

STATE OF MICHIGAN
COURT OF APPEALS

MARGARETT KRUGER, Personal
Representative of KATHERINE KRUGER,
Deceased,

UNPUBLISHED
April 2, 2002

Plaintiff-Appellant/Cross-Appellee,

v

WHITE LAKE TOWNSHIP, WHITE LAKE
TOWNSHIP POLICE CHIEF, LT. EDWARD
HARRIS, OFFICER JAMES CHRIST, OFFICER
JAMES F. McCLURE, OFFICER MICHAEL
PANKOFF, OFFICER O'MALLEY, OFFICER
M. SIMSACK, and OFFICER RONALD C.
ROGOWICZ,

No. 226900
Oakland Circuit Court
LC No. 99-017668-NI

Defendants-Appellees/Cross-
Appellants.

Before: O'Connell, P.J., and White and Cooper, JJ.

WHITE, J. (*concurring*).

The circuit court's opinion and order denying the motion to amend in the prior case on the basis of futility precluded plaintiff from filing the instant claim against the police department and the officers named in the prior case. Further, the circuit court's decision that there was no evidence that the defendants in the prior case acted pursuant to a custom, policy or procedure of deliberate indifference cannot be challenged here. Starting from this predicate, paragraphs 46 and 47 of plaintiff's complaint were inadequate to raise new, unlitigated issues regarding the added defendants' liability based on a custom, policy or practice of deliberate indifference, as was the deposition testimony cited on appeal.

/s/ Helene N. White