STATE OF MICHIGAN

COURT OF APPEALS

RHIANNON NUGENT and JUAN A. QUINTANA, Personal Representatives of the ESTATE OF JQ,

Plaintiffs-Appellees,

v

SPECTRUM JUVENILE JUSTICE SERVICES and SPECTRUM HUMAN SERVICES, INC.,

Defendants-Appellants.

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No. 363750
Wayne Circuit Court
LC No. 20-014709-NO

Before: LETICA, P.J., and GARRETT and FEENEY, JJ.

LETICA, P.J.

Defendant Spectrum Juvenile Justice Services (SJJS) operates the Calumet Center (Calumet), which houses boys and girls ages 12 through 17. The decedent, 15-year-old JQ, became a resident at Calumet after engaging in criminality and leaving a prior facility. JQ committed suicide by using a sheet to hang himself from a vent in his room. Plaintiffs, JQ's parents, filed their complaint alleging that staff members at the facility failed to properly supervise residents and falsified room-monitoring logs to reflect room checks of residents that were not performed as required under state of Michigan regulations. Plaintiffs further asserted that defendants' failure to monitor residents made it possible for JQ to take his own life. Plaintiffs filed this negligence action against SJJS and its parent company, defendant Spectrum Human Services, Inc. (SHS). Defendants appeal by leave granted[1] two trial court orders denying their motions for summary disposition concerning immunity, piercing the corporate veil, causation and foreseeability, and comparative fault, and granting summary disposition in plaintiffs' favor with respect to comparative fault. We conclude that the trial court erred by granting summary disposition in plaintiffs' favor regarding comparative fault and that the evidence, viewed in the light most favorable to plaintiffs, creates genuine issues of material fact regarding that issue and the

[1] *Estate of JQ v Spectrum Juvenile Justice Servs*, unpublished order of the Court of Appeals, entered May 4, 2023 (Docket No. 363750).

remaining issues. Accordingly, we affirm the trial court's orders in part, reverse in part, and remand for proceedings consistent with this opinion.

I. FACTUAL AND PROCEDURAL HISTORY

The state of Michigan, through the Department of Health and Human Services (DHHS), licensed Calumet as a "Child Caring Institution." Maurice Dillard, a former youth supervisor at Calumet, described the facility as a "jail-type facility" with a "jail-type atmosphere" and testified that residents wear uniforms similar to those worn by jail inmates. The residents' rooms contain a desk and stool that are affixed to the floor, a makeshift bed that consists of a mattress on top of a raised portion of the floor, and an exposed toilet with an attached sink.[2]

Christopher Barr, a child welfare licensing consultant employed by the state of Michigan prepared a special investigative report following JQ's suicide. He was familiar with the resident bedrooms at Calumet and the placement of the bed, toilet, and sink in the room but did not find them to be a concern. Further, the placement of the toilet and sink near a vent, to his knowledge, did not violate a rule, standard, or guideline. Barr also opined that Calumet was not required to place suicide-deterrent bars over air vents in the bedrooms. He acknowledged that it was a requirement that residents were furnished with bedding. Barr did determine that Calumet violated the administrative requirement that residents be viewed every 15 minutes, although that rule was not designed to prevent a suicide.

Specifically, in order to comply with licensing requirements, staff members were obligated to follow Rule 400.4127(4) of the Michigan Administrative Code:

> When residents are asleep or otherwise outside of the direct supervision of staff, staff shall perform variable interval, eye-on checks of residents. The time between the variable interval checks shall not exceed fifteen minutes.

Staff members acknowledged that they did not perform the eye-on checks of residents and falsified room logs indicating that they performed the checks as required. That is, they prefilled out the room logs reflecting that the checks had occurred at the appropriate intervals.

JQ became a resident of Calumet on August 9, 2018, following his adjudication of possession of marijuana and his violation of probation. While at the facility, JQ participated in individual therapy on a weekly basis and in group therapy multiple times each week. He also wrote in his journal on a daily basis. Staff members were expected to read JQ's journal entries and provide feedback. On September 11, 2018, just over one month after JQ entered the facility,

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[2] The parties discuss the nature of the facility, and plaintiffs characterize it as a jail environment. However, the complaint did not raise a claim pertaining to the building's design. A majority of our Supreme Court declined to permit liability pertaining to the nature of jail housing, stating that "no jail or holding cell could be suicide proof." *Hickey v Zezulka*, 439 Mich 408, 426; 487 NW2d 106 (1992) (BRICKLEY, J.), reh den and amended 440 Mich 1203 (1992), superseded by statute. In this case, a correlation between the housing and JQ's actions was not the subject matter of plaintiffs' complaint.

staff members discovered him hanging by his neck from a bedsheet that he had tied to the vent in his room. The vent was located on the wall above the combined toilet and sink unit and was reachable if JQ stood on the sink.

In their deposition testimony, staff members testified that they received inadequate training to address the residents' psychological needs. Additionally, it was claimed that residents regularly threatened to commit suicide. TD, a fellow resident, testified that JQ frequently threatened to commit suicide. But TD also acknowledged that residents made suicide threats in an attempt to get the supervisors' attention.

One staff member, Vaness Thompson, claimed that the frequency of such threats caused her to carry scissors to cut residents down if necessary. On the contrary, Melissa Fernandez, the then-director of Calumet, denied that suicide attempts were a pervasive occurrence. Fernandez, a mother, testified that she would feel comfortable having her children at Calumet in the manner she operated it.

Plaintiffs filed this action against defendants and, in their second amended complaint, alleged that defendants were negligent and grossly negligent under a vicarious liability theory because their employees: failed to properly supervise residents, failed to perform room checks, and failed to install suicide-deterrent vents (Count I). Plaintiffs also alleged negligence under a direct negligence theory on the basis that defendants negligently hired, supervised, and retained their employees (Count II). Further, plaintiffs alleged that defendants were jointly and severally liable because they operated as a single entity.

Defendants moved for summary disposition on several different grounds. They asserted that they were immune from liability under MCL 691.1635(1) of the Social Services Agency Liability Act (SSALA), MCL 691.1631 *et seq*., because their conduct did not rise to the level of gross negligence. In response, plaintiffs argued that the SSALA was inapplicable or, alternatively, that an exception to immunity under the act applied. The trial court determined that the SSALA was applicable and that there existed a genuine issue of material fact regarding whether defendants' conduct amounted to gross negligence such that they were not immune under the act.

Defendants also moved for partial summary disposition, arguing that plaintiffs failed to produce any evidence to support piercing SHS's corporate veil. Plaintiffs countered that SJJS was a mere instrumentality of SHS. The trial court denied the motion on the basis that a genuine issue of material fact existed with respect to whether SJJS was SHS's alter ego to allow their separate corporate entities to be disregarded.

Further, defendants moved for summary disposition regarding causation and foreseeability. They asserted that JQ exhibited no signs indicating that he was suicidal. Instead, he merely experienced good and bad days, similar to an ordinary 15-year-old. Defendants claimed that plaintiffs could only speculate that JQ would not have committed suicide if staff members had performed room checks every 15 minutes or if they had installed suicide-deterrent vents. They also argued that plaintiffs were unable to establish causation and foreseeability regarding their negligent hiring or retention claim. The trial court denied the motion, again determining that there existed genuine issues of material fact for trial.

Finally, defendants moved for partial summary disposition with respect to noneconomic damages. They maintained that such damages were precluded because JQ was more than 50% at fault for causing his own death, which barred noneconomic damages as a matter of law. The trial court denied the motion on the basis that JQ could not share a portion of fault for his suicide because he was a minor and was entrusted to defendants' care and protection. The court noted that if suicide were a defense to a claim alleging the failure to take reasonable steps to protect a child from self-harm, then the defendant would always be exonerated in such cases. The court also granted summary disposition in plaintiffs' favor under MCR 2.116(I)(2) regarding comparative fault.

II. STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition is reviewed de novo. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Summary disposition under MCR 2.116(C)(7) is appropriate in favor of a defendant if the plaintiff's claims are barred because of immunity granted by law. *Milot v Dep't of Transp*, 318 Mich App 272, 275; 897 NW2d 248 (2016). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the basis of the factual allegations in the complaint. *El-Khalil*, 504 Mich at 159. "A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id*. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Id.* Summary disposition under subrule (C)(10) is properly granted if the evidence, viewed in the light most favorable to the nonmoving party, fails to establish a genuine issue of material fact for trial. *Id.* Finally, if "there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2)." *Lockwood v Ellington Twp*, 323 Mich App 392, 401; 917 NW2d 413 (2018). Additionally, we review issues of statutory interpretation de novo. *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494-495; 948 NW2d 452 (2019).

III. THE SSALA

Defendants contend that the trial court erred in concluding that they were not entitled to immunity under the SSALA. We disagree.

"The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Id*. at 495 (quotation marks and citation omitted). The most reliable evidence of legislative intent is the plain language of the statute. *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). When statutory language is clear and unambiguous, there is a presumption that the Legislature intended the meaning plainly expressed in the statute. *Univ Neurosurgical Assoc, PC v Auto Club Ins Ass'n*, 348 Mich App 305, 311; 18 NW3d 379 (2023).

The purpose of the SSALA is to "grant immunity to a social service agency, and its officers and employees, for injury or damage caused by the provision of a child social welfare program,

subject to an exception for gross negligence or willful misconduct."[3] When a civil action is brought challenging the conduct of a child social welfare program, it is presumed that the specified actors of the social services agency acted within the scope of their authority and that their conduct did not amount to gross negligence nor willful misconduct. MCL 691.1637.

A. APPLICABILITY OF THE SSALA

The parties dispute whether the SSALA applies in this case. In relevant part, MCL 691.1635 of the SSALA provides:

> (1) Subject to subsections (3) and (4), a social services agency is immune from liability for personal injury or property damage caused by the agency's provision of a child social welfare program.
>
> * * *
>
> (3) This section does not apply if the conduct that causes personal injury or property damage amounts to gross negligence or is willful misconduct.
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> (4) This section does not apply if the conduct that causes personal injury or property damage is prohibited by law and a violation of the prohibition is punishable by imprisonment.

MCL 691.1633(d) defines "social services agency" as "a person, other than an individual, that is licensed by this state to provide child social welfare programs." The SSALA defines "person" as "an individual, partnership, corporation, association, or other legal entity, other than a governmental agency." MCL 691.1633(c). Further, "[c]hild social welfare program" is defined as "a child welfare residential or home-based program, a program involving foster care coordination including adoption activities, a respite care program, or behavioral health or early education services operating under contract and as an agent for the department of human services." MCL 691.1633(a).

DHHS licensed SJJS as a "Child Caring Institution." The license identifies Calumet as the name of the facility. SJJS contracted with DHHS to provide residential treatment for certain youth under age 18 who were involved in the juvenile justice system. The contract listed the specific services that SJJS was required to provide, including residential care, criminogenic rehabilitation services, development and administration of an individualized treatment plan, sex offender

[3] See Senate Legislative Analysis, SB 1240, September 27, 2012. We recognize that legislative history is of limited value because it does not reflect an official view of the legislators, but it may be examined to determine the underlying purpose of the legislation. *In re Certified Question From the United States Court of Appeals for the Sixth Circuit*, 468 Mich 109, 115 n 5; 659 NW2d 597 (2003). Additionally, the preamble to the SSALA identifies its purpose "to provide protection from civil liability to persons that provide court-appointed social services." Preambles are useful to ascertain statutory purpose and scope but should not be utilized to interpret or extend clear language. *King v Ford Motor Credit Co*, 257 Mich App 303, 311-312; 668 NW2d 357 (2003).

treatment, substance abuse treatment, behavioral health treatment, and psychological and psychiatric services. Barr, a licensing consultant with DHHS, testified that he regulated the licensing rules for child care institutions, including Calumet. In light of the record evidence, the services provided by Calumet constituted a "child social welfare program" and SJJS is a "social services agency" under the SSALA.

