

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER LITZENBERG,
Plaintiff-Appellee,

UNPUBLISHED
September 20, 2011

v

No. 299217
Macomb Circuit Court
LC No. 2010-000947-NO

MATTHEW GUIFFRE, L'ANSE CREUSE
PUBLIC SCHOOL DISTRICT, DAVID SMITH,
and MIKE DYJEWSKI,

Defendants,

and

DONALD RODA,

Defendant-Appellant.

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Defendant Donald Roda (defendant) appeals by right the circuit court's order denying his motion for summary disposition. Because defendant's conduct was not *the* proximate cause of plaintiff's injury, we reverse the decision of the circuit court and remand for entry of judgment in favor of defendant.

Plaintiff worked as an athletic trainer on the sidelines during a junior varsity lacrosse game at L'Anse Creuse High School. While the junior varsity team was playing, varsity lacrosse players began practicing and throwing a lacrosse ball in the area between the sidelines and the bleachers. Plaintiff alleged that she told the varsity lacrosse players and defendant, the varsity lacrosse coach, that it was not safe for the players to be throwing the ball on the sidelines because someone could get injured. Additionally, plaintiff alleged that the previous week, the high school track coach had asked defendant not to have his players practice on the sidelines while the track team was using the field because he felt it was dangerous.

The players continued to practice on the sidelines after plaintiff warned defendant that it was dangerous. At some point, a player threw a lacrosse ball and struck plaintiff in the back of the head.

Plaintiff filed suit against Matthew Guiffre (a lacrosse player), the L'Anse Creuse School District, and defendant. Plaintiff alleged that defendant had been grossly negligent by failing to properly train and supervise the lacrosse team members. According to plaintiff, defendant had failed to take action to prevent the lacrosse players from practicing on the sidelines despite her warnings. Plaintiff alleged that her injury had resulted from defendant's acts or omissions in this regard.

Defendant and the school district generally denied the allegations contained in plaintiff's complaint and subsequently moved for summary disposition under MCR 2.116(C)(7). Defendant argued that plaintiff's claim against him was barred by § 7 of the Governmental Tort Liability Act (GTLA), MCL 691.1407. For the purposes of the motion, defendant did not argue that his actions did not rise to the level of gross negligence. Rather, defendant argued that his acts or omissions could not be "the" proximate cause of plaintiff's injuries because plaintiff's injuries were most directly caused by the ball thrown by one of the lacrosse players. The circuit court denied defendant's motion, ruling that "a genuine issue of material facts exists regarding whether defendant Roda's actions in bringing the team to practice between the sidelines and bleachers or his failure to prohibit the players from practicing there was the immediate, efficient and direct cause of plaintiff's injuries."

We review de novo the circuit court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "With regard to a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court reviews the affidavits, pleadings, and other documentary evidence presented by the parties and 'accept[s] the plaintiff's well-pleaded allegations, except those contradicted by documentary evidence, as true.'" *Young v Sellers*, 254 Mich App 447, 450; 657 NW2d 555 (2002), quoting *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999). The applicability of governmental immunity is a question of law that is reviewed de novo on appeal. *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004).

Under MCL 691.1407(2)(c), governmental employees are immune from tort liability unless their conduct "amount[s] to gross negligence that is the proximate cause of the injury or damage." The GTLA defines "[g]ross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Whether a governmental employee's conduct constituted gross negligence that proximately caused a plaintiff's injury is generally a question of fact; but if reasonable minds could not differ, it is a question of law for the court. *Briggs v Oakland Co*, 276 Mich App 369, 374; 742 NW2d 136 (2007).

The standard for determining proximate cause in governmental immunity cases was articulated by our Supreme Court in *Robinson v Detroit*, 462 Mich 439, 445-446; 613 NW2d 307 (2000), wherein the Court held that "the phrase 'the proximate cause' as used in the employee provision of the governmental immunity act, MCL 691.1407(2)... means the one most immediate, efficient, and direct cause preceding an injury, not 'a proximate cause.'" In reaching this conclusion, the *Robinson* Court stated that "[t]he Legislature's use of the definite article 'the' clearly evinces an intent to focus on one cause. The phrase 'the proximate cause' is best understood as meaning the one most immediate, efficient, and direct cause preceding an injury." *Id.* at 458-459.

Turning to the present case, plaintiff argues that defendant's conduct was *the* proximate cause of her injuries. Plaintiff argues that defendant created a hazard by directing his players to practice along the sidelines during the junior varsity game, that defendant was warned of the danger, and that defendant, as the coach, had the authority to prevent the harm. She asserts that defendant failed to act, thus proximately causing her injury. We are not persuaded.

As the *Robinson* Court made clear, in the context of governmental immunity the statutory phrase "the proximate cause" focuses on "the *one* most immediate, efficient, and direct cause preceding an injury." *Id.* at 445-446 (emphasis added). We fully acknowledge that defendant's acts or omissions may have contributed to plaintiff's injury in some way. However, in this case, the one most immediate and direct cause of plaintiff's injury was the ball thrown by the lacrosse player. Therefore, although defendant's conduct may have amounted to "a" cause of plaintiff's injury, it simply was not "the" proximate cause of plaintiff's injury. See *id.* Defendant was entitled to summary disposition.

Reversed and remanded for entry of judgment in favor of defendant consistent with this opinion. We do not retain jurisdiction. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Amy Ronayne Krause
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen