STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF JEREMIAH GULLEY, by LEE GULLEY, Personal Representative, Plaintiff-Appellant, v ROBERT SMITH and JOHN SCHMIDT, Defendants-Appellees.	UNPUBLISHED November 27, 2012 No. 304291 Kalamazoo Circuit Court LC No. 2010-000431-NO

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Plaintiff, Lee Gulley, in his capacity as personal representative of the estate of Jeremiah Gulley, brought this action against defendants following the death of his two-month-old son, Jeremiah. Plaintiff alleged that defendants had a duty to report suspected child abuse or neglect under the Child Protection Law (CPL), MCL 722.621 *et seq.*, that they failed to timely make such a report, and that their failure was the proximate cause of Jeremiah's death. The trial court found that defendants were entitled to governmental immunity under the Government Tort Liability Act (GTLA), MCL 691.1407(2), and entered summary disposition in favor of defendants. We affirm.

On October 15, 2008, defendants Robert Smith and John Schmidt, Kalamazoo County Deputy Sheriffs, responded to a domestic assault complaint at Angela Cooks' apartment. Cooks said that she and Gulley, with whom she had a relationship, had been arguing and that she asked Gulley to leave. She further alleged that after Gulley left, he returned by breaking in through an open window and that he pushed her. Defendants, surmising that alcohol was involved administered a preliminary breath test to both Gulley and Cooks. Both had high blood alcohol contents. Jeremiah, the son of Gulley and Cooks, was in the apartment at the time.

Defendants arrested Gulley and left Jeremiah with Cooks. Gulley alleged in an affidavit that he warned defendants not to leave Jeremiah alone with Cooks because Cooks "was extremely intoxicated." Defendants disputed that Gulley warned them about Cooks and observed that when they left, Jeremiah appeared to be well nourished and that he did not display any signs of distress. Defendants left Cooks' apartment at approximately 7:40 p.m. At some time between 7:40 p.m. and 9:50 p.m., defendants, pursuant to department policy, contacted

Child Protective Services (CPS) and informed a CPS worker of the arrest, that an infant was at the scene, and that Cooks' blood alcohol content was .178. CPS did not intervene in the matter.

Sometime during the evening of October 15 or the early morning hours of October 16, Cooks killed Jeremiah by repeatedly throwing him to the floor in her apartment; she later pleaded no contest to second-degree murder. Plaintiff brought this suit against defendants alleging that because they knew that Cooks was intoxicated and because defendants had been warned that Jeremiah was not safe with Cooks, they had a duty to immediately report the situation under the CPL. Plaintiff further alleged that defendants failed to report immediately, and that their failure to do so was the proximate cause of Jeremiah's death. The trial court determined that defendants were entitled to governmental immunity under the GTLA, which grants government employees, such as police officers, immunity from tort liability when:

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

The phrase "the proximate cause" means "the one most immediate, efficient, and direct cause of the injury or damage . . . ." *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Because it determined that plaintiff could not prove that defendants were "the proximate cause" of Jeremiah's death, the trial court granted summary disposition to defendants.

Plaintiff acknowledges that he cannot overcome governmental immunity because he cannot demonstrate that defendants were "[t]he one most immediate, efficient, and direct cause . . ." of Jeremiah's death. *Id*. Indeed, Cooks, not defendants, was the most immediate and direct cause of Jeremiah's death. Still, plaintiff asks us to find that the CPL, by expressly naming law enforcement officers as persons against whom a cause of action may be brought for failing to report suspected child abuse or neglect, creates an exception to the GTLA. In general, the immunity provisions granted under MCL 691.1407 are to be "construed broadly and the statutory exceptions are to be narrowly construed." *Stanton v Battle Creek*, 466 Mich 611, 618; 647 NW2d 508 (2002). "Under the GTLA, the [government] defendant is immune from tort liability unless the Legislature has pulled back the veil of immunity and allowed suit by citizens against the government." *Lash v Traverse City*, 479 Mich 180, 195; 735 NW2d 628 (2007) (quotation omitted).

We need not determine whether the CPL creates an exception to the GTLA because we find that regardless of whether governmental immunity applies, there is no genuine issue of material fact concerning defendants' liability. Indeed, if governmental immunity applies, plaintiff concedes that he cannot establish defendants' liability. Moreover, we find that even if governmental immunity does not apply, plaintiff cannot maintain a cause of action against defendants under the CPL.

The CPL imposes a duty on a host of individuals to immediately report suspected child abuse or neglect to the Department of Human Services (i.e., CPS). MCL 722.623(1)(a). Law enforcement officers are expressly named as individuals who have a duty to report. *Id.* The act also expressly creates a cause of action against those who fail to report and holds those persons liable "for the damages proximately caused by the failure." MCL 722.633(1). The proximate cause standard employed under the CPL is different from the more demanding standard used under the GTLA and instead falls in line with the proximate cause standard used in other negligence actions. *Marcelletti v Bathani*, 198 Mich App 655, 658, 662; 500 NW2d 124 (1993). Our Supreme Court has defined "a proximate cause" as "a foreseeable, natural, and probable cause . . . ." *Shinholster v Annapolis Hosp*, 471 Mich 540, 546; 685 NW2d 275 (2004). Intervening acts that constitute superseding proximate causes may, however, absolve a defendant of liability. *May v Parke, Davis & Co*, 142 Mich App 404, 419; 370 NW2d 371 (1985).

We find that although there may be factual questions as to whether defendants had a duty to report in this situation and as to whether defendants immediately contacted CPS, there is no factual dispute as to whether defendants' delay in contacting CPS, if there were any, proximately caused Jeremiah's death. After defendants contacted CPS, it took no action in the matter. Thus, CPS's inaction was an intervening act that absolves defendants of liability. *Id.* Indeed, even if defendants made the report to CPS as soon as they left Cooks's apartment, Jeremiah's death would still have occurred because CPS did not follow-up or intervene in the matter. Hence, the requisite link between defendants' failure to make an immediate report and Jeremiah's death is missing, and there is no genuine issue as to whether defendants' failure to timely report was the proximate cause of Jeremiah's death. See *Marcelletti*, 198 Mich App at 662 (finding that even if the abuse or neglect had been reported earlier, defendants were not liable where there was no link between the failure to timely report and the injury). Accordingly, because there is no genuine issue of material fact as to whether defendants were the proximate cause of Jeremiah's death, summary disposition in favor of defendants was appropriate. *Id.*

While the trial court did not decide the case on this issue, it was nonetheless raised before the trial court and preserved in defendants' motion for summary disposition. *Peterman v State Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). Moreover, "[w]hen this Court concludes that a trial court has reached the correct result, this Court will affirm even if it does so under alternative reasoning." *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001). Consequently, we affirm the trial court's grant of summary disposition albeit for different reasons from those stated by the trial court.

We affirm.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens