STATE OF MICHIGAN

IN THE SUPREME COURT

LAURA K. FUNDUNBURKS,

Plaintiff-Appellee,

v.

CAPITAL AREA TRANSPORTATION AUTHORITY, a governmental agency, and MICHELLE BEARD,

Defendants-Appellants,

_________________________________/

Supreme Court No. 134408

Court of Appeals No. 274928

Ingham County Circuit Court
No. 06-000062-NI

Hon. Paula J.M. Manderfield

David S. Mittleman (P37490)
CHURCH, KRITSELIS & WYBLE, P.C.
Attorney for Plaintiff-Appellee
2827 East Saginaw Street
Lansing, Michigan 48912
(517) 372-1011

Mary Massaron Ross (P43885)
PLUNKETT COONEY
Co-Counsel on Appeal for
Defendants-Appellants
533 Griswold, Suite 2400
Detroit, Michigan 48226
(313) 983-4801

MURPHY, BRENTON & SPAGNUOLO, P.C.
Vincent P. Spagnuolo (P30350)
Matthew C. Rettig (P67545)
Attorneys for Defendants-Appellants
4572 South Hagadorn Road, Suite 1A
East Lansing, Michigan 48823
(517) 351-2020

134408
PLAE's Suppl

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF UPON THE ISSUES PRESENTED FOR ORAL ARGUMENT BY ORDER OF THE COURT

FILED

MAR 19 2008

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES ii

QUESTIONS PRESENTED iv

STANDARD OF REVIEW vi

STATEMENT OF FACTS 1

ARGUMENT 2

THE TRIAL COURT PROPERLY DENIED DEFENDANT BEARD'S MOTION FOR SUMMARY DISPOSITION WHEN PLAINTIFF'S UNCONTESTED EVIDENCE DEMONSTRATED THAT DEFENDANT CLOSED THE BUS DOOR ON PLAINTIFF, THEREBY PUSHING HER OUT OF THE BUS, DESPITE THE WARNINGS OF OTHER PASSENGERS WHEN PLAINTIFF WAS THE ONLY PASSENGER EXITING THE BUS. ACCORDINGLY, IT WAS NOT REVERSIBLE ERROR TO PERMIT THE EXTENSION OF DISCOVERY SO THAT DEFENDANT'S DEPOSITION COULD BE TAKEN, WHILE RETAINING THE OPTION OF ADDRESSING THIS ISSUE AGAIN AT A LATER DATE. 3

THE TRIAL COURT PROPERLY DENIED DEFENDANT BEARD'S MOTION FOR SUMMARY DISPOSITION BECAUSE PLAINTIFF HAS PRESENTED SUFFICIENT EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO HER, THAT RAISES A QUESTION OF MATERIAL FACT AS TO WHETHER DEFENDANT BEARD'S PREMATURE CLOSING OF THE BUS DOOR, WHEN PLAINTIFF WAS THE ONLY PASSENGER DISEMBARKING AND WHEN OTHER PASSENGERS WERE SHOUTING WARNINGS TO THE DEFENDANT, CONSTITUTES GROSS NEGLIGENCE AS DEFINED BY MCL 691.1407(7)(a). 6

RELIEF REQUESTED 12

INDEX OF EXHIBITS 13

INDEX OF AUTHORITIES

Page

STATUTES

MCL 691.1405 3

MCL 691.1407(2) 7

MCL 691.1407(2)(c) 2

MCL 691.1407(7)(c) 7

CASE LAW

Alex v Wildfong,
460 Mich 10; 594 NW2d 469 (1999) 8,9

Burgie v Lileikis,
unpublished per curiam opinion of the Court of Appeals,
decided February 10, 2005 (Docket No. 250666) 10

Chandler v Muskegon County,
467 Mich 315; 652 NW2d 224 (2002) 1

Dep't of Social Services v Aetna Casualty & Surety Co,
177 Mich App 440; 443 NW2d 420 (1989) 4,6

Domako v Rowe,
438 Mich 347; 475 NW2d 30 (1991) 5

Goodson v Suburban Mobility Authority,
unpublished per curiam opinion of the Court of Appeals,
decided May 12, 2005 (Docket No. 253375, 253376) 10

Helfner v Center Line Public Schools,
unpublished per curiam opinion of the Court of Appeals,
decided June 20, 2006 (Docket No. 26575) 11

Helfner v Center Line Public Schools,
477 Mich 931; 723 NW2d 459 (2006) 11

Hines v Volkswagen of America, Inc,
265 Mich App 432; 695 NW2d 84 (2005) 1

Jackson v County of Saginaw,
458 Mich 141; 580 NW2d 870 (1998) 1,6

Martin v Rapid Inter Urban Transit Partnership,
Order of the Supreme Court dated November 16, 2007,
reh den Martin v Rapid Inter Urban Transit Partnership,
Order of the Supreme Court dated February 1, 2008 2

Nuriel v YWCA,
186 Mich App 141; 463 NW2d 206 (1990) 5

Stanton v City of Battle Creek,
466 Mich 611; 647 NW2d 508 (2002) 9

Szidik v Podsiadlo,
109 Mich App 446; 311 NW2d 386 (1981) 4

Tryc v Michigan Veterans' Facility,
451 Mich 129; 545 NW2d 642 (1996) 8

West v GMC,
469 Mich 177; 665 NW2d 468 (2003) 1

COURT RULES

MCR 2.302(B)(1) 5

QUESTIONS PRESENTED

Under Michigan law, is it permissible for a trial court to deny a Defendant's motion for summary disposition on the issue of whether Defendant committed gross negligence when Plaintiff presents evidence that she was the only passenger exiting the bus driven by Defendant, various passengers aboard the bus shouted warnings at Defendant that Plaintiff had not exited the bus, and when Defendant's deposition had not been taken when Defendant filed for summary disposition before the close of discovery?

The Plaintiff says:	"Yes."
The Trial Court said:	"Yes."
The Court of Appeals said:	"Yes."
The Defendant says:	"No."

Under Michigan law, does a Plaintiff present sufficient evidence such that reasonable minds could differ as to whether Defendant Beard's conduct amounted to reckless conduct showing a substantial lack of concern as to whether the injury would result when Plaintiff presents uncontested evidence that she was the sole passenger exiting the bus driven by Defendant, various passengers aboard the bus shouted warnings at Defendant that Plaintiff had not exited the bus when Defendant began closing the doors prematurely, and when Defendant failed to take any measures to prevent Plaintiff's injury or to mitigate Plaintiff's injury?

The Plaintiff says:	"Yes."
The Trial Court said:	"Yes."
The Court of Appeals said:	"Yes."
The Defendant says:	"No."

STANDARD OF REVIEW

This Court reviews the denial of summary disposition de novo. Chandler v Muskegon County, 467 Mich 315, 319; 652 NW2d 224 (2002). A reviewing court "must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law." Hines v Volkswagen of America, Inc, 265 Mich App 432, 437; 695 NW2d 84 (2005). A court must consider all documentary evidence such as pleadings, affidavits, depositions and admissions in the light most favorable to the nonmovant. Jackson v County of Saginaw, 458 Mich 141, 142; 580 NW2d 870 (1998). Summary disposition should not be granted if "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." West v GMC, 469 Mich 177, 183; 665 NW2d 468 (2003).

STATEMENT OF FACTS

On December 13, 2004, Plaintiff Laura Fundunburks was a passenger on a bus driven by Defendant Michelle Beard, who is an employee of the governmental agency Capital Area Transportation Authority ("CATA"). Defendant Beard was acting in her official capacity at the time. The bus was traveling along Cedar Street in Lansing, Michigan. (Exhibit A, Defendant's Answers to Plaintiff's Interrogatories, Answer #10). Plaintiff signaled for Defendant to stop the bus near a K-Mart store on South Cedar Street. When Defendant stopped the bus, Plaintiff was the only passenger on the bus to attempt to exit the bus. Plaintiff's account is as follows:

> A: When I looked down, the doors are starting to close. At that point I just go bam. As I moved my arm out, the door closes. I hear people yelling someone's falling. Stop. She doesn't stop.

(Exhibit B, Plaintiff's Deposition Transcript, p. 40).

> Q: Do you know, were you actually – are you saying that you were pushed out by the closing doors?

A: Yeah. I had to either get out or I would have been – I don't know if I would have been drug or what. But the doors couldn't close because it was, like, a mechanism, like I don't know if it's – like, automatically if there's something that's in the midst of it, it doesn't – you know, it locks or whatever, but it didn't do that. So I just went, like, "Whew." Before I could catch my bearing, I was, like, on the ground.

(Exhibit B, Plaintiff's Deposition Transcript, pp. 40-41).

Plaintiff's uncontested testimony demonstrates that despite being the only passenger exiting the CATA bus, Defendant Beard failed to take even the most minimal efforts to ensure that Plaintiff safely departed the bus. Plaintiff's deposition also describes how passengers warned Defendant Beard that Plaintiff was in distress, but that Defendant Beard failed to stop the door mechanism, resulting in Plaintiff being thrown to the ground. Defendant Beard's actions were the only proximate cause of Plaintiff's injuries, and reasonable jurors could conclude from these facts alone that Defendant Beard's actions amounted to "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(2)(c).

ARGUMENT

The issues before this Court on oral argument pertain only to the liability of Defendant Michelle Beard, the governmental employee of the governmental agency CATA. This Court has instructed the litigants to address whether or not Defendant Beard's actions constituted gross negligence as defined by the governmental tort liability act. Plaintiff submits that the issue concerning whether or not Plaintiff's injuries arose from the negligent operation of a government owned motor vehicle has been effectively settled by this Court's order in Martin v Rapid Inter Urban Transit Partnership, Order of the Supreme Court dated November 16, 2007, reh den Martin v Rapid Inter Urban Transit Partnership, Order of the Supreme Court dated February 1, 2008 (Attached as Exhibit C). The unloading of passengers is an action within the operation of a government owned

bus and Plaintiff's injuries arose from exiting the CATA bus, satisfying the exception to governmental immunity set forth in MCL 691.1405.

With respect to whether or not Defendant Beard retains her statutory protection of governmental immunity, Plaintiff wishes to make clear one point – in no way does Plaintiff suggest that establishing a genuine issue of material fact depends upon the testimony of Defendant Beard. Rather, Plaintiff has presented uncontested evidence that (1) she was the only passenger exiting the CATA bus at the time of the accident, (2) passengers shouted out warnings that Plaintiff was in danger, and (3) that Defendant Beard failed to keep the bus doors open and in fact subsequently drove away from the fallen Plaintiff. The fact that both the trial court and the Court of Appeals made reference to the fact that Defendant's deposition had not been taken only underscores the reality that a trail court is granted discretion to extend discovery if circumstances warrant such extension. That Judge Manderfield elected to exercise such discretion when her docket was stretched due to a highly publicized criminal trial does not mean that the trial court erroneously overlooked the requirement that a Plaintiff must bring forth evidence in order to create a question of fact. Plaintiff met her burden through her deposition testimony. Permitting discovery to continue in order to allow Defendant's deposition to be taken does nothing to alter the facts Plaintiff has established on the record.

THE TRIAL COURT PROPERLY DENIED DEFENDANT BEARD'S MOTION FOR SUMMARY DISPOSITION WHEN PLAINTIFF'S UNCONTESTED EVIDENCE DEMONSTRATED THAT DEFENDANT CLOSED THE BUS DOOR ON PLAINTIFF, THEREBY PUSHING HER OUT OF THE BUS, DESPITE THE WARNINGS OF OTHER PASSENGERS WHEN PLAINTIFF WAS THE ONLY PASSENGER EXITING THE BUS. ACCORDINGLY, IT WAS NOT REVERSIBLE ERROR TO PERMIT THE EXTENSION OF DISCOVERY SO THAT DEFENDANT'S DEPOSITION COULD BE TAKEN, WHILE RETAINING THE OPTION OF ADDRESSING THIS ISSUE AGAIN AT A LATER DATE.

The Court of Appeals has noted that "[s]ummary judgment is premature if made before discovery on the disputed issue is complete. Szidik v Podsiadlo, 109 Mich App 446, 450; 311 NW2d 386 (1981). However, the "question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position." Dep't of Social Services v Aetna Casualty & Surety Co, 177 Mich App 440, 446; 443 NW2d 420 (1989). Such a test would be a daunting obstacle for Plaintiff to overcome if Plaintiff were relying solely upon Defendant Beard's deposition to create a question of material fact. However, Plaintiff has sufficiently presented enough evidence such that reasonable minds could differ on whether Defendant's actions amounted to gross negligence.

Nevertheless, Defendant has gone to great lengths to argue that Plaintiff's sole leg to stand on is the "prematurity" argument. Plaintiff filed her original complaint in January of 2006, at which time Defendant Beard's identity was not known. Plaintiff subsequently discovered the identity of the CATA bus driver and accordingly amended her complaint in July of 2007. Discovery was scheduled to end in October of 2006. Defendant submitted her Motion for Summary Disposition on September 13, 2006. The hearing for that Motion took place on November 15, 2006, and an Order denying both Defendants requests for Summary Disposition was entered November 29, 2006. (Exhibit D, Order Dated 11/29/06).

A letter from Defendant's attorney to Plaintiff's attorney explains the late timing of the hearing as well as Defendant's willingness to obtain an extension of discovery. In pertinent part, that letter discloses that:

> As you know, we have a later date for the hearing on this matter due to the fact that Judge Manderfield has postponed her motion days due to the Holland criminal case.

> Confirming our recent telephone conversation, I understood that you agreed with me that we should go forward in order to remove one way or another the legal issues in this matter. Assuming that we are unsuccessful in our pursuit of dismissal on the legal issues, then we agreed to go back for status conference and obtain new dates for discovery, case evaluation, pretrial and trial, etc.
>
> (Exhibit E, Letter from Defendant's attorney dated October 6, 2006).

Thus, it should have come as no surprise that Judge Manderfield, in light of the evidence presented by Plaintiff at her deposition, denied Defendant's Motion for Summary Disposition but agreed to revisit the issue at a later time. Trial courts operate under an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case. MCR 2.302(B)(1); Domako v Rowe, 438 Mich 347, 353, 359; 475 NW2d 30 (1991). As such a trail court's decision to extend discovery is reviewed for an abuse of discretion. Nuriel v YWCA, 186 Mich App 141, 146; 463 NW2d 206 (1990). Judge Manderfield did not abuse her discretion when, burdened by the publicity of the Holland criminal trial, she denied Defendant's Motion for Summary Disposition based on the evidence available at that time, while agreeing to revisit the issue in the future after Defendant's deposition had been taken.

The deposition of Defendant Beard is not the basis for finding a question of material fact in this matter. That question of fact derives from the uncontested deposition testimony of Plaintiff as outlined above. The information that would be learned from Defendant's deposition would include whether or not she heard the passenger's warnings, whether or not she bothered to look and see if the only passenger exiting the bus had safely departed the bus, and why after hearing the shouts of other passengers she did not open the doors nor pull the bus over to see if Plaintiff was injured. Such information is not necessary to find a question of material fact, but certainly "stands a fair chance of uncovering factual support" for Plaintiff's claims. Dep't of Social Services, supra, 177 Mich App

at 446.

THE TRIAL COURT PROPERLY DENIED DEFENDANT BEARD'S MOTION FOR SUMMARY DISPOSITION BECAUSE PLAINTIFF HAS PRESENTED SUFFICIENT EVIDENCE, WHEN VIEWED IN A LIGHT MOST FAVORABLE TO HER, THAT RAISES A QUESTION OF MATERIAL FACT AS TO WHETHER DEFENDANT BEARD'S PREMATURE CLOSING OF THE BUS DOOR, WHEN PLAINTIFF WAS THE ONLY PASSENGER DISEMBARKING AND WHEN OTHER PASSENGERS WERE SHOUTING WARNINGS TO THE DEFENDANT, CONSTITUTES GROSS NEGLIGENCE AS DEFINED BY MCL 691.1407(7)(a).

The matter before this Court is whether Defendant Beard's conduct on December 13, 2004, amounts to gross negligence, the legal standard that Plaintiff must prove in order to remove Defendant's protection of governmental immunity. This Court has provided that:

> Generally, once a standard of conduct is established, the reasonableness of an actor's conduct under the standard is a question for the factfinder, not the court. However, if, on the basis of the evidence presented, reasonable minds could not differ, then the motion for summary disposition should be granted.
>
> Jackson, supra, 458 Mich at 146 (internal quotations and citations omitted).

Thus, the question is whether Plaintiff's deposition testimony presents sufficient evidence such that reasonable minds could differ as to whether Defendant's actions amount to gross negligence. Plaintiff asserts that when viewed in a light most favorable to her, and when drawing all reasonable inferences from the evidence presented, Plaintiff has satisfied this burden.

Defendant, in her Application for Leave to Appeal, argued vehemently that Defendant's actions were, at best, a momentary lapse of judgment. Defendant reiterates the brief amount of time it took to jettison Plaintiff from the bus platform onto the ground as a basis for finding only negligence rather than gross negligence. The governmental tort liability act contains no such duration requirement and Defendant's arguments would have Courts impermissibly reading into the

plain language of a statute a requirement for a drawn out series of grossly negligent acts. The lives of thousands of people are changed in an instant due to split-second choices that amount to gross negligence. Defendant would have this Court construct a requirement that is not found in the plain language of the statute that no plaintiff could recover except on the basis of lengthy periods of gross negligence.

The governmental tort liability act, in its plain language, states:

> (2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:
>
> The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> The governmental agency is engaged in the exercise of discharge of a governmental function.
>
> The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.
>
> MCL 691.1407(2).

The statute also defines gross negligence as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(c). Nothing in the plain language of the statute mandates that the conduct extend for a certain length of time, just as nothing in the plain language of the statute prohibits recovery on the basis of conduct amounting to gross negligence that is brief in duration. For this Court to impose such requirements onto the statute would violate this Court's long-standing tradition of statutory construction, which holds that "the plain meaning of the

statute reflects the legislative intent and judicial construction is not permitted." Tryc v Michigan Veterans' Facility, 451 Mich 129, 135-136; 545 NW2d 642 (1996).

If the duration of the conduct should not be taken as a bright line rule for whether or not conduct is so reckless as to demonstrate a substantial lack of concern for whether an injury results, that is not to say that duration does not matter. Clearly, duration must be considered as a factor when looking at the context in which the Defendant's behavior took place. Other factors that Plaintiff proposes are relevant include, in this particular instance, the number of passengers exiting the bus, whether or not any passengers attempted to warn the bus driver of the impending danger, and the bus driver's reactions during the entire course of events. When viewing the evidence in a light most favorable to Plaintiff, reasonable minds could differ on whether Defendant's actions constituted gross negligence and summary disposition was not appropriate.

In Alex v Wildfong, 460 Mich 10; 594 NW2d 469 (1999), this Court reinstated a jury's determination at the trial court that defendant's conduct had not amounted to gross negligence. Defendant was a volunteer firefighter who was driving his own vehicle and collided with a vehicle driven by plaintiff's decedent. Id. at 12. Defendant testified that prior to the accident he turned on his overhead lights and had seen the red reflection of those lights against a white house that he passed on the road. Id. at 13. Plaintiff had alleged that defendant's lights were not turned on or turned on "only an instant before the collision." Id. This case was not decided by summary disposition, most likely due to the conflicting accounts presented by the parties, and the jury ultimately concluded that defendant had not been grossly negligent. Id. at 15. In the case at bar, there simply is no testimony as to the Defendant's conduct and whether or not she acted in conformance with any standard of care. There is, however, uncontested evidence that Plaintiff was

the only passenger exiting the CATA bus, that passengers had shouted warnings at the bus driver, and that the bus driver did not stop the doors before they threw Plaintiff to the ground. Should any party be granted peremptory relief by this Court, it is Plaintiff who has presented uncontested evidence which a reasonable jury could conclude amounts to gross negligence by the Defendant.

In Stanton v City of Battle Creek, 466 Mich 611; 647 NW2d 508 (2002), this Court affirmed the granting of summary disposition in favor of defendant because that defendant had taken positive actions which demonstrated anything but a substantial lack of concern for the safety of others. In this case defendant injured plaintiff when the brakes stuck on a forklift defendant was operating and the forklift rolled forward and struck plaintiff. Id. at 613. This Court noted the actions defendant had taken to ensure the safety of others, including the fact that once he had noticed "the problematic brakes, he notified his supervisor" in addition to the fact that "once the forklift began to roll forward at the time of the accident, [defendant] used his toe to unstick the brakes and the forklight retreated backward." Id. at 620. It should be noted that this Court looked at defendant's conduct *after* the alleged negligence took place as a sign of defendant's conduct not amounting to gross negligence, namely, the efforts to unstick the brakes and retreat the forklift. In drastic contrast, the uncontested evidence brought forth in this matter demonstrates that Defendant Beard took no action whatsoever to mitigate the injury sustained by Plaintiff Fundunburks. Instead, Defendant Beard drove away from Plaintiff as she lay on the ground, even after passengers on the bus had been shouting about Plaintiff's peril.

