STATE OF MICHIGAN

COURT OF APPEALS

ROZELLE JACKSON,

Plaintiff-Appellant,

v

PERKINS HIGGINS,

Defendant-Appellee,

and

DETROIT PUBLIC SCHOOLS,

Defendant.

UNPUBLISHED
December 27, 2012

No. 305838
Wayne Circuit Court
LC No. 09-031884-NO

Before: RONAYNE KRAUSE, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendant[1] in this negligence/governmental immunity action. We reverse because there is a genuine issue of fact regarding whether defendant's conduct was the proximate cause of plaintiff's injury.[2]

This lawsuit arises from an alleged incident on January 8, 2007 in which plaintiff suffered hand fractures requiring surgery. Plaintiff was a student at Finney High School in Detroit. Defendant was employed there as a security guard. According to the testimony of another student, plaintiff and several other students were talking outside the lunch room when defendant security guard, holding a taser in his hand, ordered plaintiff to come over to him. There was no apparent reason for this and the other students, at least initially, concluded that the guard was simply engaged in joking banter. Defendant then asked one of the other students to grab plaintiff. When one did, defendant came towards plaintiff with the taser. Plaintiff got out

[1] Detroit Public Schools is not involved in this appeal, so we use the term "defendant" to refer exclusively to Mr. Higgins.

[2] Defendant-Appellee has not filed a brief in this appeal.

of his classmate's grasp and attempted to run from defendant. Plaintiff testified that defendant "was chasing me with the taser, he had the taser in his hand getting closer to me." He also stated that as he ran from defendant he fell into a wall, striking his hand. . ." When asked if had tripped over something, plaintiff stated, "I think I tripped over my own feet."

Defendant testified that the event described by plaintiff and the two student witnesses never occurred and that it was wholly fiction. He also testified that he carried only a metal detector, not a taser, as a school security guard.[3] However, defendant did not dispute that there were questions of material fact as to these issues and as to gross negligence and moved for summary disposition solely on the grounds that his alleged actions could not have been the proximate cause of plaintiff's injury citing MCL 691.1407(2) and *Robinson v City of Detroit*, 462 Mich 439, 458; 613 NW2d 307 (2000). The trial court agreed and granted summary disposition to defendant.

This Court reviews de novo a trial court's granting of a defendant's motion for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10). *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004). In reviewing a motion for summary disposition under MCR 2.116(C)(7), a court considers the affidavits, pleadings, and other documentary evidence presented by the parties and accepts the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true. *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). The evidence is to be viewed "in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). "The court is not permitted to assess credibility or to determine facts on a motion for summary disposition." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1995). We must make "all legitimate inferences in favor of the nonmoving party." *Moll v Abbott Laboratories*, 444 Mich 1, 27-28, n. 36; 506 NW2d 816 (1993).

As we concluded in *Tarlea*, 263 Mich App at 92, a case like the instant matter should be dismissed where "[n]o reasonable person could find that the [defendant's] misconduct was the proximate cause of [plaintiff's injury]" and to be *the* proximate cause, the action must be "the one most immediate, efficient and direct cause." *Tarlea*, 263 Mich App at 89.

We conclude that the trial court, however, did not consider the evidence in the light most favorable to plaintiff. The court wrongly required plaintiff to wholly eliminate all other possible causes, rather than requiring plaintiff to demonstrate that among the causes, a jury could reasonably find that defendant's actions constituted the "most immediate, efficient and direct cause" when it stated:

> It cannot be said that the defendant's acts alone were the most immediate, efficient, and direct cause preceding the injury under the *Robinson* test. And I can say that the breaking of a wrist in the plaintiff's case here is not clearly

[3] Curiously, defendant, who has not filed a brief to this Court, is apparently not certain whether or not he was working as a security officer at Finney High School in January of 2007, though that should be simple enough to determine.

> attributable to the defendant alone, and instead may just as fairly be attributed to the plaintiff who tripped over his own feet. Or can be attributed to [another student] who had kind of a bear hold on him, or was holding him, even if it's a fake hold and releasing him. And it's the pulling and releasing that caused him to stumble, which is what he said. Because he said it came right after the release, is what his own testimony was in his own deposition.

This conclusion is not consistent with the record when viewed in the light most favorable to plaintiff. While it might be reasonable for a jury to conclude that plaintiff fell because of the interference from another student, there was also testimony that contradicted such a conclusion. Two witnesses testified that plaintiff ran down a hall and around a corner after the other student released him and before he fell into the wall.

The trial court also concluded as a matter of law that the most direct cause of the injury was "plaintiff tripping over his own feet." However, this conclusion is not consistent with a view of the evidence in the light most favorable to plaintiff. Plaintiff was not running for fun or as a result of his own wishes. Rather, he was purposely sprinting away from a man because that man was chasing him with an activated taser. Under this view of the evidence, a reasonable juror could certainly conclude that defendant's actions of chasing a student with a drawn weapon was the most "immediate, efficient and direct cause" of the fleeing student's fall and injury. The trial court's conclusion that plaintiff's failure to avoid losing his balance while fleeing from an armed man constitutes a separate "cause" is tantamount to punishing plaintiff for not fleeing more effectively. Plaintiff lost his footing and fell because he was being chased by defendant.

The trial court also compared this case to *Oliver*, in which a plaintiff sued police officers who allegedly injured him in the process of arresting him. However, in that case the officers were not the proximate cause of the defendant's injuries because the plaintiff failed to comply with lawful police orders and physically resisted the officers' attempts to handcuff him. 290 Mich App at 686-687.

By contrast, there is *no* testimony in the present case that defendant had a legitimate reason for chasing plaintiff. Other than defendant, all the witnesses appear to agree that defendant was engaged in horseplay with a weapon in a school hallway. Thus, the holding *Oliver* does not support the trial court's decision in this case.

There is no indication that plaintiff somehow brought the defendant's behavior on himself and plaintiff had every right and reason to flee from someone running at him with a weapon. What the trial court described as plaintiff "tripping over his own feet" was not an intervening cause of plaintiff's injury, but was a part of the process of getting injured as a result of being chased.

Summary disposition was inappropriate. Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro