

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN IBRAHIM,

Plaintiff-Appellant,

v

CITY OF DETROIT and DETROIT POLICE
OFFICER JOHN DOE,

Defendants-Appellees,

and

IVAN LAZAR,

Defendant.

UNPUBLISHED

March 13, 2012

No. 301617

Wayne Circuit Court

LC No. 08-016613-NI

Before: SAAD, P.J., and K.F. KELLY and M.J. KELLY, JJ.

PER CURIAM.

In this negligence action, plaintiff, Brian Ibrahim, appeals the trial court's order that granted defendant, city of Detroit's motion for summary disposition. Plaintiff filed this action against the city after he was involved in an automobile accident with codefendant Ivan Lazar during a police pursuit of Lazar's vehicle. For the reasons set forth below, we affirm.

We review de novo a trial court's grant of a motion for summary disposition. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003), citing *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999). Further, whether a governmental defendant is entitled to governmental immunity under the Governmental Immunity Act, MCL 691.1401, *et seq.*, is a question of law subject to de novo review. *Plunkett v Dep't of Transp*, 286 Mich App 168, 180; 779 NW2d 263 (2009).

"As a general rule, a governmental agency is immune from tort liability when it is engaged in the exercise or discharge of a governmental function." *Curtis v City of Flint*, 253 Mich App 555, 558-559; 655 NW2d 791 (2002), citing MCL 691.1407(1). However, under the motor vehicle exception to governmental immunity, MCL 691.1405, "a governmental agency is liable for bodily injury 'resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle' owned by the governmental agency." *Curtis*, 253 Mich App at 559, citing MCL 691.1405.

In *Robinson v City of Detroit*, 462 Mich 439, 444, 613 NW2d 307 (2000), our Supreme Court specifically addressed the motor vehicle exception under MCL 691.1405. The Court held that an innocent person injured as a result of a police chase may seek recovery against a governmental agency under the motor vehicle exception, MCL 691.1405, only if the injuries resulted “from the police physically hitting the fleeing car or physically causing another vehicle or object to hit the fleeing car or physically forcing the fleeing car off the road into another vehicle or object.” *Robinson*, 462 Mich at 445, 456-457, 469. See also *Curtis*, 253 Mich App at 557-558, 561-562. “Because the statute allows liability only for injuries ‘resulting from’ the negligent operation of a government-owned vehicle, as opposed to a lesser ‘but for’ standard,” *Robinson* requires that the government-owned vehicle be “physically involved in the collision that caused [the] plaintiff’s injuries, either by hitting plaintiff’s vehicle or by physically forcing that vehicle off the road or into another vehicle or object.” *Curtis*, 253 Mich App at 562-563.

The trial court correctly granted Detroit’s motion for summary disposition because governmental immunity precludes plaintiff’s claim. When the accident occurred between plaintiff’s vehicle and Lazar’s vehicle, Detroit police officers were pursuing Lazar after he failed to stop at a stop sign. However, it is undisputed that the police vehicle had no physical contact with plaintiff’s vehicle or the fleeing vehicle. There is also no evidence showing that the police vehicle “physically forced” plaintiff’s vehicle or Lazar’s vehicle off the road or into another vehicle or object. Rather, the pursuing officer gave un rebutted testimony that his police vehicle was one block away from the accident scene when plaintiff and Lazar collided. These undisputed facts establish that the motor vehicle exception does not apply because the police vehicle was not physically involved in the collision. *Robinson*, 462 Mich at 445, 456-457. Thus, in accordance with *Robinson*, the trial court correctly granted summary disposition to Detroit because governmental immunity bars plaintiff’s negligence claim.

Plaintiff contends that *Robinson* was wrongly decided and asks this Court to reject *Robinson* and re-adopt the standards applied in *Fiser v Ann Arbor*, 417 Mich 461; 339 NW2d 413 (1983), and *Rogers v Detroit*, 457 Mich 125; 579 NW2d 840 (1998). This Court, however, “is bound by stare decisis to follow the decisions of our Supreme Court” until overruled or modified by that Court. *Griswold Props, LLC v Lexington Ins Co*, 276 Mich App 551, 555-556; 741 NW2d 549 (2007), citing *Boyd v WG Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled on other grounds, *Karaczewski v Farbman Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007). “An elemental tenet of our jurisprudence, stare decisis, provides that a decision of the majority of justices of this Court is binding upon lower courts.” *People v Mitchell*, 428 Mich 364, 369; 408 NW2d 798 (1987). Our Supreme Court in *Robinson* expressly overruled *Fiser* and *Rogers* and rejected the broader proximate cause standard in favor of a narrow construction of the motor vehicle exception, MCL 691.1405. *Robinson*, 462 Mich at 445, 456-457, 468. Under the principles of stare decisis, we are bound by and must follow the Michigan Supreme Court’s decision in *Robinson*.

We further hold that the trial court correctly dismissed plaintiff’s negligence claims against the individual police officer. “Pursuant to MCL 691.1407(2), a governmental employee may be liable for grossly negligent conduct if that conduct is ‘the proximate cause of the injury or damage.’” *Curtis*, 253 Mich App at 562-563. As our Supreme Court explained in *Robinson*, “to impose liability on a governmental employee for gross negligence, the employee’s conduct must be ‘the one most immediate, efficient, and direct cause preceding an injury.’” *Curtis*, 253

Mich App at 563, quoting *Robinson*, 462 Mich at 458-459. Here, “the most immediate, efficient, and direct cause” of plaintiff’s injuries was the “reckless conduct” of codefendant Lazar, the driver of the fleeing vehicle, when he proceeded through the intersection and collided with plaintiff’s vehicle. *Robinson*, 462 Mich at 445-446, 458-459, 462, 469. Accordingly, the police officer was also “immune from suit in tort because [his] pursuit of the fleeing vehicle was not, as a matter of law, ‘the proximate cause’” of plaintiff’s injuries. *Robinson*, 462 Mich at 458-459, 462, 469.

Affirmed.

/s/ Henry William Saad

/s/ Kirsten Frank Kelly

/s/ Michael J. Kelly