A few unpublished opinions by the Court of Appeals shed some light on the determination of gross negligence within some type of bus driver context. While not binding upon this Court, they

are useful tools to consider how context shapes the determination of what constitutes gross negligence. In Goodson v Suburban Mobility Authority, unpublished per curiam opinion of the Court of Appeals, decided May 12, 2005 (Docket No. 253375, 253376)(Attached as Exhibit F), the Court of Appeals affirmed a trial court's denial of summary disposition to a defendant, when he had "proceed[ed] through a busy intersection against a red light, into the path of an oncoming bus." Id. As a result of Defendant's conduct, a bus driver had to slam on his brakes causing a passenger on that bus to be injured. In this context, the defendant's lack of care when in a busy intersection created a question of material fact so as to preclude summary disposition. In this matter, Defendant Beard's lack of care when Plaintiff Fundunburks was the only passenger disembarking from the CATA bus should also create a question of material fact. Had Plaintiff been one of many passengers attempting to disembark and had Defendant Beard dutifully waited while all but one passenger safely left the bus, Defendant's conduct would not be as egregious. However, because of the fact that – as Defendant noted in her Application for Leave to Appeal – Plaintiff was the only passenger disembarking from the bus, Defendant has no excuse for why she was not able to observe Plaintiff's movements.

In Burgie v Lileikis, unpublished per curiam opinion of the Court of Appeals, decided February 10, 2005 (Docket No. 250666)(Attached as Exhibit G), the Court of Appeals reversed a trial court's denial of summary disposition, when the conduct of two bus drivers idly stopped at a crosswalk was not the one most immediate, efficient and direct cause of plaintiff's injuries, when plaintiff was hit by a jeep as she walked past those buses. The Court of Appeals noted that the CATA bus drivers had no control over the motion of the jeep. By contrast, this case presents no third-party negligence or intervening cause of Plaintiff's injuries. Defendant Beard's reckless

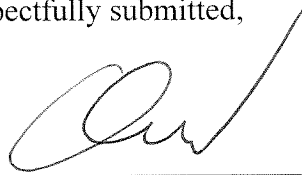
disregard over whether the only passenger attempting to disembark the bus had safely made it off the bus was the most immediate, efficient and direct cause of Plaintiff's injuries.

A similar argument was made by Judge WHITBECK in the dissenting opinion of Helfner v Center Line Public Schools, unpublished per curiam opinion of the Court of Appeals, decided June 20, 2006 (Docket No. 26575)(Attached as Exhibit H), which this Court found persuasive in reversing the Court of Appeals in Helfner v Center Line Public Schools, 477 Mich 931; 723 NW2d 459 (2006). This Court, in adopting Judge WHITBECK's dissent, found persuasive that what merited summary disposition in favor of defendants was the fact that plaintiff ran across the street without looking for cars. Judge WHITBECK concluded that this decision was the proximate cause of her injuries. However, Judge WHITBECK aptly noted that plaintiff had arguably presented evidence that defendant was grossly negligent when there was *conflicting* testimony as to whether defendant had turned on the school bus's red flashing lights at the time of the accident. In this matter, Plaintiff's testimony is uncontested and clearly demonstrates that she was the only passenger exiting the CATA bus, that Defendant Beard failed to observe the only passenger exiting as Plaintiff attempted to disembark, and that Defendant Beard prematurely closed the doors on Plaintiff Fundunburks even as other passengers were shouting warnings to the driver.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests this Court to deny Defendant's Application for Leave to Appeal or in the alternative, peremptorily affirm Judge Manderfield's decision to deny Defendant's Motion for Summary Disposition.

Respectfully submitted,



By: ____________________________

David S. Mittleman (P37490)
CHURCH, KRITSELIS & WYBLE, P.C.
Attorneys for Plaintiff
2827 East Saginaw Street
Lansing, Michigan 48912
(517) 372-1011

INDEX OF EXHIBITS

EXHIBIT A -	Defendant's Answers to Plaintiff's Interrogatories
EXHIBIT B -	Plaintiff's Deposition Transcript
EXHIBIT C -	Order of the Supreme Court, dated 11/16/07
EXHIBIT D -	Order dated 11/29/06
EXHIBIT E -	Letter from Defendant's Attorney dated October 6, 2006
EXHIBIT F -	Goodson v Suburbam Mobility Authority
EXHIBIT G -	Burgie v Lileikis
EXHIBIT H -	Helfner v Center Line Public Schools