arise from the negligent operation of the bus as a motor vehicle. The plaintiff was not injured incident to the vehicle's operation as a motor vehicle. Rather, the vehicle was parked in a maintenance facility for the purpose of maintenance and was not at the time being operated *as* a motor vehicle. *Id*. at 322.

Accordingly, the Supreme Court reversed the judgment of this Court and reinstated the circuit court's grant of summary disposition for the defendant. *Id*.

A year later, this Court in *Poppen* applied *Chandler* to a situation in which the plaintiff struck a city water truck from behind while that truck was stopped in the curb lane of the roadway with its four-way emergency flashers and overhead warning lights activated. *Poppen*, 256 Mich App at 353. This Court noted that "[a]t the time of the collision, the city vehicle had been stopped for approximately three to five minutes in order to permit its passenger to inspect a public utility. Once stopped for this purpose, [the truck's] presence on the road was no longer 'directly associated with the driving' of that vehicle." *Id*. at 355-356.

The Supreme Court's decision in *Chandler* is the current starting point for an analysis of the motor vehicle exception to governmental immunity. Nevertheless, as plaintiff and the trial court note, the narrow holding of *Chandler* appears to have evolved somewhat in the Supreme Court's decision in *Martin v Rapid Inter-Urban Transit Partnership*, 480 Mich 936; 740 NW2d 657 (2007). The Supreme Court in *Martin* reversed this Court's ruling[5] that *Chandler* precluded recovery for injuries the plaintiff suffered when she fell down wet and slippery steps while exiting a city-owned shuttle bus. The defendant argued in the trial court that *Chandler* precluded recovery because the shuttle was not operating as a motor vehicle when the accident occurred because it was not engaged in an activity "directly associated with the driving of a motor vehicle." *Martin*, 271 Mich App 495. The plaintiff claimed that the defendants had mischaracterized *Chandler* and asserted that "the determining factor whether the shuttle bus was being operated as a motor vehicle was not whether the bus was actually moving at the time of [the] plaintiff's fall, but whether it was in use as a bus at the time of the accident." *Id*. The trial court denied the defendant's motion for summary disposition, reasoning:

> This Court did not grant leave to appeal in *Orlowski* or its progeny to overturn that precedent. However, today, without the benefit of full briefing or oral argument, the majority announced a new rule redefining "negligent operation" to mean "negligent driving." It does this despite the fact that the long line of Court of Appeals cases discussed in the thorough Court of Appeals opinion militates against preemptory action by this Court. [*Id*. at 323 (KELLY, J, dissenting) (quotation marks and citations omitted).]

[5] *Martin*, 271 Mich App at 495.

> [W]hen something is operating exactly as its [sic] designed for on the streets and roadways of our community, exactly the way the manufacturer designed it for, exactly the way that the driver wanted it to be, exactly the way that the governmental organization that undertook the hiring of it to be done, that sure seems like operation of a motor vehicle to this Court . . . . [*Id*. at 496.]

On appeal, this Court concluded that the trial court "improperly applied the *Orlowski* standard by focusing on the object and purpose of the DASH shuttle bus." *Id*. at 499. The Court likewise rejected the plaintiff's emphasis on the use to which the bus was being put at the time of the accident. *Id*. at 499-500. The Court reasoned that "use" is a concept broader than "operation," and can "include a range of activity unrelated to *actual driving*." *Id*. at 500. However, under *Chandler*, "operation" encompasses activities directly associated with "*the driving* of a motor vehicle." *Id*. (quotation marks and citations omitted). The Court concluded that the defendant's alleged failure to install step heaters or to remove accumulations of snow and ice did not constitute negligent operation under the motor vehicle exception because installing heaters and removing snow and ice pertained to maintenance and were "not the type of activities *directly* associated with the driving of the DASH shuttle bus." *Id*. at 500, 501. Relying on its earlier decision in *Poppen*, the Court noted that once the shuttle bus stopped, "it ceased to be engaged in activities related directly to driving." *Id*. at 500. The Court opined that, "[u]nder [the] plaintiff's theory, a defective seat, handle, interior light, or other piece of equipment related and inherent to the transportation of passengers, but not directly related to driving, would be included under the motor vehicle exception to government immunity." *Id*. at 501.

In a one-paragraph peremptory order, the Supreme Court reversed this Court's judgment in *Martin*, agreeing with the trial court that "[t]he loading and unloading of passengers is an action within the 'operation' of a shuttle bus."[6] *Martin*, 480 Mich at 936.[7] Following the Supreme Court's ruling in *Martin*, this Court held in *Strozier v Flint Comm Schs*, 295 Mich App 82; 811 NW2d 59 (2011), that "stopping to pick up garbage is necessarily included within the 'operation' of a garbage truck" for purposes of the motor-vehicle exception to governmental immunity. *Strozier v Flint Comm Schs*, 295 Mich App 82, 91; 811 NW2d 59 (2011). *Strozier* involved a collision between a school bus and a garbage truck owned by the defendant City of Flint that injured a passenger on the school bus. *Id*. at 84. The parties disputed whether the

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[6] Justice Maura Corrigan found the distinction between "operation" and "maintenance" more complex than the Supreme Court's order suggested. *Id*. at 936 (CORRIGAN, J, dissenting). Consequently, she urged the other Justices, "If 'operation' means something more than driving, then the Court should answer the next logical question: What precisely *does* 'operation' mean?" *Id*. at 937.