B. IMMUNITY UNDER THE SSALA

Because SJJS is a "social services agency" under the SSALA and JQ's death occurred during the provision of a "child social welfare program," we must address whether SJJS is immune from liability under MCL 691.1635(3) or (4). Subsection (3) states that "[t]his section does not apply if the conduct that causes personal injury or property damage amounts to gross negligence or is willful misconduct." The SSALA defines "gross negligence" as "conduct or a failure to act that is so reckless that it demonstrates a substantial lack of concern for whether an injury will result." MCL 691.1633(b). In the governmental-immunity context, courts have described the same language "as a willful disregard of safety measures and a singular disregard for substantial risks." *Oliver v Smith*, 290 Mich App 678, 685; 810 NW2d 57 (2010).

"If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide." *Moraccini v City of Sterling Hts*, 296 Mich App 387, 391; 822 NW2d 799 (2012) (quotation marks and citation omitted). But when a pertinent factual dispute exists, summary disposition is inappropriate. *Id*. Similarly, "[i]f reasonable jurors could honestly reach different conclusions regarding whether conduct constitutes gross negligence, the issue is a factual question for the jury." *Oliver*, 290 Mich App at 685.

When deciding a motion for summary disposition, the trial court may not weigh the evidence or make credibility determinations. *Franks v Franks*, 330 Mich App 69, 85; 944 NW2d 388 (2019). That is, the trial court is not to decide the credibility of the various witnesses. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). "Summary disposition is suspect when motive or intent are at issue or where the credibility of a witness is crucial." *Foreman v Foreman*, 266 Mich App 132, 135; 701 NW2d 167 (2005). Thus, when "the truth of a material factual assertion of a moving party is contingent upon credibility, summary disposition should not be granted." *Id.* at 136. The trial court may not make factual findings, and if the evidence conflicts, summary disposition is improper. *Piccione v Gillette*, 327 Mich App 16, 19; 932 NW2d 197 (2019). Indeed, courts must be liberal in finding a factual dispute that withstands summary disposition. *Id*. Inconsistencies in statements given by witnesses cannot be ignored. *White v Taylor Distrib Co, Inc*, 482 Mich 136, 142; 753 NW2d 591 (2008). And, application of disputed facts to the law present proper questions for the trier of fact. *Id.* at 143.

In this case, the testimony of the witnesses reflects conflicts in the evidence and credibility determinations that preclude a ruling on the issue of gross negligence as a matter of law. *Moraccini*, 296 Mich App at 391, As noted, Barr investigated JQ's death on behalf of DHHS. He testified that Calumet was required to conduct room checks in accordance with Rule 400.4127(4) and that the purpose of the rule is to ensure the children's safety because, absent monitoring, they could hurt each other or themselves. The record contains testimony from employees that the residents did indeed try to hurt themselves, in particular, as relevant to this case, by attempting to hang themselves from the vents in their rooms. Thompson, a former youth-care worker, testified

that the location of the vent above the sink in the cells was problematic. Residents were able to reach the vent by standing on the sink and often communicated with each other through the vents. Thompson proffered that at least two residents, in addition to JQ, attempted to hang themselves from the vents in her work area, "pod 6," during her shift. She testified that one of those residents "tried to hurt himself all the time." Thompson carried scissors with her in case she needed them to cut a resident down from the vent, which she had done on numerous occasions. She maintained that the problem involving the vents occurred throughout the building. She notified the managers and supervisors about the problem, but they failed to make any changes. In fact, because management failed to take any action to address the problem, she sought new employment and had written notes about the problem.[4] Her notes indicated that she dealt with self-harm and suicidal behavior "on the daily" and that she had cut socks, t-shirts, and blankets from the necks of residents.

