

STATE OF MICHIGAN
COURT OF APPEALS

JANE DOE,

Plaintiff-Appellee,

v

27TH JUDICIAL DISTRICT COURT and The
Estate of ROBERT SAMSON,

Defendants,

and

NATALIE SHAUL,

Defendant-Appellant.

UNPUBLISHED
February 14, 2013

No. 307523
Wayne Circuit Court
LC No. 10-010274-NZ

Before: CAVANAGH, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Defendant, Natalie Shaul, appeals as of right an order denying her renewed motion for summary disposition pursuant to MCR 2.116(C)(7) premised on governmental immunity.¹ We reverse.

Defendant had been the director of the probation department at the 27th Judicial District Court (District Court) since 1996. Codefendant Robert Samson (Samson) had been employed as a probation officer at the District Court since 1996, but had been a volunteer in the probation department since 1983. In 2009, plaintiff was placed on probation and Samson was her assigned probation officer. During her probation, plaintiff alleged that Samson sexually accosted her and solicited sexual relations with him which resulted in Samson being charged with four felony counts of soliciting criminal sexual conduct. Subsequently, Samson committed suicide and plaintiff filed her several count complaint arising from her allegations. With regard to defendant, plaintiff asserted a claim of gross negligence premised on defendant's purported failure to enforce rules and guidelines that would have prevented Samson's illegal conduct.

¹ We refer to Natalie Shaul as "defendant" in this opinion.

Defendant's first motion for summary disposition premised on a claim that the action against her was barred by governmental immunity—because plaintiff failed to plead facts establishing that she was grossly negligent or that such gross negligence was the proximate cause of plaintiff's injuries—was denied. Defendant eventually filed a renewed motion for summary disposition raising substantially the same arguments. Plaintiff responded to defendant's motion, arguing that defendant was grossly negligent as evidenced by an affidavit of a former probationer assigned to Samson who averred that she wrote a letter to defendant several years ago informing defendant that Samson had solicited her for sex. Accordingly, plaintiff argued, defendant was grossly negligent and her gross negligence was the proximate cause of plaintiff's injuries. In reply to plaintiff's response, defendant argued that she was not *the* proximate cause of plaintiff's alleged injuries, i.e., the one most immediate, efficient, and direct cause preceding plaintiff's alleged injuries. The trial court denied defendant's motion for summary disposition, holding that the affidavit submitted by plaintiff gave rise to a question of fact as to whether defendant knew or had reason to know of Samson's propensity for assault. This appeal followed.

Defendant argues that her motion for summary disposition premised on governmental immunity should have been granted because plaintiff cannot demonstrate that her alleged misconduct was the proximate cause of plaintiff's injuries. We agree.

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *Oliver v Smith*, 290 Mich App 678, 683; 810 NW2d 57 (2010). "A motion for summary disposition pursuant to MCR 2.116(C)(7) tests whether a claim is 'barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties.'" *Miller v Lord*, 262 Mich App 640, 643; 686 NW2d 800 (2004) (citation omitted). In reviewing such a motion, a court considers the affidavits, pleadings, and other documentary evidence presented by the parties and accepts the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true. *Oliver*, 290 Mich App at 683 (citation omitted). "To survive a motion for summary disposition brought under MCR 2.116(C)(7), the plaintiff must allege facts warranting the application of an exception to governmental immunity." *Miller*, 262 Mich App at 643.

Generally, under MCL 691.1407(2)(c), a governmental employee is immune from tort liability when the employee's "conduct does not amount to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(7)(a) defines "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Accordingly, evidence of ordinary negligence is not sufficient to establish "gross negligence;" rather, the definition suggests a willful disregard of precautions or safety measures and a singular disregard for substantial risks. See *Oliver*, 290 Mich App at 685; *Chelsea Investment Group LLC v Chelsea*, 288 Mich App 239, 265; 792 NW2d 781 (2010). Further, to avoid governmental immunity, such gross negligence must also be "the proximate cause of the injury or damage." MCL 691.1407(2)(c); *Tarlea v Crabtree*, 263 Mich App 80, 83; 687 NW2d 333 (2004). In *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), our Supreme Court explained that "[t]he phrase 'the proximate cause' is best understood as meaning the one most immediate, efficient, and direct cause preceding an injury." *Id.* at 459.

In this case, defendant argued that she was neither grossly negligent nor the proximate cause of plaintiff's purported injuries; thus, she was entitled to governmental immunity. Plaintiff

argued that defendant was grossly negligent because she ignored a claim by a former female probationer that Samson had solicited her for sex. Plaintiff supported this claim with an affidavit of the probationer who averred that she wrote a letter to defendant several years ago which informed defendant that Samson had solicited her for sex. Plaintiff argued that this affidavit created a genuine issue of material fact whether defendant knew of Samson's propensity to solicit sex from female probationers and "chose to ignore the situation;" thus, establishing gross negligence. Further, plaintiff argued, there was a genuine issue of material fact whether defendant's conduct constituted the one most immediate, efficient, and direct cause of plaintiff's injuries because defendant created or failed to mitigate the hazard of plaintiff being subjected to a sexual predator.

We have significant reservations regarding plaintiff's claim that reasonable jurors could conclude that defendant's conduct rose to the level of gross negligence, i.e., that her conduct was "so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a); see also *Oliver*, 290 Mich App at 685; *Chelsea Investment Group, LLC*, 288 Mich App at 265. But even if we agreed that a question of fact existed on the issue of defendant's gross negligence, reasonable jurors could not find that this alleged misconduct was "the proximate cause" of plaintiff's alleged injuries.² See *Robinson*, 462 Mich at 463. Rather, "the one most immediate, efficient, and direct cause preceding" plaintiff's alleged injuries was Samson's sexual misconduct. See *id.* Defendant's alleged misconduct was too remote to overcome the grant of immunity set forth under MCL 691.1407(2)(c). Accordingly, the trial court's order denying defendant's renewed motion for summary disposition under MCR 2.116(C)(7) is reversed.

Reversed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Henry William Saad

² Plaintiff's alleged injuries included: "physical injuries, pain, suffering, emotional distress, mental anguish, unlawful sexual abuse, psychological counseling and treatment, lost wages, posttraumatic stress disorder, physical illness, medical expenses, injuries to her reputation leading to pecuniary loss, humiliation, mortification, and embarrassment, all of which damages continue into the future."