STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER KELLY WILLIS, Deceased, by FRANK D. WILLIS and MICHAEL J. WILLIS, Personal Representatives,

Plaintiffs-Appellants,

v

CHARTER TOWNSHIP OF EMMETT, LOGAN BISHOP, and SCOTT COUNTS,

Defendants-Appellees,

and

MICHIGAN STATE POLICE, JAMES CAMPBELL, CALHOUN COUNTY MEDICAL EXAMINER, ROBERT DEMSKI, HEATHER HILLMAN, EMERGENCY MEDICAL TEAM, SCOTT BRANDENBURG, KIMBERLY VANVORST, MICHAEL BENTLEY, BRIDGET ROSS, BORGESS HEALTH ALLIANCE, BORGESS HOSPITAL, SCOTT BROCKMAN, MICHELLE VOGEL, and LAUREN VOGEL,

Defendants.

UNPUBLISHED
October 18, 2012

No. 301324
Calhoun Circuit Court
LC No. 2009-001808-NO

Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

This litigation arises from a tragic and severe multi-vehicle collision. Plaintiffs' decedent had recently returned from service in Iraq and ingested drugs and alcohol during a celebration. The decedent lost control of his pickup truck, which crossed the median and became airborne. The decedent's truck collided with other vehicles and the frame separated from the cab, which landed upside down with the decedent still inside. At the chaotic scene, the decedent was

erroneously reported dead.[1] Ultimately, he did perish. Plaintiffs, as personal representatives for the estate of the decedent, filed suit against the township and responding officers, alleging gross negligence. Defendants moved for summary disposition, asserting that the public duty doctrine barred liability and the requirements of gross negligence, including proximate cause, could not be established, and the trial court agreed. Plaintiffs appeal by right. On appeal, we reverse the trial court's ruling regarding the public duty doctrine. However, we affirm the trial court's holding that plaintiffs could not establish causation, and therefore, the trial court properly granted summary disposition in favor of defendants.

A trial court's ruling on a motion for summary disposition presents a question of law subject to review de novo. *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 486 Mich 311, 317; 783 NW2d 695 (2010). A motion brought pursuant to MCR 2.116(C)(7) alleges that a claim is barred because of immunity by law. *Chelsea Investment Group LLC v City of Chelsea*, 288 Mich App 239, 264; 792 NW2d 781 (2010). To determine whether summary disposition is appropriate on the basis of MCR 2.116(C)(7), a court must examine all documentary evidence submitted by the parties and accept as true the allegations in the complaint unless affidavits or other documentation contradicts them. *Blue Harvest, Inc v Dep't of Transp*, 288 Mich App 267, 271; 792 NW2d 798 (2010). If there are no material facts in dispute or if reasonable minds could not differ regarding the legal effect of the facts, the application of governmental immunity is resolved as an issue of law. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006).

Plaintiffs first allege that the trial court erred in granting summary disposition premised on the public duty doctrine. We agree.

In *White v Beasley*, 453 Mich 308, 316, 552 NW2d 1 (1996) (Opinion by Brickley, J.), our Supreme Court defined the public duty doctrine:

> [t]hat if the duty which the official authority imposes upon an officer is a duty to the public, a failure to perform it, or an inadequate or erroneous performance, must be a public, not an individual injury, and must be redressed, if at all, in some form of public prosecution. On the other hand, if the duty is a duty to the individual, then a neglect to perform it, or to perform it properly, is an individual wrong, and may support an individual action for damages. [Citations omitted.]

In the context of police action, the public duty doctrine protects officers from tort liability for the failure to provide protection except when a special relationship exists. *Id*.

In *Beaudrie v Henderson*, 465 Mich 124, 126-127; 631 NW2d 308 (2001), our Supreme Court declined the invitation to extend the doctrine to police dispatchers and other government

[1] Although a pulse was not detected by at least one officer, a witness testified that the decedent was breathing. Apparently because of the extensive damage to the pickup truck and the presence of other injured individuals at the scene, it was concluded by many responders that the crash was not survivable and first aid was directed elsewhere.

employees. The *Beaudrie* Court held that expansion of the public duty doctrine was "unwarranted because the governmental immunity statute already provides government employees with significant protections from liability." *Id*. at 134. Consequently, with regard to police action, the public duty doctrine was limited to cases "involving an alleged failure of a police officer to protect a plaintiff from the criminal acts of a third party." *Id*. at 141. Because of the *Beaudrie* Court's pronouncement that the expansion of the public duty doctrine is inappropriate in light of the protections offered by governmental immunity statutes, we reject defendants' request to expand the doctrine to police officers acting as first responders in an emergency situation. Accordingly, the trial court erred in granting summary disposition premised on an expansion of the public duty doctrine.

Next, plaintiff asserts that the trial court erred in granting summary disposition when factual issues regarding causation precluded summary disposition. We disagree.

"The governmental tort liability act, MCL 691.1401 *et seq*., provides immunity from tort liability to governmental agencies engaged in a governmental function. MCL 691.1407(1). The act provides immunity from tort liability to governmental employees if, inter alia, the employee's conduct does not amount to gross negligence. The legislative immunity granted to governmental agencies and their employees is broad." *Stanton v City of Battle Creek*, 466 Mich 611, 614-615; 647 NW2d 508 (2002) (footnotes omitted).

MCL 691.1407 provides in relevant part:

> (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:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) 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.
>
> * * *
>
> (7) As used in this section:
>
> (a) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

"[T]he phrase 'the proximate cause' as used in the employee provision of the governmental immunity act, MCL 691.1407(2) . . . means the one most immediate, efficient, and direct cause preceding an injury, not 'a proximate cause.'" *Robinson v City of Detroit*, 462 Mich 439, 445-446; 613 NW2d 307 (2000). Consequently, individual police officers are immune from liability when their actions do not constitute "the" proximate cause of a plaintiff's injuries. *Id*. at 445. The appropriate inquiry involves addressing "the" proximate cause, not foreseeability or superseding causes. *Cooper v Washtenaw Co*, 270 Mich App 506, 509-510; 715 NW2d 908 (2006). Indeed, the plain language of MCL 691.1407, *Briggs Tax Serv, LLC v Detroit Public Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010), only addresses "the" proximate cause. Consequently, police officers cannot be responsible for the suicide of an inmate in jail, *Cooper*, 270 Mich App at 509, and fire fighters cannot be responsible for deaths of residents for the manner in which they respond to a fire, *Love v City of Detroit*, 270 Mich App 563, 566; 716 NW2d 604 (2006).

In the present case, "the most immediate, efficient, and direct cause" of the decedent's injury was the vehicular accident. Plaintiffs' contention, that the opinion offered by their expert regarding causation precludes summary disposition, is without merit. The duty to interpret and apply the law is allocated to the courts, not the parties' expert witnesses. *Hottmann v Hottmann*, 226 Mich App 171, 179-180; 572 NW2d 259 (1997).[2]

Affirmed in part and reversed in part.[3] Defendants may tax costs, having prevailed on appeal. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood

[2] In the trial court, plaintiffs asserted that an excerpt of the Dr. Hickey deposition created a genuine issue of material fact, thereby precluding summary disposition as a matter of law. However, on the record presented, the deposition excerpt contained in the narrative portion of the brief failed to meet plaintiffs' burden, *Blue Harvest*, 288 Mich App at 271, and summary disposition premised on governmental immunity was therefore appropriate as a matter of law, *Willett*, 271 Mich App at 45.

[3] In light of our conclusion regarding the proximate cause, we do not address defendants' alternative grounds for affirmance. Additionally, we note that plaintiffs abandoned the issue of defendant township liability by failing to cite authority and brief the issue. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008).