

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ARTINA TINSLEY HARDMAN,

Plaintiff-Appellee,

v

CITY OF DETROIT, DETROIT POLICE  
DEPARTMENT, POLICE OFFICER ADRIEN  
CANNON, and POLICE OFFICER URSULA  
MILLER,

Defendants-Appellants,

and

POLICE OFFICER CHARO TURNER and  
GEORGE WRIGHT,

Defendants.

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UNPUBLISHED  
September 3, 2009

No. 284252  
Wayne Circuit Court  
LC No. 07-711915-NI

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendants appeal by right the trial court's order denying their motion for summary disposition based on governmental immunity. We reverse and remand for entry of judgment for defendants. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In the afternoon of May 13, 2006, defendant Miller, a city of Detroit police officer, was on duty operating a patrol car with her partner, defendant Cannon. The officers observed a vehicle driven by defendant Wright traveling the wrong way on a one-way street. Officer Miller testified that she activated the lights and siren of the police car and followed Wright in an effort to warn on-coming traffic that Wright was traveling in the wrong direction. Wright continued driving and subsequently turned onto a two-way street. The officers testified that they followed Wright, but once on the two-way street, they deactivated the patrol car's lights and siren and slowed to almost a complete stop. Plaintiff claims that the officers pursued Wright onto the two-way street and deactivated their lights and siren before rapidly approaching Wright's vehicle from behind. Undisputedly, Wright accelerated his truck and disregarding a stop sign, drove into an intersection where he collided with plaintiff's vehicle, a fence and a parked vehicle. Wright fled on foot but was apprehended a short distance away by Officer Cannon. He was

subsequently charged with, and pleaded guilty to, third-degree fleeing and eluding where the violation resulted in a collision or accident, MCL 257.602a(3)(a).

Officers Miller and Cannon assert that at the time of the collision their patrol car was at least one-half of a city block away from the accident scene. The patrol car Miller was operating was not damaged and did not contact any other vehicle. Officers Miller and Cannon claim the incident was never a “police chase” of Wright. But a nearby resident claimed he heard the collision and immediately went to the scene. The resident also claimed that a female officer stated that the officers had been chasing Wright but stopped talking when another officer told the female officer “to be careful about what she was saying.”

Officer Charo Turner, a certified accident investigator with the Detroit Police Department, investigated the accident and concluded that Miller and Cannon’s patrol car never made contact with any other vehicle and was not damaged.

Plaintiff filed suit against the city of Detroit, Turner, Cannon, Miller, and Wright. The city of Detroit and the police officers answered plaintiff’s complaint, asserting governmental immunity as a special and affirmative defense, MCL 691.1401 *et seq.*

The city of Detroit and the police officers moved for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10), arguing that plaintiff’s claims were barred by governmental immunity. The trial court granted summary disposition to Turner, finding no “liability on his part with regard to this accident,” but denied the motion with respect to the city of Detroit, Cannon, and Miller based on the motor vehicle exception to governmental immunity.<sup>1</sup>

Defendants argue on appeal that the trial court erred in denying their motion for summary disposition with respect to the city of Detroit based on *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), which held a plaintiff cannot satisfy the motor vehicle exception to governmental immunity where the pursuing police vehicle does not hit the fleeing car or otherwise physically force it off the road or into another vehicle or object. Defendants contend that even if a police chase occurred, because the police car did not hit Wright’s vehicle or otherwise physically force it off the road or into plaintiff’s vehicle, plaintiff cannot satisfy the motor vehicle exception to governmental immunity. *Id.* at 456-457. We agree.

Plaintiff relies on *Terry v Detroit*, 226 Mich App 418; 573 NW2d 348 (1997), which was authored by then Court of Appeals Judge Young, while distinguishing the subsequent case of *Robinson, supra*, in which then Justice Young concurred. Plaintiff mistakenly argues that *Robinson* can be distinguished from the present case in two significant ways: (1) the *Robinson*

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<sup>1</sup> MCL 691.1405 provides:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner. . . .

plaintiffs were passengers in the fleeing vehicles and were not innocent third parties as plaintiff is here; and (2) the police officers in *Robinson* engaged their lights and siren during the pursuit of the fleeing vehicles, unlike the police officers in the present case.

These distinctions either do not exist or are immaterial. First, the *Robinson* Court specifically noted it was deciding that case on the presumption that the plaintiffs were innocent passengers. The Court noted that “the record does not allow us to conclude as a matter of law whether plaintiffs were innocent as a matter of law[.]” *Robinson, supra* at 444. The Court explained in a footnote that “there was some evidence suggesting that Henderson was not innocent. However, because the test we announce is new, and Henderson’s estate was never on notice of its obligation to produce any evidence to the contrary, we take the more prudent course and decline to find as a matter of law that Henderson was a wrongdoer.” *Robinson, supra* at 444 n 1. Moreover, regardless of the status of the *Robinson* plaintiffs, the rules of law the Court adopted in *Robinson* apply to innocent plaintiffs, as in the instant case.

Second, whether the patrol car’s lights and sirens were on is immaterial under *Robinson* if there were no contact between the police vehicle and another vehicle that caused injuries. In the instant case, it is undisputed the police vehicle never hit the Wright’s vehicle or otherwise physically forced it off the road or into any another vehicle or object. The *Robinson* Court held with respect to innocent plaintiffs, a claim does not come within the motor vehicle exception to governmental immunity when there is no contact between the police vehicle and another vehicle. *Robinson, supra* at 456-457. The Court opined that the “plaintiffs’ injuries did not, as a matter of law, result from the operation of the police cars where the police cars did not hit the fleeing car or physically cause another vehicle or object to hit the vehicle that was being chased or physically force the vehicle off the road or into another vehicle or object.” *Id.* at 445. The Court concluded that the “plaintiffs cannot satisfy the ‘resulting from’ language of the statute [MCL 691.1405] where the pursuing police vehicle did not hit the fleeing car or otherwise physically force it off the road or into another vehicle or object.” *Robinson, supra* at 457.

In addition to the foregoing plain holding of *Robinson*, plaintiff’s argument that *Terry, supra*, somehow is controlling precedent is further undermined by the fact that the *Robinson* Court specifically overruled *Fiser v Ann Arbor*, 417 Mich 461; 339 NW2d 413 (1983), on which this Court’s decision in *Terry* was based. See *Robinson, supra* at 445, 455-456, and *Terry, supra* at 429-431. Moreover, *Robinson* overruled *Rogers v Detroit*, 457 Mich 125; 579 NW2d 840 (1998), holding that “an officer’s decision to pursue does not constitute the negligent operation of a motor vehicle.” *Robinson, supra* at 445.

In sum, with respect to the motor vehicle exception governmental immunity in the context of a police chase, *Robinson* supersedes *Terry*. This Court is bound by rule of law announced by our Supreme Court until overruled or modified by that Court. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled on other grounds in *Karaczewski v Farbman Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007). Consequently, the trial court erred by ruling MCL 691.1405 applied on these facts and by failing to grant summary disposition to the city of Detroit on the basis of governmental immunity.

Defendants next argue that the trial court erred in denying their motion for summary disposition with respect to Miller and Cannon because the officers’ conduct could not have been the proximate cause of plaintiff’s injuries. We agree.

Police officers giving chase owe a duty of care to innocent persons but not wrongdoers. *Robinson, supra* at 451. But the officers' decision "to pursue does not constitute the negligent operation of a motor vehicle." *Id.* at 445. Furthermore, pursuant to MCL 691.1407(2), officers, employees, members, or volunteers of a governmental agency may be liable only if their conduct amounts to gross negligence that is the proximate cause of the injury or damage. MCL 691.1407(7)(a) defines "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." The *Robinson* Court held that "[t]he phrase 'the proximate cause' [as used MCL 691.1407(2)] is best understood as meaning the one most immediate, efficient, and direct cause preceding an injury." *Robinson, supra* at 459.

Defendants assert that the evidence in this case demonstrates that because the police officers' vehicle was not involved in the collision, the one most immediate and direct cause of plaintiff's injury was Wright's reckless driving. Therefore, the police officers' operation of their patrol car could not, as a matter of law, be "the proximate cause" of plaintiff's injuries. We agree. With respect to the police officers in *Robinson* who were operating police vehicles that did not make physical contact with another vehicle, the Court held, "the officers in question are immune from suit in tort because their pursuit of the fleeing vehicles was not, as a matter of law, 'the proximate cause' of the injuries sustained by the plaintiffs. The one most immediate, efficient, and direct cause of the plaintiffs' injuries was the reckless conduct of the drivers of the fleeing vehicles." *Robinson, supra* at 462. Here, the trial court erred by not granting the police officers summary disposition because there was no evidence their patrol car ever physically was involved in the accident, and therefore, "reasonable jurors could not find that the officers were 'the proximate cause' of [plaintiff's] injuries." *Id.* at 463. The police officers in this case were entitled to summary disposition on the basis of governmental immunity.

We reverse and remand for entry of judgment for defendants. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ Jane E. Markey