

STATE OF MICHIGAN  
COURT OF APPEALS

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SETH ALAN RICORD,

Plaintiff-Appellee,

v

CORPORAL DEMENA MURPHY, a/k/a  
CORPORAL DEMITA MURPHY,

Defendant-Appellant.

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UNPUBLISHED

July 27, 2006

No. 268837

Washtenaw Circuit Court

LC No. 04-001282-NI

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying her motion for summary disposition under MCR 2.116(C)(7) based on governmental immunity. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured while he was enrolled in a boot camp program where he was serving time for various burglary convictions. Plaintiff was a member of a 15-man work crew assigned to defendant. Toward the end of the day on which the incident occurred, the crew was returning yard equipment to the storage area. According to plaintiff, defendant ordered him to help four other men push a lawn roller, a six-foot wide cylinder with a push bar, because they were having difficulty. Plaintiff testified that defendant ordered him to the center of the bar, with two men on either side of him. When the men decided they needed to rest, they intended to stop on a count of three. Plaintiff indicated in the prison accident report that when "[he] positioned [his] foot to help slow [the roller] down . . . the roller smashed [his foot]." Additionally, plaintiff testified at his deposition that "when [he] put [his] foot back the roller ran up and over [his] foot crushing it." Plaintiff later denied moving his foot back in an attempt to stop the roller. While plaintiff conceded that defendant "had nothing to do with the bar or the roller in any way," and that the roller likely would have stopped had the men all stopped at the same time, he maintained that it was his placement on the roller at defendant's behest that caused his injury.

Defendant moved for summary disposition under MCR 2.116(C)(7), contending that she was immune from liability under MCL 691.1407(2) because the evidence did not support a finding of gross negligence and her alleged conduct was not the proximate cause of plaintiff's injury. The trial court denied the motion, finding that a question of fact existed regarding issues of gross negligence and proximate cause.

We review de novo a trial court's grant or denial of summary disposition to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties. *Diamond v Witherspoon*, 265 Mich App 673, 681; 696 NW2d 770 (2005). The determination whether a governmental employee's conduct constituted gross negligence under MCL 691.1407 is generally a fact question, but if reasonable minds could not differ, a court may grant summary disposition. *Oliver v Smith*, 269 Mich App 560, 563; 715 NW2d 314 (2006).

MCL 691.1407 provides individual immunity for governmental employees under certain circumstances. Immunity requires that the employee's conduct "does not amount to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2)(c). "Gross negligence" means "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Further, the grossly negligent conduct must be "the" proximate cause of the plaintiff's injuries, i.e., "the one most immediate, efficient, and direct cause . . . ." *Tarlea v Crabtree*, 263 Mich App 80, 89; 687 NW2d 333 (2004), quoting *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000).

The trial court erred in determining that reasonable minds could differ concerning whether defendant's conduct constituted gross negligence that was the proximate cause of plaintiff's injury. The evidence presented indicates that plaintiff's foot was injured by the roller when he and the other inmates decided to momentarily stop and rest. However, there was no evidence to indicate that defendant caused plaintiff to place his foot in a position to be run over. Indeed, plaintiff initially testified that the roller ran over his foot when he moved it backward in an attempt to stop the roller. No reasonable trier of fact could conclude, on the basis of the evidence presented, that defendant exhibited conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results or that defendant's conduct was the most immediate, proximate cause of plaintiff's injury. Accordingly, the trial court improperly denied summary disposition in favor of defendant.

We reverse.

/s/ Janet T. Neff  
/s/ Richard A. Bandstra  
/s/ Brian K. Zahra