

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY CASSIDY,

Plaintiff-Appellant,

v

CITY OF WESTLAND and CITY OF WESTLAND
POLICE DEPARTMENT, Jointly and Severally,

Defendants-Appellees.

UNPUBLISHED

July 19, 1996

No. 182365

LC No. 93-319033-NI

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendants in this personal injury action. We affirm.

Plaintiff was pushing a stalled vehicle off the road when he was hit by a vehicle driven by Timothy Kennedy, an on-duty police officer for the City of Westland. Kennedy was driving his own vehicle. Plaintiff brought an action against defendants. Defendants brought a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). Plaintiff agreed to dismiss the Westland Police Department as a defendant and the trial court entered a dismissal stating that the Westland Police Department was not a separate legal entity from the City of Westland. The trial court granted summary disposition to the City of Westland based on governmental immunity, MCR 2.116(C)(7). The court found that the motor vehicle exception to governmental immunity did not apply because Kennedy was driving his own vehicle, not a vehicle owned by the City.

This Court reviews summary disposition orders de novo. *Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995). In deciding a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court reviews plaintiff's complaint to see whether facts have been pleaded to support a finding that recovery is not barred by governmental immunity. *Vermilya v Dunham*, 195 Mich App 79, 81; 489 NW2d 496 (1992). A motion for

* Circuit judge, sitting on the Court of Appeals by assignment.

summary disposition filed under MCR 2.116(C)(7) may be supported or opposed by affidavits, depositions, or other documentary evidence. *Id.*

On appeal, plaintiff contends that the City of Westland is not entitled to governmental immunity because the motor vehicle exception to governmental immunity found at MCL 691.1405; MSA 3.996(105) applies. For the motor vehicle exception to governmental immunity to apply, the governmental agency must be the owner of the motor vehicle. MCL 691.1405; MSA 3.996(105); *Trommater v State of Michigan*, 112 Mich App 459, 466-467; 316 NW2d 459 (1982); *Bertolotti v Macomb County*, 20 Mich App 162, 164-165; 173 NW2d 723 (1969). Herein, the trial court was correct in holding that Kennedy was the owner of the vehicle, not the City of Westland. Plaintiff argues that the result in this case should be different because Kennedy was an on-duty police officer driving his own vehicle. We disagree. There is nothing in the statute to indicate that such an exception to the ownership requirement should be made.

Drawing an analogy to the fireman's rule, plaintiff argues we should create a judicial exception to the ownership rule for this case. The fireman's rule prohibits police officers and fire fighters from recovering damages from a private party for negligence in creating the reason for the officer's presence. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85-86; 520 NW2d 633 (1994). This rule does not apply, as plaintiff acknowledges, because he is not a police officer seeking damages, but is a private citizen seeking damages from a governmental agency. Neither will we create a judicial exception to a statute which, by its clear language, recognizes no such exception. The trial court did not err in granting summary disposition to City of Westland on the basis of governmental immunity.

We affirm.

/s/ Richard Allen Griffin

/s/ Richard A. Bandstra

/s/ Meyer Warshawsky