STATE OF MICHIGAN

COURT OF APPEALS

PAMELA HURLEY, Next Friend of RICHARD A. BURNS, Minor,

Plaintiff-Appellant,

v

CHRISTIE PINNOW and LINCOLN CONSOLIDATED SCHOOL DISTRICT,

Defendants-Appellees.

UNPUBLISHED
July 22, 2003

No. 238431
Washtenaw Circuit Court
LC No. 00-001284-NO

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

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

Defendant Pinnow, the minor plaintiff's science teacher, was preparing a demonstration that required hot water. She boiled the water on hot plates placed on the classroom floor. The minor plaintiff was injured when one of the pots of water overturned on his foot. The trial court ruled that defendants 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 all 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 basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

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). In other words, "[a] governmental employee is not immune from tort

liability for injuries to persons caused by the employee while in the course of employment if the employee's actions amount to gross negligence that is the proximate cause of the injury." *Stanton v Battle Creek*, 237 Mich App 366, 374; 603 NW2d 285 (1999).

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). Thus, "evidence of ordinary negligence does not create a material question of fact concerning gross negligence." *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999) (footnote omitted). In addition, the employee's gross negligence must be the proximate cause of the plaintiff's injuries, not just a proximate cause. This means that the employee's conduct must be "the one most immediate, efficient, and direct cause preceding an injury." *Robinson v Detroit*, 462 Mich 439, 458-459, 462; 613 NW2d 307 (2000).

In this case, Pinnow was arguably negligent in heating water on hot plates set on the floor directly behind the students' seats in an area where students would be walking. However, Pinnow warned students not to leave their seats without permission to control traffic around the hot plates and try to prevent injury. Once she learned Burns was injured, she assisted in treating the burn. Under these circumstances, the trial court did not err in concluding that the evidence was insufficient to establish gross negligence. Even assuming that Pinnow were grossly negligent, her conduct in placing the hot plates on the floor was not the one most immediate and direct cause of Burns' injury. She did not spill the hot water on Burns or cause the pot to overturn. Rather, Burns himself overturned the pot, spilling water on himself, when he tripped over another student's chair leg. The trial court did not err in granting summary disposition in favor of Pinnow. Because vicarious liability is derivative, summary disposition in favor of the school district was also proper.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens