STATE OF MICHIGAN

COURT OF APPEALS

THADDEUS M. GUYZIK and RICHARD GUYZIK, Plaintiffs-Appellees, v JEFFREY KRAUSE, SR., Defendant-Appellant, and DENNIS HOPKINS and ED KOLEDO, Defendants.	UNPUBLISHED November 27, 2012 No. 306759 Genesee Circuit Court LC No. 10-094594-NI

Before: MURPHY, C.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant Jeffrey Krause, Sr., appeals as of right the trial court's order denying his motion for summary disposition on the basis of governmental immunity. The trial court concluded that there was a question of fact whether Krause's gross negligence was the proximate cause of plaintiff Thaddeus M. Guyzik's injury. We reverse and remand.

I. FACTS

A. BACKGROUND FACTS

Guyzik's injury arose from his attempt to operate the sprinkler system that watered Linden High School's practice football field. The sprinkler system is composed of three spigots at various locations on the field, and a retractable hose attached to a movable reel. Each spigot has an on/off valve and a metal cap. Two clamps secure the cap to the spigot. To operate the sprinkler system, the operator places the reel near a spigot, turns the valve to its "off" position, releases the metal cap from the clamps, connects the hose to the spigot with the clamps, and turns the valve to its "on" position. The operator then drags the hose across the field and connects it to a sprinkler. When the operator turns the sprinkler on, the reel automatically retracts the hose and sprinkler to the spigot while the sprinkler is operating, and then the system automatically turns itself off.

Krause testified that several players, including Guyzik, would routinely set up the sprinkler system before and after football practice. The students would get the sprinkler out. Krause would release the lever on the reel, so that the students could drag the hose to the other end of the football field and connect it to the sprinkler. Below the sprinkler, there is a button that activates the sprinkler. The students would then turn the sprinkler on.

Krause testified that the students were never responsible for attaching the hose to the spigot, and that he never had problems removing the metal cap from the spigot. He testified that the hose and spigot were only disconnected if the landscapers disconnected them, and that the sprinkler system was normally not pressurized. Guyzik testified that when the hose and the spigot were not connected, he would never connect them, and that Krause never asked students to connect the hose to the spigot.

B. GUYZIK'S INJURY

On July 28, 2009, Guyzik attended football practice at the high school. Guyzik testified that Krause told him to "grab a bunch of guys to go get the water cannon going," and that when he asked whether Guyzik had to turn the water on or off, Krause responded, "[n]o, nothing's on. There's no pressure." Guyzik testified that he saw that the hose was not connected to the spigot, and yelled, "[h]ey, Coach, can you come here." He testified that Krause either did not hear him, or ignored the question. Guyzik then attempted to remove the metal cap from the spigot. It flew off and struck him, injuring his face and teeth. He testified that he heard a "poosh" sound come from the spigot.

Krause testified that on July 28, someone disconnected the hose to either mow or chalk the practice field. He testified that he did not know that the hose and spigot were not connected, and that if he had known that he would have connected the hose himself. He testified that the only way to determine if the spigot and hose were connected was to observe it from a close distance, and that on the day Guyzik was injured, he did not walk over to the spigot to see if the hose was connect because he was tired and cold.

Dennis Hopkins, the head coach of the football team, testified that operating the sprinklers was Krause's responsibility. Hopkins testified that he operated the sprinkler system one time in July 2008. On that occasion, water unexpectedly shot out of the spigot and struck him in the chest, knocking him onto his back. Hopkins testified that he was not injured, and only informed the principal about the incident. Guyzik and Shari Oole, an athletic trainer, testified that Hopkins told them that this incident occurred three days before Guyzik's injury. Krause testified that Hopkins never told him about the incident.

C. PROCEDURAL HISTORY

Guyzik and his father, Richard Guyzik, filed a complaint on October 4, 2010. The complaint named Krause, Hopkins, and the Superintendent of Linden Community Schools as defendants. Guyzik alleged that the defendants knew about the risk of harm the sprinkler system posed because of Hopkins's accident, and that Krause's request that Guyzik operate the sprinkler system was grossly negligent. The trial court dismissed Hopkins and the Superintendent as

defendants in response to motions for summary disposition, and they are not involved in this appeal.

In August 2011, Krause filed a motion for summary disposition, alleging that his conduct was not grossly negligent as a matter of law. Guyzik argued that whether Krause was grossly negligent should be a question of fact for the jury, because his failure to ensure that the hose was connected demonstrated his recklessness, and his statement that he would never have asked Guyzik to connect the hose demonstrated that knew the risk of harm that the sprinkler system posed. The trial court determined that there was a question of fact concerning gross negligence on the basis of the Guyzik's arguments, and denied Krause's motion summary disposition.