[7] See also *Tucker v Capital Area Transp Auth*, unpublished per curiam opinion of the Court of Appeals, issued November 19, 2009 (Docket No. 288367), in which the Court relied on *Martin* to conclude that the motor vehicle exception to governmental immunity applied where a wheelchair-bound passenger fell from a municipal bus's wheelchair lift after the driver, who had placed the wheelchair on the lift, went inside the bus to draw the wheelchair into the bus.

garbage truck was in motion at the time of the collision. However, relying on *Martin*, this Court determined that, even if the garbage truck had been stopped, it had stopped to "perform the function for which it was designed" and, therefore, that "stopping to pick up garbage is necessarily included within the 'operation' of a garbage truck." *Id*. at 91. The Court reasoned as follows:

> This case is factually similar to *Martin* and distinct from *Chandler* and *Poppen.* In *Poppen,* the defendant parked the truck on the road, with its hazard lights on, for about five minutes, in a way that indicated it was not currently in use as a vehicle. Similarly, in *Chandler,* the bus was parked in a maintenance garage as the driver got out of the vehicle, indicating that use of the bus as a vehicle had ended. In this case, even if the garbage truck was stopped, it was stopped because it was carrying out its intended function of picking up garbage. As it is impossible for a garbage truck to perform the function for which it was designed without periodically stopping to pick up garbage, we conclude that stopping to pick up garbage is necessarily included within the "operation" of a garbage truck. [*Id*. at 90-91].

Consequently, this Court held that summary disposition in favor of the defendant under MCR 2.116(C)(7) was not warranted because the motor-vehicle exception to governmental immunity applied. *Id*.

Plaintiff relies on *Chandler*, *Martin*, *Strozier*, and *Tucker* (see above, n 7) for the proposition that whether a state-owned vehicle is operating as a motor vehicle under MCL 691.1405 calls for analysis of "the specific purpose of the vehicle and whether it was performing that purpose at the time the injury arose." According to plaintiff, the motor vehicle exception did not apply in *Chandler* because the bus was sitting in maintenance, not operating according to its purpose, which was to transport passengers. In *Martin* and *Tucker*, the motor vehicle exception did apply because, although the buses involved were in both cases stopped, they nevertheless were operating as buses by loading passengers. In *Strozier*, the motor vehicle exception applied because the garbage truck, although possibly stopped at the time of the collision, was nevertheless operating as garbage trucks operate. Plaintiff contends that the instant case falls squarely into the camp of *Martin*, *Strozier*, and *Tucker* because here, as in those cases, the MDOT pickup truck, although stopped, was nevertheless carrying out its intended function of transporting cargo for unloading at a worksite when one of the objects being unloaded rolled onto the highway and collided with plaintiff's car.

Defendants distinguish *Martin*, *Strozier*, and *Tucker* from the facts in this case by observing that the motor vehicle exception applied in those cases because the vehicles involved were operating as motor vehicles, i.e., their engines were running and they were making intermittent, temporary stops as part of their normal operation. Defendants contend that the facts in this case are analogous to those in *Poppen*: the MDOT vehicle was parked, its engine was off, and Naranjo had "exited the vehicle to install ATDs—a non-driving related function . . . ." At the time of the accident giving rise to this dispute, defendants claim, the MDOT truck was "merely serving as a stationary container holding ATDs and was not being operated 'as' a motor vehicle . . . ."

We conclude that in light of existing precedent and the known facts in the present case, defendant has the better argument. The proposition plaintiff advances is substantially the same as that advanced by this Court in *Chandler*, which was rejected by the Supreme Court. In *Chandler* and *Martin*, the Supreme Court arguably reiterated a key point in *Orlowski*'s definition of "operation" that was overlooked by this Court in *Chandler*.[8] As described above, *Orlowski* quoted with approval a definition of operation that required the vehicle in question to "be in a state of being at work or in the active exercise of some specific function by performing work or producing effects at the time and place the injury is inflicted." *Orlowski*, 36 Mich App at 116 (quotation marks and citation omitted). Applying this definition, the *Orlowski* Court noted that "[a]t the time and place of the accident the truck was being put to a definite task and was carrying out a desired objective. It is undisputed that the truck was being used for the purpose of transporting the inmates to have them help curtail the fire." *Id*.

It was this characterization of the bus as "in a state of being at work" that this Court explicitly rejected in its analysis in *Chandler* when it stated that MCL 691.1405 "does not require that the motor vehicle be involved in any particular activity, only that the injury result from negligent operation of the motor vehicle." *Chandler*, unpub op at 10-11. Arguably, it is this "in a state of being at work" that the Supreme Court sought to emphasize by concluding that " 'operation of a motor vehicle means that the motor vehicle is being operated *as* a motor vehicle[,]" and that the " 'operation of a motor vehicle' encompasses activities that are directly associated with the driving of a motor vehicle." *Chandler*, 467 Mich at 321.

Like the distilled proposition by this Court in *Chandler*, plaintiff's proposition lacks the element of "in a state of being at work" that is at the center of the definitions of "operation" set forth by this Court in *Orlowski* and the Supreme Court in *Chandler* and *Martin*. At the time of the incident that gives rise to the case at bar, the MDOT truck, like the truck in *Poppen* and the bus in *Chandler*, was not in a state of being at work. Unlike the buses in *Martin* and *Tucker*, and the garbage truck in *Strozier*, the MDOT truck essentially was in a state of rest. Had an ATD fallen out of the back of the truck while it was being transported to the worksite, any injuries caused may have been recoverable under MCL 691.1405. As it was, however, having transported its cargo of ATDs to the worksite, the truck had completed its work, exercised its function, produced its effect, and was dormant, with the motor off, while Naranjo began to offload the ATDs. In short, while he was offloading the ATD, Naranjo, much like the fire hydrant inspector in *Poppen*, was not operating a motor vehicle. Therefore, we affirm the trial court's grant of summary disposition to defendants on plaintiff's claim against MDOT under the motor vehicle exception to governmental immunity, MCL 691.1405.

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[8] That the Supreme Court in *Chandler* did not overrule *Orlowski* was suggested by the *Tucker* panel. *Tucker*, unpub op at 3. The only place the Supreme Court in *Chandler* mentioned *Orlowski* was in a footnote identifying the various cases from which this Court had distilled the rule it applied in *Chandler*. The majority opinion rejected the approaches of this Court and of Justice Kelly's dissent, which was based on an application of the distilled definition of "operation," not on a strict application of the definition set forth in *Orlowski*.

C. GROSS NEGLIGENCE

MCL 691.1407(2) provides immunity from tort liability to governmental employees who are acting or reasonably believe they are acting within the scope of their authority unless an employee's conduct "amount[s] to gross negligence that is the proximate cause of the [plaintiff's] injury or damage." The governmental employee has the burden of proving that he is entitled to immunity under MCL 691.1407(2). *Odom v Wayne County*, 482 Mich 459, 479; 760 NW2d 217 (2008).

Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). "The plain language of the governmental immunity statute indicates that the Legislature limited employee liability to situations where the contested conduct was substantially more than negligent." *Maiden v Rozwood*, 461 Mich 109, 122; 597 NW2d 817 (1999). "[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence." *Id*. at 122-123.

> The [Governmental Tort Liability Act, MCL 691.1401 *et seq*.] takes great pains to protect government[al] employees to enable them to enjoy a certain degree of security as they go about performing their jobs. The purpose of summary disposition is to avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved on an issue of law. Accordingly, when no reasonable person could find that a governmental employee's conduct was grossly negligent, our policy favors a court's timely grant of summary disposition to afford that employee the fullest protection of the GTLA immunity provision by sparing the employee the expense of an unnecessary trial. [*Tarlea v Crabtree*, 263 Mich App 80, 88; 687 NW2d 333 (2004) (quotation marks and citations omitted, second alteration in the original).]

The record reveals very little about the details leading up to the incident. Both parties rely for supporting facts on Naranjo's rather short affidavit, in which he described his actions as set forth above. Nothing in the record indicates how Naranjo handled the ATD, who else from MDOT was present at the scene at the time of the incident, precisely how the truck was parked next to the embankment, where the ATDs were being installed relative to the truck's position, or how Naranjo usually offloaded ATDs. Further, in neither his answer to Naranjo's motion for summary disposition, nor in his appeal or reply briefs filed with this Court, does plaintiff argue that summary disposition on the gross negligence claim is premature, nor does he specifically ask this Court to remand the matter for further discovery.

In light of the foregoing, we conclude that the trial court did not err in ruling that plaintiff failed to set forth facts sufficient to sustain a claim that Naranjo acted with gross negligence. It is certainly reasonable to conclude that a jury might find Naranjo negligent by parking next to a hill and leaving his tailgate open while moving ATDs from the front of the pickup bed to the back of the pickup bed because he failed to minimize the risks arising from any potential mishaps. However, there is no evidence that Naranjo had any problems handling ATDs himself, was required to have any assistance, or encountered any prior problems with breaking pallets such that he should have realized the possibility that the pallet might break and that such breakage could lead to the ATD accidentally rolling off the truck. Consequently, we agree with

the trial court that a reasonable jury could not conclude that Naranjo's actions were "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a).

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Jane M. Beckering