

STATE OF MICHIGAN
COURT OF APPEALS

ELLA SMITH, Personal Representative of the
Estate of TOYA MICHELLE BERRY, Deceased,

UNPUBLISHED
July 26, 2002

Plaintiff-Appellant,

v

CITY OF DETROIT, DETROIT POLICE
DEPARTMENT, OFFICER JERRY SWOPE,
OFFICER MARCUS HARRIS, OFFICER
RAYMOND YEE, OFFICER ROBERT
OBIDZINSKI, OFFICER ROBERT MINGUS and
OFFICER CLINTON MACK,

No. 232321
Wayne Circuit Court
LC No. 00-007290-NZ

Defendants-Appellees.

Before: Talbot, P.J., and Cooper and D. P. Ryan*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews all the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

As a general rule, a governmental agency is immune from tort liability when it is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1). However, a governmental agency is liable for bodily injury "resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle" owned by the governmental agency. MCL 691.1405. To the extent plaintiff seeks to impose liability on the

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

city for defendant Harris' decision to pursue a fleeing suspect, the city is immune because a police officer's decision to pursue a fleeing vehicle does not constitute "operation of a motor vehicle" and is outside the motor vehicle exception to governmental immunity. *Robinson v Detroit*, 462 Mich 439, 457-458; 613 NW2d 307 (2000). To the extent plaintiff seeks to impose liability on the city for Harris' operation of the vehicle, the city is immune because Harris' car did not hit the fleeing suspect's car or otherwise physically force it off the road or into the decedent's vehicle. *Id.* at 457.

An employee of a governmental agency is immune from tort liability for an injury to a person caused by the employee while in the course of employment if: (1) the employee is acting or reasonably believes he or she is acting within the scope of his or her authority; (2) the governmental agency is engaged in the exercise or discharge of a governmental function; and (3) the employee's conduct does not amount to gross negligence that is the proximate cause of the injury. MCL 691.1407(2). The phrase "the proximate cause" is not synonymous with "a proximate cause" and to impose liability on a government employee for gross negligence, the employee's conduct must be "the one most immediate, efficient, and direct cause preceding an injury." *Robinson, supra* at 458-459, 462.

Defendant Harris' pursuit of the fleeing suspect was not the proximate cause of plaintiff's decedent's injuries. Rather, the decedent's injuries most immediately and directly resulted from the impact of the suspect's vehicle after he ran a stop sign and crashed into her car. Therefore, the trial court did not err in finding that defendants were immune from liability.

While defendant filed its motion for summary disposition before discovery was completed, discovery was set to be closed on October 16, 2000 pursuant to the trial court's scheduling order. The hearing on defendant's motion for summary disposition was held on November 28, 2000, and the trial court did not issue its order until January 8, 2001. Moreover, "[i]f a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence." *Bellows v Delaware McDonald's Corp*, 206 Mich App 555, 561; 522 NW2d 707 (1994). Plaintiff presented no evidence to establish the existence of a genuine issue of fact as to whether the decedent's injuries resulted from or were proximately caused by defendant Harris' operation of his vehicle, such that he or the city could be held liable for the decedent's injuries.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan