

STATE OF MICHIGAN
COURT OF APPEALS

MILDRED FERN CONLEY,

Plaintiff-Appellee,

v

CHARTER TOWNSHIP OF BROWNSTOWN,

Defendant-Appellant,

and

EDWARD JOSEPH MOISE,

Defendant.

UNPUBLISHED

January 16, 2014

No. 310971

Wayne Circuit Court

LC No. 11-001429-NI

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant¹ appeals as of right from the order granting in part and denying in part its motion for summary disposition in this automobile negligence action brought by plaintiff. Because defendant is immune from liability for any emotional or psychological injuries, we reverse in part.

Plaintiff was involved in a traffic accident with Officer Edward Moise, when she turned in front of him while he was pursuing a speeding suspect. Plaintiff suffered injuries as a result of the accident and filed a lawsuit seeking damages. Defendant moved for summary disposition on three grounds, but the only one that is relevant for the sole issue on appeal involves defendant's claim that, under MCR 2.116(C)(7), plaintiff's claims for emotional and psychological damages were barred by the doctrine of governmental immunity under MCL 691.1405. The trial court denied the motion with respect to this aspect.

¹ Our use of "defendant" will refer to Brownstown Township. Officer Edward Moise was initially named as a defendant in the suit, but he was later dismissed.

This court reviews a trial court's decision on a motion for summary disposition de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). A trial court properly grants summary disposition under MCR 2.116(C)(7) when a claim is barred because of immunity granted by law. *State Farm Fire & Cas Co v Corby Energy Servs, Inc*, 271 Mich App 480, 482; 722 NW2d 906 (2006). In order to avoid summary disposition pursuant to MCR 2.116(C)(7), a plaintiff must plead facts in avoidance of immunity. *Mack v Detroit*, 467 Mich 186, 199; 649 NW2d 47 (2002). "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence." *Maiden v Rozwood*, 461 Mich 109, 119, 597 NW2d 817 (1999). Further, the applicability of governmental immunity and the statutory exceptions to immunity are also reviewed de novo on appeal. *Moraccini v Sterling Heights*, 296 Mich App 387, 391; 822 NW2d 799 (2012).

Pursuant to MCL 691.1407(1), "[e]xcept as other 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." The term "governmental function" is to be broadly construed, and the statutory exceptions are to be narrowly construed. *Maskery v Bd of Regents of Univ of Mich*, 468 Mich 609, 614; 664 NW2d 165 (2003). One of the six exceptions to governmental immunity is the motor-vehicle exception that is found in MCL 691.1405:

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 [Emphasis added.]

From the plain language of the statute, it is clear that waiver of immunity is limited to bodily injury and property damage. *Wesche v Mecosta Co Rd Comm'n*, 480 Mich 75, 84; 746 NW2d 847 (2008). The question then becomes whether "bodily injury" encompasses damages for emotional or psychological injuries. This Court's holding in *Hunter v Sisco*, 300 Mich App 229; 832 NW2d 753 (2013), dictates the answer to that question.

In *Hunter*, this Court was confronted with the question of whether the term "bodily injury" encompasses emotional injuries as well as pain and suffering. *Id.* at 233, 235-236. The Court, while relying heavily on our Supreme Court's decision in *Wesche*, concluded that such emotional injuries are not included in the term "bodily injury." In fact, the term "bodily injury" encompasses only 'a physical or corporeal injury to the body.'" *Id.* at 240, quoting *Wesche*, 480 Mich at 85. The *Hunter* Court noted that if the Legislature had wanted to allow plaintiffs to recover "damages for pain and suffering or emotional shock or stress, it could have done so by providing for 'personal injury' or emotional damages in the statute." *Hunter*, 300 Mich App at 240.

In the instant case, the trial court denied defendant's motion for summary disposition and ruled that "bodily injury is anything that results from an injury, whether it's psychological or otherwise." As *Hunter* has instructed us, this was erroneous. Because damages for pain and suffering, mental anguish, emotional distress, shock and fright, and psychological injuries do not constitute physical or corporeal injuries to the body, the motor-vehicle exception does not apply and immunity is not waived. *Id.* Therefore, the trial court erroneously ruled that plaintiff may recover damages for emotional and psychological injuries, and summary disposition should

have been granted in favor of defendant on this specific ground. Accordingly, we reverse the trial court's order to the extent the trial court denied summary disposition on this ground.

The part of the trial court's order denying defendant's motion for summary disposition on the issue of bodily injury is reversed and the matter is returned to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction. A public question being involved, no costs may be taxed. MCR 7.219.

/s/ William B. Murphy

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood