

STATE OF MICHIGAN
COURT OF APPEALS

DAWN COOPER, Personal Representative of the Estate
of DEMETRIUS MORTON, Deceased,

Plaintiff-Appellee,

v

WASHTENAW COUNTY, CITY OF ANN ARBOR,
ANTHONY WOODFORD, PAMELA RACITI, and
EUGENE HAHN,

Defendants,

and

MICHAEL WATCHOWSKI and STEVE LAWRENCE,

Defendants-Appellants.

DAWN COOPER, Personal Representative of the Estate
of DEMETRIUS MORTON, Deceased,

Plaintiff-Appellant,

V

WASHTENAW COUNTY, ANTHONY WOODFORD,
PAMELA RACITI, and EUGENE HAHN,

Defendants-Appellees,

and

CITY OF ANN ARBOR, MICHAEL WATCHOWSKI,
and STEVE LAWRENCE,

Defendants.

FOR PUBLICATION
April 4, 2006
9:10 a.m.

No. 262141
Washtenaw Circuit Court
LC No. 04-001290-NI

No. 262903
Washtenaw Circuit Court
LC No. 04-001290-NI

Official Reported Version

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

JANSEN, J.

In Docket No. 262141, defendants Ann Arbor Police Officers Michael Watchowski and Steve Lawrence appeal as of right the trial court's order denying their motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). In Docket No. 262903, plaintiff appeals by leave granted an order granting summary disposition to defendants Washtenaw County and individual county law enforcement personnel Anthony Woodford, Pamela Raciti, and Eugene Hahn. Plaintiff challenges the dismissal of the individual county defendants only. We conclude that all individual city defendants and the individual county defendants were entitled to summary disposition on the basis of governmental immunity. We therefore reverse the order denying the individual city defendants' motion and affirm the order granting summary disposition in favor of the individual county defendants. These consolidated appeals are being decided without oral argument pursuant to MCR 7.214(E).

This action arises from the death of plaintiff's decedent, Demetrius Morton, who committed suicide while confined in a holding cell at the 15th District Court. At issue in these appeals is whether the individual defendants, law enforcement personnel involved in Morton's confinement, are entitled to summary disposition on the basis of governmental immunity, MCL 691.1407(2), because their alleged conduct was not "the proximate cause" of Morton's death.

This Court reviews de novo rulings on summary disposition motions. *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999).

MCL 691.1407(2) provides individual immunity for governmental employees under certain circumstances. The statute states, in part:

Except as otherwise provided in this section, . . . each officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person . . . caused by the officer, employee . . . while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee . . . 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 . . . conduct does not amount to gross negligence that is *the proximate cause* of the injury or damage. [MCL 691.1407(2) (emphasis added).]

The phrase "the proximate cause" within subdivision c "is best understood as meaning the one most immediate, efficient, and direct cause preceding an injury." *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000).

We agree with defendants that the one most immediate, efficient, and direct cause of Morton's death was his own conduct. This case is analogous to *Kruger v White Lake Twp*, 250 Mich App 622, 626-627; 648 NW2d 660 (2002). There, the plaintiff asked the police to take her

daughter into custody because the daughter was intoxicated and posed a danger to herself and others. The police took her into custody and handcuffed her in a booking room. She escaped from the police station, ran into traffic, was hit by a vehicle, and died. This Court held that police officers were entitled to governmental immunity because their actions could not be considered "the proximate cause" of the death. The Court stated that "there were several other more direct causes of Kathryn's injuries than defendant officers' conduct, e.g., her escape and flight from the police station, her running onto M-59 and into traffic, and the unidentified driver hitting plaintiff's decedent. Any gross negligence on the defendant officers' part is too remote to be 'the' proximate cause of Katherine's injuries." *Id.*, p 627.

It is plaintiff's position here that Morton's actions should not be considered the proximate cause of his death because, at least in prisoner suicide cases, causation is intertwined with foreseeability. Therefore, if Morton's actions were foreseeable, then those actions are not a superseding cause, and, thus, defendants' conduct may be deemed "the proximate cause." Plaintiff primarily relies on an unpublished federal district court opinion, *Schreiber v Crawford Co*, 2002 WL 1907974; 2002 US Dist LEXIS 15349 (ED Mich, 2002).

We decline plaintiff's invitation to adopt the reasoning in *Schreiber*. The decisions of this Court and our Supreme Court that address the issue of "the proximate cause" under MCL 691.1407(2) in circumstances in which there were multiple causes of the harm do not discuss the concepts of intervening and superceding causation and do not indicate that foreseeability of an intervening cause is relevant to whether it may be deemed "the proximate cause" under the statute. For example, in *Robinson, supra* at 462, "the proximate cause" of injuries and deaths resulting from a collision following a police pursuit was the reckless conduct of the driver of the fleeing vehicle, rather than the pursuit of the individual police officers. Whether the reckless conduct or the flight of the vehicle was foreseeable to the officers was not mentioned. In *Curtis v City of Flint*, 253 Mich App 555, 562-563; 655 NW2d 791 (2002), the proximate cause of the plaintiff's injuries when her vehicle collided with the back of a car that abruptly changed lanes and stopped for an emergency vehicle was the abrupt movement and stopping of the vehicle that she hit, not the actions of the driver of the emergency vehicle. Whether the evasive movements were foreseeable to the driver of the emergency vehicle was not considered. There is no discussion of intervening causation or foreseeability in these cases and no indication that the cause that is the most immediate, efficient, and direct cause preceding an injury may not be deemed "the proximate cause" for purposes of MCL 691.1407(2) if it was foreseeable to the governmental actors.

Because the alleged conduct of the individual defendants in this case was not "the proximate cause" of Morton's death, these defendants are immune from tort liability pursuant to MCL 691.1407(2). Therefore, we reverse the order denying the individual city defendants' motion for summary disposition and affirm the order granting summary disposition in favor of the individual county defendants.

Affirmed in part, reversed in part, and remanded for entry of judgment in favor of the individual city defendants.

Markey, J., concurred.

/s/ Kathleen Jansen

/s/ Jane E. Markey