STATE OF MICHIGAN

COURT OF APPEALS

MARGIE SIMS,

Plaintiff-Appellant,

v

DARELL FITZGERALD, KATHLEEN ARMSTRONG and CITY OF DETROIT,

Defendants-Appellees,

and

JACKIE RANDELL DRISKELL and ROBERT DRISKELL,

Defendants.

UNPUBLISHED
July 23, 2002

No. 232056
Wayne Circuit Court
LC No. 99-913202-NO

Before: Talbot, P.J., and Cooper and D.P. Ryan*, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court order granting defendants-appellees' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants Fitzgerald and Armstrong, Detroit police officers, were in pursuit of a car driven by defendant Jackie Driskell. Driskell ran a red light and collided with another vehicle. The force of the impact propelled his car onto the sidewalk, where he struck plaintiff. The court ruled that the city and both officers were immune from liability.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a

* Circuit judge, sitting on the Court of Appeals by assignment.

basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

As a general rule, a governmental agency is immune from tort liability when it is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1). By specific exception to this rule, a governmental agency is liable for bodily injury "resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle" owned by the governmental agency. MCL 691.1405. To the extent plaintiff seeks to impose liability on the city for the officers' decision to pursue Driskell, the city is immune because a police officer's decision to pursue a fleeing vehicle does not constitute "operation of a motor vehicle" and does not fall within the motor vehicle exception to governmental immunity. *Robinson v Detroit*, 462 Mich 439, 457-458; 613 NW2d 307 (2000). To the extent plaintiff seeks to impose liability on the city for the officers' operation of the vehicle, the city is immune because the officers' car did not hit Driskell's car or otherwise physically force it off the road or into the other vehicle or into plaintiff. *Id*. at 457.

An employee of a governmental agency is immune from tort liability for an injury to a person caused by the employee while in the course of employment if (1) the employee is acting or reasonably believes he or she is acting within the scope of his or her authority, (2) the governmental agency is 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. MCL 691.1407(2). The phrase "the proximate cause" is not synonymous with "a proximate cause" and to impose liability on a government employee for gross negligence, the employee's conduct must be "the one most immediate, efficient, and direct cause preceding an injury." *Robinson, supra* at 458-459, 462.

The officers' pursuit of Driskell was not the proximate cause of plaintiff's injuries. Rather, plaintiff's injuries most immediately and directly resulted from Driskell's loss of control of his car after he ran the red light and crashed into another vehicle. While plaintiff argues that but for the officers' pursuit of Driskell, she would not have been injured, but-for causation is not sufficient. The concept of proximate cause comprises both causation in fact or but-for causation, and legal or proximate cause. The two types of causation are not identical and causation in fact must be established "in order for legal cause or 'proximate cause' to become a relevant issue." *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Thus, while the officers' conduct may have been a cause in fact of plaintiff's injuries, it was not "the one most immediate, efficient, and direct cause of" those injuries. *Robinson, supra* at 462. Therefore, the trial court did not err in ruling that the officers were also immune from liability.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan