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STATE OF MICHIGAN

COURT OF APPEALS

DESHAWN DAVIS,

Plaintiff-Appellee,

v

THE CHARTER COUNTY OF WAYNE,

Defendant-Appellant.

UNPUBLISHED
April 10, 2026
9:50 AM

No. 374135
Wayne Circuit Court
LC No. 23-010042-NO

Before: KOROBKIN, P.J., and YOUNG and BAZZI, JJ.

PER CURIAM.

In this negligence action, defendant appeals as of right the trial court's order denying defendant's motion for summary disposition under MCR 2.116(C)(7) (immunity granted by law) and MCR 2.116(C)(8) (failure to state a claim on which relief can be granted). Because plaintiff's claims are barred by governmental immunity, we reverse and remand.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case involves plaintiff's negligence claim arising from injuries she suffered at the Jazz on the River festival. Jazz on the River is an annual event at Elizabeth Park, which is part of the Wayne County park system in Trenton, Michigan. Defendant operated Jazz on the River with several local sponsors. The event was free to attend. Defendant spent approximately $134,000 on Jazz on the River to staff the event and hire musical performers. Defendant earned approximately $30,000 in revenue from parking and vendor fees.

Defendant's maintenance workers set up tents at Elizabeth Park a few days before Jazz on the River. Paul Barr, who worked as a foreman at Elizabeth Park, inspected the tents on the day of the event "to make sure all the poles [were] up and tied down correctly...." Barr did not notice any issues with the tents. On August 7, 2022, plaintiff attended Jazz on the River with six other individuals. Plaintiff placed her lawn chair under a "big white park[]...tent[]" which was in a "row

of tents right by the sidewalk...." [1] Plaintiff testified that a tent pole fell from a vendor tent positioned behind her and the pole hit her in the head. Plaintiff collapsed when she tried to stand up from her chair. Defendant's department manager, who oversaw maintenance at Elizabeth Park, said he did not know why the tent pole fell. After this incident, plaintiff claimed to experience blurry vision, a concussion, and severe head, neck, and shoulder pain.

Plaintiff subsequently filed a complaint alleging premises liability, gross negligence, and nuisance against defendant. Plaintiff contended that defendant did not exercise due care, and acted in a grossly negligent manner, by failing to properly maintain and inspect the tent. Defendant moved for summary disposition under MCR 2.116(C)(7) and (C)(8). Defendant argued that plaintiff failed to sufficiently plead in avoidance of governmental immunity,[2] and amendment would be futile because plaintiff's claims did not fall within any exception to governmental immunity. Plaintiff responded defendant's operation of Jazz on the River was not a governmental function under MCL 691.1407.

Following a hearing, the trial court ruled that defendant was not immune from plaintiff's claims because operating Jazz on the River did not constitute a governmental function. The court opined that "the jazz fest is...not something in the essence of governing. And the operations and logistics of putting on a jazz fest is not an activity that can be done only by the government." After the trial court denied summary disposition, defendant moved for reconsideration, arguing that the trial court palpably erred by relying on overruled caselaw. The trial court denied reconsideration, and defendant now appeals.

II. GOVERNMENTAL IMMUNITY

On appeal, defendant argues the trial court erroneously denied summary disposition under MCR 2.116(C)(7),[3] because defendant's operation of Jazz on the River was a governmental function. Defendant asserts plaintiff's claims do not fall within any exception to governmental immunity. We agree.

A. STANDARD OF REVIEW

This Court reviews a trial court's grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Plaintiff challenges the trial court's denial of summary disposition under MCR 2.116(C)(7). "A motion for summary disposition brought under MCR 2.116(C)(7) may be granted when a claim is barred by immunity." *Mays v Governor*, 506 Mich 157, 181; 954 NW2d 139 (2020) (citation omitted). "When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe

[1] Plaintiff testified there were no signs on the tent, and a woman who was "folding T-shirts[]" informed her she could sit there. Plaintiff stated three or four individuals were sitting under the same tent. Barr asserted the tent where plaintiff was seated was not open to the public.

[2] Whether plaintiff adequately pleaded in avoidance of governmental immunity is not at issue in this appeal.

[3] The trial court's denial of summary disposition under MCR 2.116(C)(8) is not at issue on appeal.

them in favor of the plaintiff, unless other evidence contradicts them." *Mays*, 506 Mich at 181 (quotation marks and citation omitted). This Court reviews issues of statutory interpretation, including whether governmental immunity applies to plaintiff's claim, de novo. *Eplee v City of Lansing*, 327 Mich App 635, 644; 935 NW2d 104 (2019) (citations omitted).

B. DISCUSSION

The trial court erroneously denied defendant summary disposition under MCR 2.116(C)(7) because defendant was engaged in a governmental function by operating the Jazz on the River event.

Plaintiff raised a negligence claim against defendant based on premises liability.[4] MCL 691.1407(1) states, "Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." A governmental function is "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b). This Court broadly construes whether a particular activity is a governmental function. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998) (citations omitted).

The trial court applied the incorrect legal test to determine whether the operation of the Jazz on the River event constituted a governmental function. Plaintiff cites the Michigan Supreme Court's opinion in *Parker v City of Highland Park*, 404 Mich 183, 193; 273 NW2d 413 (1978), which limited governmental functions to those activities "of essence to governing," to support her argument. Under the test provided in *Parker*, the Michigan Supreme Court resolved that operating a hospital was not a governmental function because private organizations could also operate a hospital. *Id*. at 194.[5] In the present case, the trial court similarly opined that defendant's operation of Jazz on the River was not a governmental function because a jazz festival was not an activity which could only be operated by the government.

But the Michigan Supreme Court criticized the essence of governing test in *Ross v Consumers Power Co*, 420 Mich 567, 616-618; 363 NW2d 641 (1984), superseded by statute on other grounds as stated in *Jones v Bitner*, 300 Mich App 65, 74; 832 NW2d 426 (2013). In *Ross*, the Court stated that by requiring judges to make value judgments on an activity-by-activity basis, that test contradicted the broad immunity provided by the governmental tort liability act (GTLA),

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[4] "In a premises-liability action, . . .the plaintiff must establish the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach proximately caused the plaintiff's injuries, and (4) the plaintiff suffered damages." *Jeffrey-Moise v Williamsburg Towne Houses Coop, Inc*, 336 Mich App 616, 626; 971 NW2d 716 (2021) (citation omitted).

[5] Our Supreme Court overruled *Parker* on its specific facts regarding public hospitals but has not explicitly overruled the essence of governing test. *Hyde v Univ of Mich Bd of Regents*, 426 Mich 223, 243; 393 NW2d 847 (1986) (footnote omitted), overruled on other grounds by *McCummings v Hurley Med Ctr*, 433 Mich 404, 407-408; 446 NW2d 114 (1989), overruled on other grounds by *Mack v City of Detroit*, 467 Mich 186, 198; 649 NW2d 47 (2002).

MCL 691.1401 *et seq*. *Ross*, 420 Mich at 618. The Court instead held "a governmental function is an activity which is expressly or impliedly mandated or authorized by constitution, statute, or other law." *Id*. at 620. This language is mirrored in the current GTLA. See MCL 691.1401(b).[6] *Ross* demonstrates the essence of governing test is incompatible with the statutory definition of a governmental function. The trial court erred by relying on that test as opposed to the pertinent statutory language.

Applying the GTLA definition, the Jazz on the River event was a governmental function, because it was authorized under Michigan law. "A determination of whether an activity was a governmental function must focus on the general activity and not the specific conduct involved at the time of the tort." *Herman v Detroit*, 261 Mich App 141, 144; 680 NW2d 71 (2004) (citation omitted). MCL 123.51 authorizes counties to "operate a system of public recreation" and "equip and maintain land, buildings, or other recreational facilities." MCL 123.51. Our Supreme Court relied on the same authorization to hold a county immune from a negligence claim after the decedent drowned in a public swimming area. *Richardson v Jackson County*, 432 Mich 377, 380-381, 387; 443 NW2d 105 (1989) (citations and footnotes omitted). Just as Michigan law authorized the defendant to operate the public beach in *Richardson*, defendant was authorized to operate Elizabeth Park and host recreational events such as Jazz on the River. The record demonstrates defendant's employees hired musical performers and vendors and maintained the Elizabeth Park grounds for the event. Because MCL 123.51 authorizes defendant to operate recreational events such as Jazz on the River, that event was a governmental function.

Plaintiff asserts, even if the operation of Jazz on the River constitutes a governmental function, defendant is not immune from liability for its gross negligence.[7] As this Court has explained, "MCL 691.1407(1) provides immunity to a governmental agency without regard to an employee's gross negligence. MCL 691.1407(2) provides immunity for governmental employees, but MCL 691.1407(2)(c) provides an exception to that immunity when the employee's conduct constitutes gross negligence." *Yoches v City of Dearborn*, 320 Mich App 461, 476; 904 NW2d 887 (2017). Accordingly, "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). Under this "unambiguous" statutory language, a plaintiff does not eliminate a governmental agency's immunity by claiming the agency was grossly negligent. *Yoches*, 320 Mich App at 476. Plaintiff did not name any of defendant's employees, either during the lower court proceedings or on appeal, and she did not allege certain employees were grossly negligent.

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[6] MCL 691.1401(b) states:

> "Governmental function" means an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority, as directed or assigned by his or her public employer for the purpose of public safety.

[7] MCL 691.1407(8)(a) defines "[g]ross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

Plaintiff's challenge to defendant's immunity based on its alleged gross negligence lacks merit.[8] In light of the foregoing, defendant is immune from plaintiff's negligence claims, and the trial court erroneously denied defendant summary disposition under MCR 2.116(C)(7).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Daniel S. Korobkin
/s/ Adrienne N. Young
/s/ Mariam S. Bazzi

[8] Because both defendant and plaintiff contend the proprietary-function exception to governmental immunity is inapplicable, and plaintiff bears the burden to demonstrate an exception to governmental immunity, *Mack v Detroit*, 467 Mich 186, 201; 649 NW2d 47 (2002), we decline to address this issue.