

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PREIJA SINISHTAJ, Personal Representative of  
the Estate of DONNA J. SINISHTAJ, Deceased,

UNPUBLISHED  
July 9, 2002

Plaintiff-Appellant,

v

CITY OF DETROIT, LLOYD T. ALLEN,  
LIEUTENANT GIGNATI, SERGEANT  
KOWALSKI, OFFICER R. STUOLEY,  
LIEUTENANT FRANK HARO, and  
INVESTIGATOR WHITFIELD,

No. 230539  
Wayne Circuit Court  
LC No. 99-930464-NI

Defendants-Appellees.

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Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant Whitfield. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Decedent Donna Sinishtaj filed a complaint for divorce from her husband Leka Sinishtaj, and obtained a personal protection order (PPO) against him. Subsequently Leka repeatedly contacted Donna and threatened her with physical harm. Donna reported the incidents to the police. On March 23, 1998, Leka broke into Donna's home, tied her with rope, and threatened to sexually assault and kill her. Donna escaped and called the police. On March 26, 1998, Donna met with Investigator Whitfield of the Sex Crimes Unit, who determined that Leka should be arrested as soon as possible. Whitfield delivered the relevant documentation to the mobile unit the same day. On March 31, 1998 Leka shot and killed Donna and then committed suicide.

Plaintiff filed a wrongful death action, alleging that defendants had actual or constructive notice of the PPO issued against Leka, and that defendants' failure to take steps to locate and arrest Leka constituted gross negligence and a proximate cause of Donna's death. Defendant

City of Detroit was dismissed with prejudice. The trial court granted summary disposition in favor of individual defendants Allen, Gignati, Kowalski, Stuoley, and Haro.<sup>1</sup>

Whitfield moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that he was entitled to governmental immunity and that plaintiff's complaint failed to state a claim on which relief could be granted because his actions were not the proximate cause of Donna's death. In response, plaintiff argued that because Leka was mentally ill and insane, his act of shooting Donna was not voluntary and therefore could not be considered the proximate cause of Donna's death. The trial court granted Whitfield's motion, finding that Leka's act of shooting Donna was the direct and immediate cause of Donna's death.

We review a trial court's decision on a motion for summary disposition de novo. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996).

A governmental employee may be liable for grossly negligent conduct if that conduct is "the proximate cause of the injury or damage." MCL 691.1407(2)(c). To be the proximate cause of an injury, the conduct must be the "one most immediate, efficient, and direct cause of the injury or damage ... ." *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). If the facts bearing on proximate cause are not disputed and reasonable minds could not differ, the issue of probable cause is one of law for the court. *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995).

Plaintiff argues that the trial court erred by granting Whitfield's motion for summary disposition. Plaintiff continues to assert that because Leka was mentally ill and insane at the time he shot Donna, his act was not voluntary and thus could not be considered the proximate cause of Donna's death. See, e.g., *People v Zak*, 184 Mich App 1, 12; 457 NW2d 59 (1990). We disagree and affirm. Whitfield could be held liable for Donna's death only if his conduct was grossly negligent and was the proximate cause, i.e., "the most immediate, efficient, and direct cause," of Donna's death. MCL 691.1407(2)(c); *Robinson, supra*. The undisputed evidence showed that Whitfield last had contact with Donna five days before her death. Whitfield took Donna's statement and prepared documentation for Leka's arrest. No evidence showed that Whitfield was personally responsible for arresting Leka. The immediate, direct cause of Donna's death was Leka's act of shooting her.

Plaintiff's complaint did not allege that Leka was mentally ill and insane at the time he shot Donna. Plaintiff's assertion that Leka was mentally ill and insane is completely unsubstantiated. However, even assuming arguendo that Leka was so afflicted, that fact would not make Whitfield's actions the proximate cause of Donna's death. In the civil context, an insane person can expect or intend the results of his actions. See *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 569-570; 489 NW2d 431 (1992). Plaintiff has cited no authority that holds that the acts of a mentally ill or insane person cannot constitute the proximate cause of an injury or damages. The trial court did not err by finding that even if Leka was insane his actions still constituted the proximate cause of Donna's death under the *Robinson* standard. The trial

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<sup>1</sup> Plaintiff does not challenge that decision on appeal.

court properly granted summary disposition in favor of Whitfield.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Martin M. Doctoroff