

STATE OF MICHIGAN
COURT OF APPEALS

LERONDA SMITH, Personal Representative of
the Estate of MYRTIS A. KEITH, Deceased,

Plaintiff-Appellant,

v

WARREN C. SMITH,

Defendant-Appellee,

and

GOLDEN FINANCIAL, INC., DEWALD
REALTY COMPANY, JOHN P. DEWALD,
and JOAN R. DEWALD,

Defendants.

UNPUBLISHED

August 9, 2005

No. 261387

Wayne Circuit Court

LC No. 03-334216-NO

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of summary disposition in favor of defendant, Warren C. Smith.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant owns an apartment building in Detroit, where he employed Rudy Williams as a caretaker, providing him with an apartment in exchange for the work he performed. Plaintiff's decedent, Myrtis Keith, was a tenant of the building. Keith participated in a consensual sexual relationship with Williams, who beat and strangled her to death.² Williams maintained that the killing occurred when he and Keith were having "rough" consensual sex while intoxicated.

¹ Defendants Dewald Realty Company, John P. Dewald, Joan R. Dewald and Golden Financial, Inc. are not parties to this appeal.

² Williams pleaded nolo condendere to second-degree murder, MCL 750.317, and was sentenced
(continued...)

Williams had served time in prison for prior convictions of criminal sexual conduct, breaking and entering with intent to commit a felony, and escaping from prison. Plaintiff brought suit under a theory that defendant negligently hired Williams without inquiring into his extensive criminal history, and that defendant's negligence was a proximate cause of Keith's death because defendant placed Williams in the position of the apartment building's caretaker. The trial court granted summary disposition because plaintiff could not show that defendant's actions caused Keith's death under the circumstances.

We review de novo a trial court's ruling on a motion for summary disposition. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. Summary disposition is appropriate if, after reviewing the evidence in a light most favorable to the nonmoving party, the trial court determines that no genuine issue concerning a material fact exists and the moving party is entitled to judgment as a matter of law. *Id.*³

To establish a prima facie case of negligence, a plaintiff must be able to prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of the duty, (3) causation, and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Proximate cause incorporates both cause in fact and legal or "proximate" cause. *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004). To show cause in fact, a plaintiff must show that the injury would not have occurred "but for" the defendant's actions. Legal or proximate cause, on the other hand, "normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences." *Id.* at 86-87, quoting *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Before it can hold that the defendant's negligence was the proximate or legal cause of a plaintiff's injuries, a court must find that the defendant's negligence was a cause in fact of the injuries. "While a plaintiff need not prove that an act or omission was the *sole* catalyst for his injuries, he must introduce evidence permitting the jury to conclude that the act or omission was *a* cause." *Id.* at 87 (emphasis in original).

It is important to bear in mind that a plaintiff cannot satisfy this burden by showing only that the defendant *may* have caused his injuries. Our case law requires more than a mere possibility or a plausible explanation.

Rather, a plaintiff establishes that the defendant's conduct was a cause in fact of his injuries only if he "sets forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." A valid theory of causation, therefore, must be based on facts in evidence. And while "the evidence need not negate all other possible causes," this Court has consistently required that the

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to twenty to forty years in prison.

³ The trial court did not state the subsection under which it granted summary disposition. However, because the trial court relied on documentary evidence other than the pleadings, we treat the case as if the trial court granted summary disposition pursuant to MCR 2.116(C)(10). *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003).

evidence “exclude other reasonable hypotheses with a fair amount of certainty.”
[*Craig, supra* at 87-88 (emphasis in original; footnotes omitted).]

The chain of proximate causation may sometimes be broken by an intervening cause, which is one that actively operates to produce the harm after the negligent conduct of the defendant has occurred. *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985); *Poe v Detroit*, 179 Mich App 564, 577; 446 NW2d 523 (1989). An intervening cause relieves a defendant from liability unless the intervening act was reasonably foreseeable. *McMillian, supra* at 576.

The issues of proximate cause and superseding or intervening cause in a negligence action are generally questions of fact for the jury. *Helmus v Dep’t of Transportation*, 238 Mich App 250, 256; 604 NW2d 793 (1999). However, where the facts bearing on proximate cause are not disputed and if reasonable minds could not differ, then the issue is one of law. *Id.*; *Rogalski v Tavernier*, 208 Mich App 302, 306; 527 NW2d 73 (1995).

In the instant case, the trial court erred in stating that the proper standard involved whether defendant was “the” proximate cause, rather than “a” proximate cause of Keith’s death because an injury can have more than one proximate cause. See *Hagerman v Gencorp Automotive*, 457 Mich 720, 733-734; 579 NW2d 347 (1998). However, even when the trial court errs, we will affirm on alternate grounds when the trial court reaches the right result. *Wickings v Arctic Enterprises, Inc.*, 244 Mich App 125, 150; 624 NW2d 197 (2000).

Plaintiff has failed to establish that “but for” defendant’s actions, the injury would not have occurred. There was no evidence presented to show that defendant’s actions in hiring Williams without first checking his criminal record⁴ caused Keith and Williams to meet. Plaintiff maintains that this conclusion is supported by Williams’ testimony in his criminal proceeding that he met Keith at approximately the same time that he became the building’s caretaker. However, the record is very clear that Williams met Keith two weeks before Keith moved into the apartment building. Thus, while it is possible that the two met in the course of Williams’ employment, it is equally possible that Williams’ employment status had nothing to do with his introduction to Keith. Plaintiff cannot “exclude other reasonable hypotheses with a fair amount of certainty.” *Craig, supra* at 87-88.

In addition, even taking as true plaintiff’s assertion that defendant’s negligence led to the hiring of Williams and served as Williams’ opportunity to meet Keith, their subsequent actions served to break the chain of causation. Plaintiff specifically acknowledges that Keith and Williams had consensual sex at least once before the night of the murder. It is also undisputed

⁴ We are mindful that background criminal information is not readily available to the general public. The Michigan Department of Corrections website, known as the offender tracking information system, does provide information pertaining to felony convictions in Michigan after 1980. See www.state.mi.us/mdoc/asp/otis2.html. However, we note that this does not provide a comprehensive criminal history, and we are not aware of any organization that provides a comprehensive criminal history to the general public free of charge.

that, on the evening of the murder, Keith voluntarily let Williams into her apartment. Plaintiff also conceded that the sexual relations on the evening of the murder were initially consensual. Keith voluntarily engaged in a consensual relationship with Williams that included repeated consensual sexual activity, before the incident that led to her death. The extended relationship between Keith and Williams, and its ultimately tragic conclusion, was not a foreseeable consequence of any negligent conduct by defendant.⁵ These actions act as an intervening, superceding cause of Keith's death. We therefore affirm the trial court's grant of summary disposition.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray

⁵ Plaintiff's attempt to analogize this case to one in which an employer negligently hires a pedophile as a day care provider is unpersuasive because children cannot engage in consensual sexual relationships.