II. GOVERNMENTAL IMMUNITY AND GROSS NEGLIGENCE

A. STANDARD OF REVIEW

This Court reviews de novo the trial court's determination on a motion for summary disposition.[1]

A defendant is entitled to summary disposition under MCR 2.116(C)(7) if the plaintiff's claims are barred because of immunity granted by law.[2] The moving party may support its motion with affidavits, depositions, admissions, or other documentary evidence that would be admissible at trial.[3] We must consider this evidence and determine whether it indicates that the defendants are entitled to immunity.[4] We consider the contents of the plaintiff's complaint to be true, unless contradicted by the documentary evidence.[5] If reasonable minds could not differ on the legal effects of the facts, it is a question of law whether governmental immunity bars a plaintiff's claim.[6]

B. GROSS NEGLIGENCE EXCEPTION STANDARDS

A defendant who is an individual employee of a governmental agency is entitled to governmental immunity if (1) the employee reasonably believed he or she was acting within the scope of his or her authority, (2) the employee was 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 or damage."[7] The only element at issue in this appeal is

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[1] *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008).

[2] *Odom*, 482 Mich at 466.

[3] *Id.*; MCR 2.116(G)(5), (6).

[4] *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011).

[5] *Odom*, 482 Mich at 466.

[6] *Snead*, 294 Mich App at 354.

[7] MCL 691.1407(2)(a)-(c); *Robinson v Detroit*, 462 Mich 439, 458-459; 613 NW2d 307 (2000).

whether Krause's conduct amounted to gross negligence that was the proximate cause of Guyzik's injuries.

Gross negligence is not itself a cause of action.[8] The plaintiff must still show the elements of negligence: (1) a duty owed to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.[9] However, "[e]vidence of ordinary negligence does not create a material question of fact concerning gross negligence."[10]

An employee's conduct is grossly negligent if the employee engages in "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."[11] Stated another way, the employee must have shown "almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks."[12]

C. APPLYING THE STANDARDS

Krause argues that he is entitled to governmental immunity because he did not engage in reckless conduct that demonstrated a substantial lack of concern for whether injury resulted, and his conduct was not the proximate cause of Guyzik's injuries. Guyzik argues that a jury could find that Krause was grossly negligent if it accepted three facts as true: (1) that Krause knew that the pressurized sprinkler system was dangerous, (2) that Krause instructed Guyzik to set up the sprinkler system without checking to see whether the hose was connected and the system was pressurized, and (3) that Krause ignored Guyzik's request to "come over here." Even accepting these facts as true, we conclude that no reasonable juror could find that Krause's conduct was grossly negligent under Michigan law.

The trial court noted that even Guyzik was not sure whether Krause ignored or did not hear his request to "come over here" when Guyzik was setting up the sprinkler system. For the purposes of this analysis, we will assume that Krause ignored Guyzik's request.

Guyzik argues that Krause substantially disregarded the dangers of the sprinkler system. He primarily bases his argument on (1) Krause's statement that he would "absolutely not" ask a student to connect the hose to the spigot and (2) that the system had knocked Hopkins down before. Far from demonstrating a reckless lack of concern about the dangers of the sprinkler system, Krause's statement demonstrates that Krause was concerned for the safety of his students. And Guyzik presented no evidence that Krause was aware that the system had knocked Hopkins down.

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[8] *Cummins v Robinson Twp*, 283 Mich App 677, 692; 770 NW2d 421 (2009); see *Maiden v Rozwood*, 461 Mich 109, 131, 135; 597 NW2d 817 (1999).

[9] *Cummins*, 283 Mich App at 692.

[10] *Maiden*, 461 Mich at 122-123.

[11] MCL 691.1407(7)(a); *Maiden*, 461 Mich at 122-123.

[12] *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004).

Even if Krause instructed Guyzik to set up the sprinkler system without checking to see whether the hose and spigot were already connected or pressurized, a reasonable juror could not find that Krause's conduct was grossly negligent. Because Krause could have taken additional precautions, his conduct *may* have been ordinarily negligent.[13] But "[e]vidence of ordinary negligence does not create a material question of fact concerning gross negligence."[14] Importantly, there was evidence that Guyzik took precautions against the risks posed by the sprinkler system. Both Krause and Guyzik testified that Krause never asked students to connect the hose to the spigot. Guyzik presented no evidence that students ever disregarded Krause's warning and connected the hose to the spigot themselves, or that any further precautions were necessary. There was no evidence that Krause could have anticipated that Guyzik would attempt to remove the metal cap himself, even if he ignored Guyzik's request to "come over here." Thus, we conclude that Krause's conduct did not demonstrate the sort of "willful disregard of precautions" that would allow a reasonable juror to find that Krause's conduct was grossly negligent.

We conclude that no reasonable juror could find that Krause's conduct was grossly negligent. Krause is entitled to summary disposition as a matter of law.

Reversed and remanded for the trial court to enter an order dismissing Guyzik's claims. We do not retain jurisdication.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

[13] *Tarlea*, 263 Mich App at 90.

[14] *Maiden*, 461 Mich at 122-123.