

STATE OF MICHIGAN
COURT OF APPEALS

HANY F. KOULTA, Personal Representative for
the Estate of SAMI F. KOULTA, Deceased,

UNPUBLISHED
July 6, 2006

Plaintiff-Appellee,

v

No. 266886
Macomb Circuit Court
LC No. 2004-005221-NO

CITY OF CENTERLINE,

Defendant,

and

DANIEL MERCIEZ, ROBERT WROBLEWSKI,
and STEVEN HILLA,

Defendants-Appellants.

Before: Bandstra, P.J., and Saad and Owens, JJ.

PER CURIAM.

In this gross negligence action, police officers Daniel Merciez, Robert Wroblewski, and Steven Hilla (“defendants”) appeal as of right from the trial court’s order denying in part their motion for summary disposition. We reverse and remand to the circuit court for entry of judgment in favor of defendants.

On September 13, 2002, defendants responded to a call for “an unwanted subject” at a residence. When defendants arrived at the home, they encountered Chrissy Lucero. Defendants ordered Lucero to leave the residence, which she did. Defendants testified that there was nothing about Lucero’s appearance or demeanor to indicate that she had been drinking. However, according to Lucero, she told defendants she was too intoxicated to drive. Minutes after Lucero drove away from the residence, Lucero’s car collided with a vehicle driven by Sami Koulta. Koulta was killed as a result of the collision. At the time of the accident, Lucero’s blood alcohol level was 0.11.

Defendants contend that the trial court erred in denying their motion for summary disposition because plaintiff failed to establish that defendants owed a duty to the decedent to protect him from being harmed by Lucero, a third party. We agree.

Duty is an essential element of a gross negligence claim. *Smith v Jones*, 246 Mich App 270, 274; 632 NW2d 509 (2001). Whether a duty exists presents a question of law that is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 131; 597 NW2d 817 (1999). A police officer's duty to protect the public from intoxicated drivers does not extend to individual drivers. *Markis v City of Grosse Pointe Park*, 180 Mich App 545, 556; 448 NW2d 352 (1989), citing *Simonds v Tibbitts*, 165 Mich App 480, 483; 419 NW2d 5 (1987). Therefore, defendants' duty to protect the public from Lucero, an intoxicated driver, did not extend to the decedent. Moreover, because defendants' duty was to the public and not to any individual driver, the alleged breach of the duty did not support an individual action for damages. See *White v Beasley*, 453 Mich 308, 316; 552 NW2d 1 (1996).

Because plaintiff failed to establish that defendants owed a duty to the decedent, plaintiff's gross negligence claim against defendants must fail. "Summary disposition of a plaintiff's gross negligence claim is proper under MCR 2.116(C)(8) if the plaintiff fails to establish a duty in tort." *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001), citing *Maiden, supra* at 135. Thus, we reverse the portion of the trial court's order denying defendants' motion for summary disposition on plaintiff's gross negligence claim.

Were we to hold that defendants owed a duty to the decedent and that their conduct constituted gross negligence, which we do not, we would nevertheless conclude that defendants were immune from liability under the governmental tort liability act (GTLA), MCL 691.1401 *et seq.* Under the GTLA, government employees may be liable for grossly negligent conduct only if that conduct is "the" proximate cause of the injuries. MCL 691.1407(2). "The proximate cause" is "the one most immediate, efficient, and direct cause preceding an injury." *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). Thus, it is insufficient if the defendant's actions are simply "a" proximate cause. *Tarlea v Crabtree*, 263 Mich App 80, 92; 687 NW2d 333 (2004). A court may grant summary disposition under MCR 2.116(C)(7) if reasonable jurors could not find that the government employee was "the" proximate cause of the injuries. *Robinson, supra* at 463, citing *Moll v Abbott Laboratories*, 444 Mich 1, 28 n 36; 506 NW2d 816 (1993).

Defendants' alleged conduct was not "the" proximate cause of decedent's death. The one most immediate, efficient, and direct cause of the decedent's injuries was Lucero's vehicle striking the decedent's vehicle. Further, there were other more direct causes of the decedent's injuries than defendants' conduct, including Lucero's speeding and running a red light at the intersection where the accident occurred. Thus, we conclude that defendants' conduct is too remote to be "the" proximate cause of the decedent's injuries. See *Kruger v White Lake Twp*, 250 Mich App 622, 626-627; 648 NW2d 660 (2002).

We reverse the portion of the trial court's order denying defendant's motion for summary disposition and remand to the circuit court for entry of judgment in favor of defendants. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Donald S. Owens