

STATE OF MICHIGAN
COURT OF APPEALS

MICHELE L. WRIGHT and ROBERT WRIGHT,
Plaintiffs-Appellees,

UNPUBLISHED
June 28, 2011

v

No. 296996
Wayne Circuit Court
LC No. 08-124457-NI

COUNTY OF WAYNE,

Defendant-Appellant,

and

LAMONT EDWARD POLK,

Defendant.

Before: METER, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Defendant County of Wayne (“Wayne County”) appeals as of right the trial court’s denial of its motion for summary disposition. We affirm.

A. BACKGROUND

On November 28, 2007, plaintiff Michele L. Wright was injured when a 2007 Ford Explorer driven by Lamont Edward Polk, a deputy with the Wayne County Sheriff’s Department, struck the parked car which Ms. Wright occupied. Deputy Polk was on duty at the time of the accident, working for Wayne County in a special program the County had with the Detroit Department of Transportation (“DDOT”) to patrol city buses. In his deposition, Deputy Polk explained that Wayne County Deputies assigned to the program went to DDOT headquarters at the beginning of their shifts to pick up an assigned vehicle for the patrol. One deputy would ride on the bus, patrolling the bus and bus shelters, while another deputy would drive in the assigned vehicle behind the bus. On November 28, 2007, Deputy Polk picked up a 2007 Ford Explorer from DDOT headquarters. While he was driving the Explorer, he swerved to avoid a vehicle coming toward him, lost control of the Explorer, and hit the car which Ms. Wright occupied.

Ms. Wright and her husband filed a personal injury suit against Wayne County, Deputy Polk, and the City of Detroit. The Wrights dismissed their claims against the City of Detroit.

Wayne County and Deputy Polk filed a motion for summary disposition claiming that they were entitled to governmental immunity. In support of their motion, Wayne County and Deputy Polk asserted that the County did not own the Explorer and included excerpts from Deputy Polk's deposition testimony.

The trial court granted the motion with regard to Deputy Polk, finding that he was entitled to governmental immunity from tort liability under MCL 691.1407(2) because his conduct was not grossly negligent. However, the court denied the motion as to Wayne County, finding that there was a question of fact regarding whether Wayne County was the owner of the Explorer and, as such, subject to liability under the motor vehicle exception to governmental immunity, MCL 691.1405. The court explained that a governmental entity can be the owner of a vehicle as defined under MCL 257.37(a) if it exercises exclusive control of the vehicle and Deputy Polk's testimony created a question of fact regarding Wayne County's ownership of the Explorer. This appeal by Wayne County followed.

B. ANALYSIS

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7) or under 2.116(C)(10). *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 279; 769 NW2d 234 (2009).

Under the Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq.*, a governmental agency is immune from tort liability when the agency is engaged in the exercise or discharge of a governmental function. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 155-156; 615 NW2d 702 (2000). One exception to this immunity is under the motor vehicle exception, MCL 691.1405, which provides that a governmental agency is liable for injuries resulting from the negligent operation by the agency's employee "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 term "owner" is defined in MCL 257.37 of the Motor Vehicle Code as follows:

- (a) Any person, firm, association, or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days[,]
- (b) [A] person who holds the legal title of a vehicle[, or]
- (c) A person who has the immediate right of possession of a vehicle under an installment sale contract.

Defendants contend that Wayne County was not the "owner" of the 2007 Ford Explorer because it did not fall within any of the definitions of owner under MCL 257.37. In support of its assertion, Wayne County points out that DDOT was the title holder of the vehicle; DDOT purchased, insured, and stored the vehicle; and Wayne County did not have immediate right to possession of the Explorer under an installment sale contract. Wayne County also contends that it did not have exclusive use of the Explorer: Wayne County deputies assigned to the DDOT contingent had access to the Explorer only eight of 24 hours a day and only five of seven days a week; DDOT had the right to terminate any Wayne County deputy's use of the Explorer at any

time; and the Explorer remained in the possession of DDOT when not used by Wayne County deputies. Further, Wayne County asserts that it did not contribute funds to purchase the vehicle, did not maintain it, and did not contribute to its repairs.

However, none of the facts relied on by Wayne County on appeal in support of its argument that it is not an owner of the Explorer were presented below. A party may not expand the record on appeal, and this Court may disregard documents a party submits as exhibits on appeal that were not part of the record below. MCR 7.210(A); *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002); *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 18; 527 NW2d 13 (1994).

None of the documentary evidence in the lower court record supports Wayne County's factual assertions on appeal. Rather, in support of its motion for summary disposition before the trial court, Wayne County relied, with respect to the issue of ownership of the Explorer, solely on its assertion that DDOT is the record owner of the Explorer and excerpts from Polk's deposition. The only testimony by Polk pertaining to the issue of exclusive use was the fact that he and other deputies would pick up their vehicles for the bus patrol from DDOT headquarters. None of the other facts Wayne County has presented on appeal were part of the lower court file or Wayne County's brief in support of its motion for summary disposition. Because this Court may not consider the additional facts presented on appeal in determining whether summary disposition was improperly denied, and the evidence presented to the trial court supports its finding that there was a question of fact concerning Wayne County's ownership of the vehicle, this Court must affirm the lower court's denial of Wayne County's motion for summary disposition.

On remand, assuming Wayne County is not the title holder of the Explorer, the issue of whether Wayne County owned the 2007 Ford Explorer will turn on the definition of "owner" under MCL 257.37(a). Under § 37(a), an owner is a "person, firm, association, or corporation . . . having the exclusive use [of a motor vehicle] . . . for a period that is greater than 30 days." The determination of "exclusive use" includes a *right to* exclusive use for a period exceeding 30 days, regardless of whether that person has, in fact, controlled the vehicle for that period. *Ringewold v Bos*, 200 Mich App 131, 137-138; 503 NW2d 716 (1993) (defendant had exclusive use even though she was not the primary driver of vehicle where she transferred license plates from her previous vehicle to vehicle at issue, insured the vehicle, and admitted that it was purchased in her name for her daughter's use). Also, pursuant to the definition of "owner" under § 37, there may be several owners of a motor vehicle, with no one owner possessing "all the normal incidents of ownership." *Goins v Greenfield Jeep Eagle, Inc*, 449 Mich 1, 5; 534 NW2d 467 (1995).

Wayne County's argument that a finding that it is an owner of the Explorer would be contrary to public policy because it would extend liability to a governmental entity merely for using the vehicle owned by another and would ultimately discourage cooperation between governmental entities is without merit. The Legislature created an exception to governmental immunity where the incident at issue involved a motor vehicle owned by the governmental entity. It anticipated issues concerning the definition of ownership by expressly providing that the term "owner" would be defined as provided under the Motor Vehicle Code. Thus, if Wayne County is not the title holder of the Explorer, it can still be found to be an owner if it exercised

“exclusive use” of the vehicle under MCL 257.37(a). Plaintiffs are entitled under the law to establish that a governmental entity is an owner of a vehicle even if it does not hold title but only if they can show that the governmental entity exercised “exclusive use” of the vehicle. If Wayne County is found to have exercised the indicia of exclusive use required under § 37(a) to establish its ownership, then the plaintiffs will be able to rely on the motor vehicle exception to governmental immunity and their tort claim can proceed. Otherwise, the motor vehicle exception to governmental immunity will not be available to plaintiffs and their claim must fail. This is consistent with the manner in which the Legislature structured the law, and no public policy violation will occur if Wayne County is found to be an owner of the Explorer under § 37(a) of the Motor Vehicle Code.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto