STATE OF MICHIGAN

COURT OF CLAIMS

MALISSA BOSSARDET,

Plaintiff,

v

Case No. 25-000026-MZ

Hon. Sima G. Patel

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF NATURAL RESOURCES, and GAIL FITCH IV,

Defendants.
_____ /

OPINION AND ORDER GRANTING DEFENDANTS' 5/19/25 MOTION FOR SUMMARY DISPOSITION

Plaintiff, Malissa Bossardet, filed suit against defendants—the State of Michigan, Michigan Department of Natural Resources (DNR), and Belle Isle Park Supervisor Gail Fitch IV—after stepping in a hole in a grassy area at Belle Isle State Park and breaking her leg. In lieu of an answer, defendants moved for summary disposition of plaintiff's ordinary and gross negligence claims under MCR 2.116(C)(7) and (C)(8).

Plaintiff failed to plead her ordinary negligence claim in avoidance of governmental immunity, requiring its dismissal. Although a government employee is not immune from suit for gross negligence, governmental agencies are. Accordingly, the Court must dismiss plaintiff's gross negligence claim against the State and DNR. Plaintiff's gross negligence claim against Fitch belongs in the circuit court, not before this Court. The Court GRANTS defendants' motion for

summary disposition, and DISMISSES plaintiff's complaint in its entirety, without prejudice to plaintiff filing a gross negligence claim against defendant Fitch in the circuit court.

I. BACKGROUND

On November 23, 2024, plaintiff visited Belle Isle State Park to enjoy bird watching. While walking in a grassy area between Sunset Drive and the pond in front of the James Scott Memorial Fountain, plaintiff stepped "in [a] hidden, grass covered deep hole," resulting in serious injuries.

Plaintiff filed a verified notice of intent (NOI) with the Court of Claims on January 2, 2025, describing the mechanism of her injury and the nature of the defective condition, as well as identifying her possible claims. On February 20, 2025, plaintiff filed a complaint alleging gross and ordinary negligence. Plaintiff presented pictures showing the location of the hole and the hole itself. The hole was positioned several feet from a walkway connecting Sunset Drive to the edge of the pond, far from the James Scott Fountain. The images show an indentation but do not show the depth of the hole.

In lieu of answering the complaint, defendants moved for summary disposition. The Court will address each ground raised by defendants in turn.

II. FAILURE TO COMPLY WITH COCA VERIFICATION REQUIREMENT

Defendants contend that plaintiff's complaint must be dismissed because it was not verified as required by MCL 600.6434(2) of the Court of Claims Act (COCA). However, this is a defect that could be remedied without dismissal.

MCL 600.6431(1) provides that "a claim may not be maintained against the state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written [NOI] to file a claim against the state." Plaintiff filed both an NOI and a complaint within one year of her injury. MCL 600.6431(2)(d) provides that "[a] claim or notice under subsection (1) must contain" "[a] signature and verification by the claimant before an officer authorized to administer oaths." Once this threshold is met, a plaintiff has three years to file suit. MCL 600.6452(1).

Within weeks of her claim accruing, plaintiff filed a verified NOI. She then filed a complaint well within the three-year statute of limitations, although without the required verification. Because both the NOI and the complaint were timely filed, and the defect could be remedied by filing an amended, verified complaint, defendant is not entitled to dismissal on this ground.

III. FAILURE TO EXPRESSLY IDENTIFY EXCEPTION TO IMMUNITY

Defendants contend that the Court must dismiss plaintiff's complaint because she failed to expressly identify the exception to governmental immunity under which her claims arise. This deficiency, defendants argue, supports dismissal because the complaint failed to provide a detailed statement of the claims alleged as required under the COCA, divesting this Court of jurisdiction.

A plaintiff filing suit against a governmental entity or actor must plead in avoidance of governmental immunity. *Mack v Detroit*, 467 Mich 186, 204; 649 NW2d 47 (2002). Although it is certainly preferrable for the plaintiff to expressly cite the exception to governmental immunity into which his or her claims fall, it suffices for the plaintiff to "plead[] facts that demonstrate that the alleged tort" falls within an exception. *Id*.

Plaintiff expressly raised a claim of gross negligence and asserted that defendants were not immune from that claim. See MCL 691.1407(2)(c). Summary disposition of that claim is not supported on the ground that plaintiff failed to adequately plead the exception as required by the COCA.

However, plaintiff did not expressly cite any exception to governmental immunity for her ordinary negligence claim. Neither did she plead facts demonstrating that her claim fell into any exception.

> The statutory exceptions to the governmental immunity provided to the state and its agencies are the highway exception, MCL 691.1402; the motor-vehicle exception, MCL 691.1405; the public-building exception, MCL 691.1406; the proprietary-function exception, MCL 691.1413; the governmental-hospital exception, MCL 691.1407(4); and the sewage-disposal-system-event exception, MCL 691.1417(2) and (3). [*Odom v Wayne Co*, 482 Mich 459, 478 n 62; 760 NW2d 217 (2008).]

Plaintiff alleged that she was injured at a state-owned park, in a grassy area adjacent to a pond and a walkway, but far removed from a popular fountain feature. An injury arising in such an area does not fall within the public-building exception to governmental immunity. Further, the mere collection of a motor vehicle entrance fee is insufficient to meet the proprietary function exception. See *Bessler v Huron-Clinton Metro Auth*, 180 Mich App 397, 401; 447 NW2d 811 (1989). Absent any potential exception to governmental immunity pleaded either expressly or by implication in the complaint, plaintiff failed to adequately plead her ordinary negligence claim, supporting its dismissal.

IV. FAILURE TO STATE A CLAIM

Defendants further contend that summary disposition is warranted under MCR 2.116(C)(8) because plaintiff failed to adequately plead her claims of gross and ordinary negligence. Because

plaintiff's ordinary negligence claim must be dismissed for failure to plead it in avoidance of governmental immunity, the Court will consider the legal sufficiency only of plaintiff's gross negligence claim.

A motion under (C)(8) tests the legal sufficiency of a plaintiff's claim based on the factual allegations made in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665(2019). The Court must accept as true all factual allegations in the complaint and determine whether they support the legal elements of the claim. Dismissal is warranted only where no factual development could support the plaintiff's claim. *Id*. at 160.

MCL 691.1407(8)(a) defines "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Grossly negligent conduct must be " 'substantially more than negligent.' " *Bellinger v Kram*, 319 Mich App 653, 659-660, 904 NW2d 870 (2017), quoting *Maiden v Rozwood*, 461 Mich 109, 122; 597 NW2d 817 (1999). It is characterized by "a willful disregard of safety measures and a singular disregard for substantial risks." *Bellinger*, 319 Mich App at 660 (cleaned up). "Generally, allegations or evidence of inaction or claims that a defendant could have taken additional precautions are insufficient," while "evidence that a defendant engaged in affirmative actions contrary to professionally accepted standards and then sought to cover up those actions does establish gross negligence." *Id*.

Plaintiff alleged that Fitch "demonstrated a substantial lack of concern for whether an injury results by [various enumerated] acts and omissions." Fitch's conduct in these regards, plaintiff alleged, "was committed with reckless disregard for the safety of Plaintiff, and with a substantial lack of concern for whether an injury resulted." The State and DNR, plaintiff alleged, were vicariously liable for their employee's grossly negligent conduct.

The State and DNR are entitled to summary disposition because they cannot be held vicariously liable for Fitch's alleged gross negligence. In *Yoches v Dearborn*, 320 Mich App 461, 476-477; 904 NW2d 877 (2017), the Court of Appeals held that a government agency is immune from suit on vicarious liability grounds for an employee's gross negligence unless the conduct falls within a statutory exception to governmental immunity. The Court has concluded that plaintiff failed to allege a statutory exception to governmental immunity. Accordingly, the State and DNR are entitled to dismissal of plaintiff's gross negligence claim.

Plaintiff's gross negligence claim against defendant Fitch must also be dismissed. "[T]he Court of Claims lacks jurisdiction to hear actions against persons who, although public officials, are being sued in their individual capacities." *Council of Orgs v State*, 321 Mich App 456, 466; 909 NW2d 449 (2017) (cleaned up). Although identified as an employee of the DNR, the complaint is devoid of any allegation that the gross negligence claim was raised against Fitch in his official capacity. Accordingly, this Court may not entertain the claim against Fitch. The gross negligence claim against Fitch is dismissed without prejudice, however, to plaintiff filing suit in the circuit court.

IT IS ORDERED:

1. The Court GRANTS defendants' motion for summary disposition.
2. The Court DISMISSES plaintiff's complaint in its entirety, but without prejudice to plaintiff filing her gross negligence claim against defendant Fitch in circuit court.
3. This is a final order resolving all issues in this case.

Date: February 10, 2026

Sima G. Patel
Judge, Court of Claims