

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

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SCHEHERAZDE C. LOVE, Personal  
Representative of the Estates of MILIQUE J.  
DIGGS, DEYMOND L. DIGGS, LATIYA DIGGS,  
and GENTRY GARY TRESVANT,

Plaintiff-Appellant,

v

CITY OF DETROIT, and DETROIT FIRE  
DEPARTMENT MEMBERS CARL COOK,  
HAROLD ACOFF, JEFFREY SCHLOMER,  
ROBERT WOODS, CHIEF M. HASTINGS, LT.  
BENSKY, F.E.O. ERKARD, S.F.F. HARTMAN,  
F.F. MAKULSKI, SGT. GASEL, F.F. TOZER,  
S.F.F. GERARDY, F.F. SANDERS, CAPT.  
DAVIS, D.E. CARRINGTON, F.F. THORNTON,  
CAPT. BARBARICH, F.E. MORTIER, F.F.  
SISAY, F.F. D. TONTI, SGT. R. SMITH, F.E.O. M.  
O'BRIAN, S.F.F. D. JOHNSON, SGT. P. LOPEZ,  
F.F.D. D. EMANUEL, F.F. FIJOLEK, F.F. F.  
MCGARRY, SGT. RICE, F.E.O. WILCOX, F.F.  
SMITH, T.F.F. T. WHITE, LT. COLLINS, D.E.  
FRANKLIN, F.F. SMITH, SGT. GRIFFITH, D.A.  
SUCORA, F.F. NEERY, F.F. SZARAFINSKI, SR.  
CHIEF ANDRE, SGT. E. VOSS, D.E. MCLEAN,  
F.F. DORIAS, T.F.F. MULFORD, SGT. R.  
KUMMER, D.E. SUMERACKI, F.F. H. WILSON,  
F.F.L. SPITZIG, LT. G. WILLIAMS, F.E.O. D.  
ADAMSON, F.F. D. DIXON, F.F. T.  
STALLWORTH, SGT. MARSHALL, D.A.  
JOHNSON, F.F. HOSKINS, SGT. WHITE, F.F.D.  
BROWN, F.F. POSH, F.F. SCHNEIDER, LT. D.  
RICHARDSON, each and every member of the  
DETROIT FIRE DEPARTMENT assigned to E17  
and E08 on February 17, 1999, referred to herein as  
JOHN DOES 1-12,

Defendants-Appellees.

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FOR PUBLICATION  
April 13, 2006  
9:00 a.m.

No. 257375  
Wayne Circuit Court  
LC No. 02-205765-NZ

Official Reported Version

Before: Cooper, P.J., and Jansen and Markey, JJ.

MARKEY, J.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of the individual defendants, members of the Detroit Fire Department. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Decedents died when they were unable to escape from a fire that engulfed their home. Plaintiff filed a suit alleging that the individual defendants acted in a grossly negligent manner by failing to timely respond to the fire and failing to take effective steps to rescue the trapped individuals.

The individual defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), alleging that the fire was deliberately set and that the arson, not their actions or omissions, proximately caused the deaths. The trial court agreed and granted the motion.<sup>1</sup>

We review de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002).

Governmental employees are immune from liability for injuries they cause during the course of their employment if they are acting or reasonably believe they are acting within the scope of their authority, if they are engaged in the exercise or 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. *Robinson v Detroit*, 462 Mich 439, 458; 613 NW2d 307 (2000), citing MCL 691.1407(2). Gross negligence is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). To be the proximate cause of an injury, the gross negligence must be "the one most immediate, efficient, and direct cause" preceding the injury. *Robinson, supra* at 462. 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).

Plaintiff argues that the trial court erred by granting summary disposition in favor of the individual defendants. Her theory is that, had the firefighters not acted in a grossly negligent manner, the persons trapped in the house would have been rescued. Plaintiff relies in part on *Dean v Childs*, 262 Mich App 48, 57-58; 684 NW2d 894 (2004) (*Dean I*), rev'd in part 474 Mich 914 (2005) (*Dean II*), in which this Court held that evidence that the defendant firefighter sprayed water on a deliberately set fire, "pushing" the fire toward the rear of the residence where other firefighters were attempting to rescue persons trapped inside the house, raised a question of fact regarding whether the defendant acted in a grossly negligent manner.

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<sup>1</sup> The trial court had previously granted summary disposition in favor of the city.

Our Supreme Court reversed in part this Court's decision in *Dean* and remanded for entry of an order granting the defendant's motion for summary disposition of the plaintiff's claim alleging gross negligence. That Court adopted as the basis for its decision in *Dean II* Judge Griffin's opinion dissenting in part in *Dean I*. Judge Griffin concluded that "the" proximate cause of the deaths of the decedents was the fire itself, not the defendant's actions in response to the fire. *Dean I, supra* at 62. Similarly, in this case, decedents died from the fire that engulfed the second and third floors of their home. The fire was advanced by the time the firefighters arrived at the home. Witnesses indicated that the victims could be heard screaming for help after the firefighters arrived; however, no evidence established that the firefighters could have reached the victims or that, if fire fighters had acted more aggressively, the victims would have been rescued. The firefighters' actions did not constitute the proximate cause of decedents' deaths. MCL 691.1407(2)(c); *Robinson, supra* at 462. The trial court correctly granted summary disposition in favor of the individual defendants.<sup>2</sup>

We affirm.

Jansen, J., concurred.

/s/ Jane E. Markey

/s/ Kathleen Jansen

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<sup>2</sup> On appeal, defendants assert that plaintiff failed to establish that they owed a duty to decedents. Defendants did not raise the issue of duty in the context of their motion for summary disposition, and the trial court did not consider the issue in making its decision. Therefore, we need not consider the issue. Our review is limited to issues actually decided by the trial court. *Preston v Dep't of Treasury*, 190 Mich App 491, 498; 476 NW2d 455 (1991).