

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

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LAWRENCE LONG, Conservator and Guardian  
for ANDREW LONG, a Legally Incapacitated and  
Protected Person,

UNPUBLISHED  
December 2, 2003

Plaintiff-Appellee,

V

No. 241020  
Wayne Circuit Court  
LC No. 00-020009-NO

DORRIS BAKER,

Defendant-Appellant,

and

MORRIS POUJOU, JR., CITY OF DETROIT,  
DETROIT EDISON COMPANY, JOHN DOE #1,  
JOHN DOE #2, JANE DOE #1, and JANE DOE  
#2,

Defendants.

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Before: Murray, P.J., and Gage and Kelly, JJ.

PER CURIAM.

Defendant Dorris Baker appeals by leave granted the trial court's order denying her motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of a pedestrian/automobile accident in the evening hours of October 21, 1998. Andrew Long was crossing South Fort Street near Conway in the city of Detroit when he was struck by a car driven by defendant, Morris Poujou, Jr. At the time of the accident, the streetlights near the intersection were not in operation. Andrew suffered serious and permanent injuries.

Plaintiff filed suit naming as defendants Poujou, the city of Detroit, and Detroit Edison Company. Poujou entered into a settlement with plaintiff, Detroit Edison was dismissed with prejudice, and the trial court granted the city's motion for summary disposition. Plaintiff filed an amended complaint naming as defendants the city, and city employees Dorris Baker and four "Doe" employees. The complaint alleged that the city negligently failed to maintain or repair the

streetlights, and that Baker and the Doe individuals were grossly negligent in failing to activate, maintain, or repair the streetlights in a timely manner. The complaint alleged that Long's injuries were "a direct and proximate result" of defendants' negligence.

Baker moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). She argued that she was entitled to governmental immunity because her actions were not the proximate cause of Long's injuries. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Baker contended that Poujou's act of hitting Long proximately caused Long's injuries. In response, plaintiff argued that evidence showed that the city was aware of longstanding problems with the functioning of the streetlights in the area, and that a genuine issue of fact existed as to whether Baker's actions proximately caused Long's injuries.

The trial court denied Baker's motion, stating that the fact that the streetlights were not operating at the time of the accident could be the proximate cause of the accident because the accident would not have occurred had the streetlights been operating. The trial court found that a question of fact existed regarding causation. The trial court denied Baker's motion for reconsideration, but granted plaintiff leave to file a second amended complaint. In that complaint plaintiff alleged that Baker's actions were grossly negligent and were "the direct and proximate" cause of Long's injuries.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting within the scope of their authority, if they are engaged in the discharge of a governmental function, and if their "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2). Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." 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, supra*.<sup>1</sup> If the facts bearing on proximate cause are not disputed and if 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). Evidence of ordinary negligence does not create a question of fact regarding gross negligence. *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

We reverse the trial court's order denying Baker's motion for summary disposition and remand for entry of an order granting summary disposition in favor of Baker. Baker, a government employee, could be held liable for Long's injuries only if her conduct was grossly negligent and was the proximate cause, i.e., the "one most immediate, efficient, and direct cause" of the injuries. MCL 691.1407(2)(c); *Robinson, supra*. The most immediate, direct cause of

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<sup>1</sup> This case was filed in June 2000, and *Robinson, supra*, was decided in July 2000. Our Supreme Court recently clarified that *Robinson, supra*, applies retroactively. *Ewing v Detroit*, 468 Mich 886; 661 NW2d 235 (2003).

Long's injuries was Poujou's act of hitting him with his vehicle. Contrary to plaintiff's assertion, any failure on Baker's part to activate, repair, or maintain the streetlights was not "the" sole proximate cause of Andrew's injuries. Neither Poujou nor the police officer who responded to the accident testified that the lack of street lighting was the proximate cause of Long's injuries. Poujou stated only that had the streetlights been functioning, he would have had a better opportunity to stop his vehicle. The police officer stated that had the streetlights been functioning visibility would have been better for both Poujou and Long. Reasonable minds could not differ as to whether Baker's conduct was so reckless as to demonstrate a substantial lack of concern for whether Long could be injured. MCL 691.1407(2)(c); *Maiden, supra*. The facts bearing on proximate cause are not disputed, and reasonable minds could not differ as to whether Baker's conduct was "the one most immediate, efficient, and direct cause" of Long's injuries. Baker was entitled to summary disposition. *Robinson, supra; Rogalski, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly