

STATE OF MICHIGAN
COURT OF APPEALS

SALLY WEST,

Plaintiff-Appellee,

v

MICHIGAN STATE POLICE,

Defendant-Appellant.

UNPUBLISHED

June 27, 2006

No. 255787

Court of Claims

LC No. 02-000211-MZ

JACOB WRIGHT,

Plaintiff-Appellee,

v

MICHIGAN STATE POLICE,

Defendant-Appellant.

No. 255788

Court of Claims

LC No. 03-000035-MZ

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

In these consolidated cases, defendant appeals the Court of Claims' order that denied defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On the afternoon of June 5, 2002, plaintiffs were passengers in a vehicle driven by Patrick Murphy. Murphy was making a left hand turn when he collided with a vehicle driven by state trooper Troy Szukhent. Because the trooper was en route to a local jail to obtain a DNA sample from an inmate, he was driving within the course of his employment. On his way to the jail, the trooper observed a brown vehicle that did not obey a stop sign further up the road. The trooper failed to activate his emergency lights or his sirens, and was unaware of his speed. It was a rainy, misty day that required the intermittent use of the windshield wipers. While attempting to locate the brown vehicle, the trooper saw Murphy's car. The trooper recognized that Murphy was slowly making a left hand turn. He testified that Murphy was not looking in the direction of the trooper, but was looking over his left shoulder. The trooper opined that Murphy would look forward before completing the left turn. The trooper believed that if he "let up" on the

accelerator and moved into the right lane, he could avoid any contact with Murphy's vehicle. The trooper did not activate his lights or sirens to alert Murphy to look forward and stop the slow turn in progress.

Murphy testified that he was driving with plaintiffs, his girlfriend and his roommate, to Birch Run. Murphy was familiar with the locale because he lived and attended school in the area, and followed a route with which they were familiar. Murphy came to a stop to make a left hand turn and allowed a car to pass by to give him clearance. This vehicle appeared to be traveling at the speed limit for the roadway of thirty-five miles per hour. After Murphy started to turn, he saw the trooper's vehicle approaching. Murphy opined that the trooper's vehicle was speeding, but could not approximate the rate of speed. The trooper's vehicle did not have his emergency lights or sirens activated. Murphy testified that the trooper tried to evade them and move around the turning vehicle and did not apply his brakes until the last minute. The collision between the vehicles allegedly caused serious injuries to both plaintiffs.

An accident reconstructionist estimated that the impact speed of the trooper's vehicle at the time of the collision was thirty-six to forty miles per hour. There were no signs of pre-impact braking by either car involved in the accident. Police also compiled witness statements regarding the accident. The driver of a third vehicle that was struck by a wheel from Murphy's car opined that Murphy turned directly in front of the patrol car. However, this witness also testified that the patrol car was traveling fast and estimated the speed at fifty-five miles per hour.¹

Defendant moved for summary disposition of plaintiffs' claim, alleging that the evidence revealed that the trooper was not negligent, but rather, the cause of the accident was the negligence of Murphy who turned left in front of the patrol car. Because the Court of Claims held that the evidence raised a genuine issue of material fact on the pivotal issue of negligence, the Court denied defendant's motion for summary disposition.

Defendant alleges that the court erred by denying the motion for summary disposition. We disagree. Appellate review of summary disposition decisions is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of and in opposition to a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail do

¹ Depositions from other witnesses were not submitted in the trial court. Additionally, plaintiffs indicated that two expert reconstructionists had been retained by plaintiffs, but were not deposed prior to the hearing on the dispositive motion.

not satisfy the burden in opposing a motion for summary disposition. *Quinto, supra*. Summary disposition is suspect where motive and intent are at issue or where the credibility of the witness is crucial. *Vanguard Ins Co v Bolt*, 204 Mich App 271, 276; 514 NW2d 525 (1994).

Governmental immunity is subject to five narrowly drawn statutory exceptions, which include MCL 691.1405. *Stanton v Battle Creek*, 466 Mich 611, 615 n 6; 647 NW2d 508 (2002). MCL 691.1405 governs liability for negligent operation of government owned vehicles and 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 ...

An officer's physical handling of a motor vehicle during the course of responding to an emergency call may constitute negligent operation of a motor vehicle. *Newton v Michigan State Police*, 263 Mich App 251, 268; 688 NW2d 94 (2004). To establish a case of negligence, the plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages. *Frohman v Detroit*, 181 Mich App 400, 411; 450 NW2d 59 (1989). Police officers giving chase owe a duty to innocent persons consistent with MCL 691.1405. *Robinson v Detroit*, 462 Mich 439, 451 ; 613 NW2d 307 (2000). The driver of an emergency vehicle is exempt from following certain traffic rules in emergency situations "only when the driver of the vehicle while in motion sounds an audible signal by bell, siren, air horn, or exhaust whistle ..." or when the vehicle is equipped with certain light fixtures. MCL 257.603(3) and (4). Although the driver of another vehicle must yield the right of way to an emergency vehicle emitting an emergency signal, the driver of the emergency vehicle is not relieved "from the duty to drive with due regard for the safety of persons using the highway." MCL 257.653(1) and (2). Although operators of emergency vehicles may exceed speed limitations, the exemption, by its terms, applies if the vehicle operates its emergency signals or when the "nature of the mission requires that a law enforcement officer travel without giving warning to suspected law violators." MCL 257.632. But this exemption does not apply to protect the emergency vehicle driver from the consequences of his own negligence.

Based on the record available, the trial court properly denied defendant's motion for summary disposition. Although the police trooper opined that Murphy was negligent because he turned his head to look behind him to his left, Murphy did not testify that his vision was diverted from the road in front of him. In deposition testimony, Murphy testified that he lived in the area and was familiar with the locale. He testified that he waited for one car to pass and then began to turn when it was clear. Murphy opined that trooper was speeding, although he could not approximate the exact rate of speed. Although the trooper testified that he was searching for a traffic violator, he did not activate any emergency signals to notify other drivers that he had accelerated above the speed limit. The accident reconstructionist for defendant acknowledged that the trooper was traveling in excess of the speed limit at the time of impact and that the weather conditions indicated that roads were slick due to rainy conditions. Under the

circumstances, the trial court's ruling was proper.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood