

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

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ESTATE OF GRACIE SIMMONS, by HOLLY  
PRESTON, Personal Representative,

UNPUBLISHED  
June 26, 2012

Plaintiff-Appellant,

v

LISA MILLYARD, and CARLTON  
KORZENIOWSKI,

No. 302561  
Monroe Circuit Court  
LC No. 09-027263-NO

Defendants-Appellees.

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Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) on grounds that plaintiff's claims were barred by governmental immunity. For the reasons set forth in this opinion, we affirm.

Plaintiff gave birth to the decedent, Gracie Simmons, on November 20, 2004. Gracie was fathered by plaintiff's then-boyfriend, Joseph Simmons. Gracie lived with plaintiff, but would occasionally stay with her father and his live-in girlfriend, Sonya Moussaed. In July of 2005, Gracie returned from a visit with her father with bruises on her body. Plaintiff filed a report with the Monroe County Child Protective Services (CPS). The case was assigned to defendant Lisa Millyard, a CPS worker. At the time, Millyard was supervised by defendant Carlton Korzeniowski.

Approximately two months later, Joseph and Moussaed brought Gracie to a hospital with burns on her feet. Moussaed informed the emergency room physician that Gracie stepped in boiling water that had spilled on the floor. The emergency room physician did not find Moussaed credible and reported suspected child abuse to CPS. Seven months later, Moussaed beat Gracie to death at Joseph's home. Moussaed was eventually convicted of first-degree murder and sentenced to life imprisonment for her conduct.

Plaintiff, as personal representative of Gracie's estate, commenced this wrongful death action against defendants individually. Plaintiff alleged that defendants failed to follow Department of Human Services (DHS) policies and procedures, and as a result, complaints of suspected child abuse were not properly investigated, which ultimately resulted in Gracie's

brutal murder at the hands of Moussaed. Plaintiff alleged, *inter alia*, that defendants' conduct amounted to gross negligence.<sup>1</sup>

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (C)(8). For purposes of the motion, defendants accepted as true the factual allegations in plaintiff's complaint. However, defendants argued that because it could not be shown that their conduct was the proximate cause of Gracie's death, plaintiff's gross negligence claim was barred by governmental immunity.

After entertaining oral argument, the trial court ruled that plaintiff's claims were barred by governmental immunity and that summary disposition was proper under MCR 2.116(C)(7). Although the court found that defendants' conduct rose to the level of gross negligence, it concluded that defendants' conduct was not "the proximate cause" of Gracie's death. The trial court entered an order on January 21, 2011, and plaintiff now appeals as of right.

We review *de novo* a trial court's decision whether to grant a motion for summary disposition. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008). Summary disposition is appropriate under MCR 2.116(C)(7) where a plaintiff's claim is "barred because of immunity granted by law." *Id.* (Quotation omitted). In deciding a motion brought pursuant to MCR 2.116(C)(7), a court considers all documentary evidence submitted by the parties and "accepts well-pleaded allegations as true and construes them in a light most favorable to the nonmoving party." *Tryc v Mich Veterans' Facility*, 451 Mich 129, 133-134; 545 NW2d 642 (1996). When a defendant raises the defense of governmental immunity, "the plaintiff must allege facts justifying application of an exception to governmental immunity in order to survive a motion for summary disposition." *Id.* at 134. "If no [material] facts are in dispute, or if reasonable minds could not differ regarding the legal effect of the facts, the question whether the claim is barred by governmental immunity is an issue of law." *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006) (quotation omitted).

"The legislative immunity granted to governmental agencies and their employees is broad." *Stanton v City of Battle Creek*, 466 Mich 611, 615; 647 NW2d 508 (2002). With respect to governmental employees, the employee provision of the Government Tort Liability Act (GTLA), MCL 691.1401 *et seq.*, provides in relevant part:

[E]ach . . . 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 all of the following are met:

(a) The . . . employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.

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<sup>1</sup> Plaintiff included several other claims in her complaint; however, those claims are no longer at issue in the case.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

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

Neither party disputes that defendants were acting within the scope of their authority and were engaged in the exercise or discharge of a governmental function at the time they were involved with Gracie's case at CPS. Further, defendants did not contest that their conduct rose to the level of gross negligence. Therefore, the only issue remaining in this case involves whether defendants' gross negligence was the proximate cause of Gracie's death.

In *Robinson v City of Detroit*, 462 Mich 439; 613 NW2d 307 (2000), our Supreme Court held that the phrase "the proximate cause" in MCL 691.1407(2)(c) contemplates "one" cause and explained that the phrase "is best understood as meaning the one most immediate, efficient and direct cause preceding an injury." *Id.* at 458-459. In *Robinson*, the plaintiff's decedent was an innocent passenger inside a vehicle that became involved in a high-speed pursuit with the defendant police officers. *Id.* at 448-449. The pursuit ultimately ended in a collision that killed the decedent. *Id.* Our Supreme Court held that the defendant officers were immune from tort liability because their pursuit of the fleeing vehicle did not amount to "the proximate cause" of the decedent's injuries. *Id.* at 462. Instead, the Court reasoned that the conduct of the driver of the fleeing vehicle was the "one most immediate, efficient, and direct cause" of the plaintiff's injuries. *Id.*

In this case, plaintiff argues that summary disposition was inappropriate because a question of fact remains as to whether defendants' gross negligence amounted to "the one most immediate, efficient and direct cause" that preceded Gracie's death.

Plaintiff's contention that defendants failed to comply with DHS protocol in conducting their investigation rests on the assumption that, had defendants acted differently, they would have stopped the murder. However, plaintiff cannot articulate with any degree of certainty that, had defendants properly investigated the alleged instances of child abuse, they would have successfully terminated Joseph's parental rights such that Gracie would not have been in Joseph's home on the day of the murder. Essentially, plaintiff cannot identify which of defendants' acts or omissions amounted to "the one most immediate, efficient, and direct cause" that preceded Gracie's death. Furthermore, plaintiff does not explain how defendants' failure to act constituted "the one most immediate, efficient and direct cause" that preceded Gracie's death where there were multiple actors involved with Gracie's care. Thus, even when viewed in a light most favorable to plaintiff, a reasonable juror could not conclude that defendants' conduct amounted to "the one most immediate, efficient, and direct cause" that preceded Gracie's death.<sup>2</sup>

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<sup>2</sup> Arguably, Joseph and plaintiff were in the best position to protect Gracie. The record reveals that Joseph knew of the prior instances of child abuse, yet he continued to allow Moussaed to have contact with the child. On the day of the murder, Joseph left Gracie in a position where

More importantly, plaintiff cannot prove that defendants' conduct amounted to "the one most immediate, efficient, and direct cause" that preceded Gracie's death where Moussaed murdered Gracie by beating her to death. While defendants' acted in a grossly negligent manner in dispensing with their duties as CPS workers, ultimately, Moussaed's grotesque criminal conduct amounted to "the one most immediate, efficient and direct cause" that preceded Gracie's tragic death. *Robinson*, 462 Mich at 458-459. Accordingly, the trial court properly granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).

Affirmed. No costs are awarded to either party. MCR 7.219

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Elizabeth L. Gleicher

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Moussaed was able to beat the child to death. Similarly, there is no evidence that plaintiff objected to Joseph's continued visits with Gracie even after Gracie returned from Joseph's care with bruises on her head on one occasion and was treated for burns on another occasion. These findings do not excuse the gross negligence of defendants, however, such findings raise the issue of why plaintiff and Joseph's failure to take any action to protect Gracie from Moussaed did not amount to "the proximate cause" of Gracie's death. In essence, plaintiff seeks from this Court a ruling that defendants' similar gross indifference to Gracie's safety constituted "the proximate cause" of her tragic death.