

Order

Michigan Supreme Court
Lansing, Michigan

January 28, 2022

Bridget M. McCormack,
Chief Justice

161948

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

AUDREY WEST and RANDY WEST,
Plaintiffs-Appellees,

v

SC: 161948
COA: 348452
Ct of Claims: 18-000236-MZ

DEPARTMENT OF NATURAL RESOURCES,
ANDREA ALBERT, and STEVE BUTZIN,
Defendants-Appellants.

On January 13, 2022, the Court heard oral argument on the application for leave to appeal the August 6, 2020 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

ZAHRA, J. (*dissenting*).

At issue is whether a snowmobile is a “motor vehicle” for purposes of MCL 691.1405, the motor vehicle exception to the governmental tort liability act, MCL 691.1401 *et seq.*¹ In *Stanton v Battle Creek*, 466 Mich 611, 617 (2002), this Court held that for purposes of the exception, a motor vehicle is “an automobile, truck, bus, or similar motor-driven conveyance.”² I acknowledge that this test, which requires a fact-specific comparison of the conveyance at issue to an automobile, truck, or bus, has proven difficult for lower courts to apply. But because the parties do not ask this Court to overrule *Stanton*, I will apply the existing legal framework to the facts of this case to determine whether a snowmobile is “an automobile, truck, bus, or similar motor-driven conveyance.”

Doing so, I conclude that a snowmobile is not a motor vehicle. As a snowmobile is undisputedly not itself an automobile, truck, or bus, the key question is whether it is a “similar motor-driven conveyance.” I conclude that it is not, as the dissimilarities between a snowmobile and an automobile, truck, or bus far outweigh the similarities between the conveyances. The Court of Appeals majority primarily focused on a couple

¹ MCL 691.1405 provides, in pertinent part, that governmental agencies remain “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 does not define “motor vehicle.”

² Quotation marks, citation, and emphasis omitted.

of similarities between the conveyances—that they are physically capable of operating on roads and traveling extended distances—without meaningfully discussing the multitude of differences. In my view, the dissimilarities are striking. Most importantly, unlike an automobile, truck, or bus, a snowmobile requires relatively deep snow for normal operation; a snowmobile does not have wheels, but has skis and a treaded track for propulsion; a snowmobile does not have a roof, doors, or safety equipment that allows it to operate safely on a public roadway; as a general rule, a snowmobile cannot legally share the road with automobiles, trucks, and buses; and snowmobile operators are not required to carry liability insurance. I find these differences to be significant, and I therefore conclude that a snowmobile is not a motor vehicle for purposes of MCL 691.1405.³ This conclusion is consistent with the principle that “immunity conferred upon governmental agencies is *broad*, and the statutory exceptions thereto are to be *narrowly* construed.”⁴

In concluding to the contrary, the Court of Claims relied almost exclusively on the *actual* use of the snowmobiles at the time of the accident. But, as Judge RIORDAN explained in his Court of Appeals dissent, the *Stanton* inquiry is not limited to how a conveyance was used at the time of the pertinent incident. Rather, the necessary inquiry logically includes considerations such as the intended use or purpose of the conveyance, as well as the physical characteristics of the conveyance at issue. All of these

³ I am not persuaded that this Court’s peremptory order in *Overall v Howard*, 480 Mich 896 (2007), added a distinct second prong to the *Stanton* test to include as motor vehicles all conveyances that operate “on or alongside the roadway.” That being said, whether a conveyance can be operated on or alongside a roadway is certainly a factor in determining whether it is “an automobile, truck, bus, or similar motor-driven conveyance” under *Stanton*. That is, a conveyance’s ability to travel on or alongside a roadway is one factor among many that assists a court in determining whether the conveyance at issue is a “similar motor-driven conveyance.” In this case, even assuming that a snowmobile is capable of being operated on or alongside a roadway, I nonetheless conclude that a snowmobile is not a motor vehicle because of the aforementioned dissimilarities between a snowmobile and an automobile, truck, or bus. In reaching the opposite conclusion, the Court of Appeals majority placed too much emphasis on a snowmobile’s capability of driving on or alongside a roadway without engaging in a comprehensive analysis of the similarities or dissimilarities between the conveyances.

⁴ *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158 (2000).

considerations are seemingly relevant and important in ascertaining whether a conveyance is similar to an automobile, truck, or bus. In affirming the Court of Claims, the Court of Appeals majority followed the lead of panels before it and compared a snowmobile to conveyances previously analyzed by the Court of Appeals under the motor vehicle exception: “Applying the principles outlined earlier, we must consider whether a snowmobile is more like a tractor or an excavator, which would make it a motor vehicle triggering the immunity exception, or more like a golf cart or forklift, which would not.”⁵ The proper inquiry is not whether a snowmobile is similar to a tractor or a golf cart but whether it is similar to an automobile, truck, or bus. In merely comparing the conveyance at issue to those conveyances previously analyzed, the Court of Appeals moves further away from application of the *Stanton* test by focusing not on the similarities between the conveyance at issue and an automobile, truck, or bus, but on the similarities between the conveyance at issue and others before it. Had the Court of Appeals applied all of the relevant factors to compare a snowmobile to an automobile, truck, or bus, it should have concluded that a snowmobile is not a motor vehicle under our current framework.

For these reasons, I conclude that a snowmobile is not a motor vehicle for purposes of the motor vehicle exception to governmental immunity. Accordingly, I would reverse the judgment of the Court of Appeals and remand this case to the trial court for entry of summary disposition in favor of defendant. I respectfully dissent.

⁵ *West v Dep’t of Natural Resources*, 333 Mich App 186, 193-194 (2020). See *Yoches v Dearborn*, 320 Mich App 461, 474 (2017); *Goss v Mich Dep’t of Natural Resources*, unpublished per curiam opinion of the Court of Appeals, issued July 23, 2020 (Docket No. 349411), p 4.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 28, 2022

Clerk