STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF CALISTA SPRINGER, by SUZANNE LANGDON as Personal Representative,

Plaintiff-Appellee,

V

ANTHONY JOHN SPRINGER and MARSHA SPRINGER,

Defendants,

and

DIANA KAMPHUES and CENTREVILLE PUBLIC SCHOOLS,

Defendants-Appellees,

and

PATRICIA SKELDING and CYNTHIA BARE, a/k/a CYNTHIA THIELEN,

Defendants-Appellants.

UNPUBLISHED
May 17, 2012

No. 302184
St. Joseph Circuit Court
LC No. 10-000898-NO

Before: M.J. KELLY, P.J., and WILDER and SHAPIRO, JJ.

PER CURIAM.

The present lawsuit arises from the death of Calista Springer, a minor child, as a result of a house fire during which she was chained to her bed. Following her death, her grandmother, Suzanne Langdon, acting as personal representative of her estate, filed suit against defendants Anthony and Marsha Springer (the minor's father and stepmother), the Centreville Public Schools, Diana Kamphues (a school counselor in Centreville), and Child Protective Services (CPS) employees Patricia Skelding and Cynthia Bare. In the present appeal, defendants Skelding and Bare appeal as of right the January 3, 2011, order denying their motion for

summary disposition based upon governmental immunity under MCL 2.116(C)(7). We reverse and remand for entry of summary disposition in favor of Skelding and Bare.

Appellate review of a motion for summary disposition is de novo. *Poppen v Tovey*, 256 Mich App 351, 353; 664 NW2d 269 (2003). Likewise, the applicability of governmental immunity and exceptions to governmental immunity are also questions of law to be reviewed de novo. *Co Rd Ass'n of Mich v Governor*, 287 Mich App 95, 117-118; 782 NW2d 784 (2010). For purposes of evaluating a motion for summary disposition under MCR 2.116(C)(7), the contents of the plaintiff's complaint are accepted as true unless contradicted by the moving party's documentation. *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008). "If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law." *Poppen*, 256 Mich App at 354.

As CPS employees, Skelding and Bare sought summary disposition on the basis of governmental immunity. "An employee of a governmental agency acting within the scope of his or her authority is immune from tort liability unless the employee's conduct amounts to gross negligence that is the proximate cause of the injury." *Kendricks v Rehfield*, 270 Mich App 679, 682; 716 NW2d 623 (2006), citing MCL 691.1407(2). In the present case, no one contests whether Skelding and Bare acted within the scope of their authority as employees for a governmental agency engaged in the exercise of a governmental function. For purposes of this appeal, Skelding and Bare also concede that a jury could reasonably find that the facts alleged in Langdon's complaint amounted to gross negligence. Thus, on appeal, we are only asked to determine if reasonable minds could differ as to whether Skelding's and Bare's conduct was "the proximate cause" of the minor's torture and death within the meaning of MCL 691.1407(2)(c). As held in *Robinson v Detroit*, 462 Mich 439, 445-446; 613 NW2d 307 (2000), "the proximate cause" refers to the "one most immediate, efficient, and direct cause preceding an injury, not 'a proximate cause.'"

The facts in the present case are largely undisputed. For years, Marsha and Anthony tied their daughter to her bed and subjected her to physical abuse. CPS received numerous complaints from teachers, citizens, and school counselors attesting to the fact that the minor was being tied to her bed and physically abused. Skelding conducted an investigation and concluded there was insufficient evidence of abuse and neglect; Bare signed off on Skelding's decision. Taken as true, the facts alleged in the complaint suggest Skelding and Bare utterly failed in their duty to intervene on the minor's behalf, and indeed, as previously noted, they concede their gross negligence for the purposes of this appeal. However, even assuming Skelding and Bare were grossly negligent, no reasonable juror could conclude that their conduct was "the one most immediate, efficient, and direct cause preceding an injury." *Id.* It is undisputed that Skelding and Bare were not involved in tying the minor to her bed or otherwise abusing her. Nor was the child in the custody of CPS, or directly under the care of either Skelding or Bare. Rather, the minor resided with her parents, Marsha and Anthony, who were responsible for her care. Marsha and Anthony, not Skelding and Bare, made the decision to tie the minor to her bed, and they engaged in this conduct of their own free will. The failures of Skelding and Bare, compared to the deliberate actions of her parents, are too removed to be the one, direct cause of the minor's injury.

Moreover, the fire that caused the minor's death occurred more than two years after CPS received its last complaint, and neither Skelding nor Bare were involved with starting the fire or preventing the minor's escape from the home. Accepting the pleaded facts as true, Skelding and Bare failed to protect the minor and their failure was arguably a proximate cause of her death. However, under *Robinson*, 462 Mich at 445-446, 459, 462, governmental immunity does not inquire into whether an employee's actions were one of a number of proximate causes. Rather, it must be reasonably concluded that the conduct at issue was "the one most immediate, efficient, and direct cause" of the injury. Here, given Marsha and Anthony's deliberate restraint of their daughter long after any involvement by CPS employees, we conclude that no reasonable juror could determine that the actions of Skelding and Bare were "the proximate cause" of the minor's injury and death. For this reason, the trial court erred in denying Skelding and Bare's motion for summary disposition.

Reversed and remanded for entry of an order granting summary disposition to defendants Skelding and Bare. We do not retain jurisdiction. Skelding and Bare, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Douglas B. Shapiro