# STATE OF MICHIGAN

# COURT OF APPEALS

JOSE ORTIZ and MELISSA MOORE, Co-Personal Representatives of the Estates of JOSE ORTIZ-MOORE and SAVANAH M. MOORE,

Plaintiffs-Appellants,

v

CHARLES WILLIAM PORTER and CITY OF GRAND RAPIDS,

Defendants-Appellees.

UNPUBLISHED
November 30, 2001

No. 226466
Kent Circuit Court
LC No. 98-012463-NO

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order that granted defendant Charles Porter (hereinafter defendant)[1] summary disposition of plaintiffs' complaint alleging that defendant, a Grand Rapids fire inspector, was grossly negligent in failing to ensure that a smoke detector was placed in plaintiff Moore's rental home. Several months after defendant promised to have a smoke detector installed inside the rental home, a fire at the home caused the deaths of plaintiffs' two children. We affirm.

We review de novo the trial court's summary disposition ruling. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), which tests the factual support of a plaintiff's claim. In reviewing a motion pursuant to subrule (C)(10), we consider the affidavits, pleadings, depositions and other relevant documentary evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

We initially note our agreement with plaintiffs' first contention that the trial court erred when it extended the public duty doctrine to a city fire inspector. The Supreme Court recently

[1] The trial court granted the City of Grand Rapids summary disposition, apparently pursuant to MCR 2.116(C)(7). The parties do not dispute the propriety of this ruling.

clarified that "application of the public duty doctrine is limited to cases . . . involving an alleged failure of a police officer to protect a plaintiff from the criminal acts of a third party." *Beaudrie v Henderson*, 465 Mich 124, 141; 631 NW2d 308 (2001).

The trial court also found summary disposition for defendant warranted on an alternative basis. The court reasoned that generally an individual owes no duty to protect another from endangerment by a third party's conduct, and found that in this case the facts did not demonstrate the existence of a special relationship between plaintiffs and defendant that would form the foundation of such a duty. Plaintiffs argue that the trial court's alternative reasoning failed to take into account that defendant explicitly promised plaintiffs that he would ensure the proper placement of a smoke detector.

As the parties recognized in their pleadings, MCL 691.1407(2) governs the scope of defendant's liability because defendant acted while a city employee, and acted within the scope of his employment. The statutory grant of governmental immunity therefore protects defendant from liability unless defendant's conduct "amount[s] to gross negligence that is the proximate cause of injury or damage." MCL 691.1407(2)(c). Under MCL 691.1407(2), "the Legislature provided tort immunity for employees of governmental agencies unless the employee's conduct amounts to gross negligence that is the one most immediate, efficient, and direct cause of the injury or damage, i.e., the proximate cause." *Robinson v City of Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000).

Even assuming arguendo that defendant owed plaintiffs a duty to ensure the placement of a smoke detector inside the rental home, and that defendant breached this duty by failing to reinspect the residence or otherwise obtain a smoke detector for placement inside the rental home, we nonetheless find that defendant is entitled to summary disposition pursuant to MCR 2.116(C)(7) because it is clear as a matter of law that defendant's conduct was not *the* proximate cause of the deaths of plaintiffs' decedents. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001); *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999). Although the parties did not raise and the trial court did not consider proximate causation, we address it because it constitutes a dispositive issue and our resolution of the question will prevent further, unnecessary consumption of scarce judicial resources, and our analysis involves application of the law to undisputed relevant facts. MCR 7.216(A)(7); *Paschke v Retool Industries (On Rehearing)*, 198 Mich App 702, 705; 499 NW2d 453 (1993), rev'd on other grounds 445 Mich 502; 519 NW2d 441 (1994); *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1992).

The evidence suggests that a candle the rental home residents left burning while they slept started the fire. Whatever the cause of the fire, the fire itself plainly constituted the one most immediate and direct cause of plaintiffs' injuries, and defendant undisputedly had no involvement with the fire's commencement. Under these circumstances,[2] we find that as a

[2] We also note as relevant to proximate causation the undisputed evidence that in January 1999, the month before the fatal fire, the residents had a properly functioning smoke detector inside the apartment that was mounted on a wall for a short time, taken down, apparently melted on a stove,

(continued…)

matter of law defendant's asserted negligence did not constitute *the* proximate cause of plaintiffs' decedents' deaths. *Robinson*, *supra*.

Consequently, although for different reasons, we conclude that the trial court properly granted defendant summary disposition. *Ford Credit Canada Leasing, Ltd v DePaul*, ___ Mich App ___; ___ NW2d ___ (Docket No. 229735, issued October 19, 2001), slip op. at 7-8.

Affirmed.

/s/ Hilda R. Gage

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then thrown away without being replaced.