

STATE OF MICHIGAN
COURT OF APPEALS

CLINTON FRAZIER, SR.,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED

August 20, 2020

No. 348636

Wayne Circuit Court

LC No. 18-001875-NI

Before: REDFORD, P.J., and METER and O'BRIEN, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(7) (immunity granted by law). Defendant argues that plaintiff did not create a question of fact concerning the alleged negligence of defendant's bus driver and that the trial court erred by concluding that a genuine issue of material fact exists regarding application of the motor vehicle exception, MCL 691.1405, under the governmental tort liability act (GTLA), MCL 691.1401 *et seq.* We affirm.

I. FACTUAL BACKGROUND

On December 24, 2016, plaintiff boarded one of defendant's buses, which was driven by Martez Grice. Plaintiff was carrying a drill case containing several tools, which he estimated weighed 20 pounds. Plaintiff testified that he did not believe the floor was wet, while Grice testified that it was snowing, which often would cause the floor to become "problematically wet." Plaintiff paid his fare and started walking down the aisle. He testified that, after walking only one to two feet, Grice quickly accelerated the bus, causing plaintiff to fall backward onto the floor. Plaintiff testified that Grice asked if he was okay several times, and plaintiff told Grice that he was not feeling well, but that he did not want medical services called, as he would go to his own doctor. Plaintiff testified that he did later seek medical attention and underwent shoulder surgery.

Grice had completed his transportation equipment operation training a few days before this incident, which he testified included proper passenger boarding procedure. Grice testified that he would wait for a passenger to be seated before driving off if the floor was wet, or if they were

carrying a heavy load, such as a 20-pound drill set. At Grice's deposition, he could not remember specific facts regarding this incident, other than the weather outside.

Plaintiff brought this personal injury action against defendant, alleging that defendant was vicariously liable for Grice's negligent operation of the bus. Defendant moved for summary disposition under MCR 2.116(C)(7), arguing that any movement of the bus that occurred was a normal incident of travel and was insufficient to establish negligence, and therefore, defendant was entitled to governmental immunity. The trial court denied defendant's motion, determining that plaintiff established a question of fact regarding Grice's negligence. The trial court reasoned that there was a factual dispute whether special and apparent reasons existed that should have caused Grice to wait for plaintiff to find a seat before departing, such as the speed at which Grice accelerated and the condition of the bus's floor, combined with plaintiff carrying a 20-pound drill set.

II. ANALYSIS

Defendant argues that the trial court erred when it found that questions of fact existed regarding whether the bus was operated negligently. We disagree.

We review a trial court's decision on a motion for summary disposition de novo. *Wood v Detroit*, 323 Mich App 416, 419; 917 NW2d 709 (2018). A motion for summary disposition pursuant to MCR 2.116(C)(7) must be granted if the claim is barred by immunity granted by law. *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). "[A]ny supporting evidence, including affidavits, depositions, and admissions, may be considered." *McGoldrick v Holiday Amusements, Inc*, 242 Mich App 286, 290; 618 NW2d 98 (2000). "The contents of the complaint must be accepted as true unless contradicted by the documentary evidence." *Moraccini v Sterling Hts*, 296 Mich App 387, 391; 822 NW2d 799 (2012). "We must consider the documentary evidence in a light most favorable to the nonmoving party for purposes of MCR 2.116(C)(7)." *Id.* When a relevant factual dispute exists, summary disposition under MCR 2.116(C)(7) is not appropriate. *Id.* The applicability of governmental immunity is a question of law that we review de novo. *Wood*, 323 Mich App at 419. The proper interpretation and application of a statute are also reviewed de novo. *Id.*

The GTLA grants tort immunity to governmental agencies. MCL 691.1407(1). Under the GTLA, a governmental agency can be held liable for tort only if a case falls into one of the enumerated statutory exceptions. *Moraccini*, 296 Mich App at 392. The motor vehicle exception of the governmental immunity act 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 [MCL 691.1405.]

The exceptions to governmental immunity are to be narrowly construed. *Ward v Mich State Univ (On Remand)*, 287 Mich App 76, 82; 782 NW2d 514 (2010).

The only issue in dispute is whether defendant's bus was negligently operated. In *Selman v Detroit*, 283 Mich 413, 420; 278 NW 112 (1938), the Michigan Supreme Court explained the

general approach to take when handling claims of negligent operation of street cars. There, the Court held that “[s]udden jerks or jolts in stopping to let off and take on passengers, and in starting, are among the usual incidents of travel,” and therefore, a claim of negligence required more. *Id.* The *Selman* Court contrasted these nonactionable “usual incidents of travel” with “unnecessarily sudden or violent” jerks, for which a carrier could be held liable. *Id.* In *Sherman v Flint Trolley Coach*, 304 Mich 404, 412; 8 NW2d 115 (1943), the Michigan Supreme Court added that “streetcars may be started without waiting for passengers to reach a seat, unless there is some special and apparent reason for adopting a different course.”

This caselaw, which developed in the context of injuries to passengers on streetcars, was applied to an injured bus passenger in *Getz v Detroit*, 372 Mich 98; 125 NW2d 275 (1963). In *Getz*, the Court concluded that the case presented “[n]o special or apparent reason” that would require the driver to wait for the plaintiff to sit before moving the bus. *Id.* at 100. The *Getz* Court considered whether “a look at plaintiff by the driver would have disclosed to him that she was frail, weak, infirm or in any wise disabled or in need of assistance.” *Id.* at 100-101. Because the plaintiff “was healthy and strong and performed heavy work,” the bus driver was not negligent by failing to wait for the plaintiff to find a seat. *Id.* at 100. The *Getz* Court also concluded that “there was no showing that the jerk, jolt or jar ‘was unnecessarily sudden or violent,’ ” as no proof of unsafe driving, such as excessive speeding, was presented. *Id.* at 101-102 (citation omitted).

In this case, there was a question of fact regarding whether Grice’s acceleration was “unnecessarily violent.” See *Selman*, 283 Mich at 420. Plaintiff originally testified that the bus accelerated at 20 to 30 miles per hour. He then clarified that he did not know the actual speed at which the bus accelerated, but still maintained that the bus accelerated quickly. Plaintiff testified that it was this movement of the bus that caused his fall. Conversely, Grice testified that the bus he was driving was not able to accelerate up to 20 miles per hour or more in the time frame plaintiff described. However, that was the only information Grice was able to provide about his acceleration, as he was unable to remember how fast he actually accelerated when he drove away from the bus stop. Viewing the testimony presented in the light most favorable to plaintiff, a material question of fact existed.

Plaintiff also presented a question of fact regarding whether various factors combined to create a “special or apparent reason” for Grice to wait for plaintiff to be seated before accelerating. See *Getz*, 372 Mich at 100. Grice testified that there was snow on the ground outside and he stated, “I know it was snowing that day.” He testified that, when there was snow on the ground, the bus floor would get “problematically wet.” Grice also said that he would wait for passengers to take a seat before driving when the bus floor was wet. Plaintiff testified that he did not think the floor was wet, but immediately added, “I wasn’t even paying attention to the floor.”

Plaintiff also testified that he had a 20-pound drill case in his hand. He set down this case when paying his fare, and picked it up again as he began to walk down the aisle. Grice testified that he would “have to” wait for a passenger to take a seat when asked both about heavy luggage in general, and a 20-pound drill set in particular. The record reflects questions of fact about the wet floor and the drill set, both of which are relevant to whether a “special and apparent reason” existed that required the driver to wait for plaintiff to be seated. See *Sherman*, 304 Mich at 412.

Grice testified that he was trained in the proper procedure to follow when passengers were getting on the bus. Grice later testified that either a wet floor or a passenger carrying a 20-pound drill set would require him to wait before driving off. Defendant argues that Grice was simply opining concerning how he subjectively felt passengers should be treated. Yet, when speaking about a passenger with a 20-pound drill set, Grice described what he would “have to do,” which, while not unambiguous, does seem to contemplate a procedure learned in training, as opposed to one that he adopted personally. Defendant also does not argue or present any evidence that its training takes a different position from the one espoused by Grice. This testimony by Grice was that of a trained bus driver, describing the precautions he would take under certain conditions. It provides further support that the factual questions noted above are indeed relevant to whether a standard of care was breached, and consequently to whether the driver was negligent. It was not error for the trial court to find that plaintiff presented questions of fact concerning whether Grice operated the bus negligently.

Affirmed.

/s/ /James Robert Redford

/s/ Patrick M. Meter