Another former youth-care worker, Raevan Cunningham, also testified that suicide attempts and self-harm were commonplace at Calumet. She untied or cut down at least one resident from his vent after he tried to hang himself. She testified that she and the other youth-care workers "constantly" informed their supervisor about "what was going on and what was taking place," but he responded, "it's ya'll pod, handle it," "they're just playing," or "kids talk about that type of stuff all the time, they [sic] not going to do nothing." According to Cunningham, defendants took no action to address the problem until after JQ's death when they replaced the vents with suicide-resistant vents, which have small holes instead of bars on which a ligature could be tied.

Cunningham also testified that residents wrote in their journals nearly every day and that youth-care workers read the journals and commented on the entries to provide feedback for the residents. She maintained that supervisors and therapists were required to read the journals as well, but they did not take the time to do so. She testified that JQ expressed his anxiety and depression in his journal and that a supervisor should have done something to address his concerns, but nothing was done. She claimed that it was "shocking" that nothing had been done to address the issue.[5]

TD, a fellow resident at Calumet, testified that JQ was "kind of weird" because he suffered from "weird anxiety" that included anxiety attacks or panic attacks. TD opined that both fellow residents and staff members bullied JQ because of it. During an attack, JQ turned red and rubbed his thighs in a quick, constant motion. TD heard staff members call JQ a "tomato" and saw them

[4] The intended recipient of Thompson's notes was unclear. Defendants fired Thompson as a result of JQ's suicide and seemingly before she provided her notes to anyone. At her deposition, she gave copies of her notes to the parties' attorneys.

[5] In addition to the conflicting testimony by the monitor, administrators, and staff at Calumet, JQ wrote in a journal that was reviewed by Calumet staff. JQ's journal entries reflected good and bad days, his anxiety, his inability to control his emotions, and his dismay at being housed at Calumet. He also wrote of hiding his depression with jokes and "breaking down." His last entry expressed excitement regarding a visit with his grandparents before their move out-of-state. In summary, these entries also could be variably interpreted by the trier of fact.

mock JQ rubbing his thighs. They also bullied him by calling him "stupid," "bitch," "weirdo," and "[d]umb ass." On one occasion, TD saw a staff member physically abuse JQ by putting his elbow on JQ's neck and cutting off JQ's circulation.

TD also testified that residents frequently threatened to kill themselves in order to speak to a supervisor because youth-care workers were required to inform a supervisor if a resident threatened suicide or engaged in self-harm. TD maintained that JQ had a habit of cutting himself on his legs and that the wounds were visible. When asked how bad the cuts were, TD responded that JQ "was carving himself." TD testified that JQ told other residents who engaged in self-harm or threatened suicide, "[w]hy you keep playing? Just do it." JQ himself frequently threatened suicide, but was told to "stop saying stuff like that," and warned that if he continued to make such threats, he would be placed in a "turtle suit," which prevents the wearer from engaging in self-harm. According to TD, JQ threatened to kill himself only a few hours before he actually did so, but Thompson told him to "[s]top saying that dumb shit" and prohibited him from going to church with the other residents. JQ then went into his room and never came out.

A "pink sheet" is the form on which staff members are required to note the times of their eye-on checks of residents, followed by the staff member's initials. Thompson testified that it was common practice for staff members to fill out the pink sheets for their entire shift at the beginning of a shift rather than filling them out as room checks occurred during the shift. She maintained that supervisors were not only aware of the practice, but they also sometimes engaged in the practice themselves. Thompson admitted that, on the night of JQ's death, she prefilled out the pink sheet for JQ's room at the beginning of her shift. She also admitted that she signed her supervisor's name to the pink sheet because that is what other employees did and what defendants had taught them to do. Thompson's supervisor, Maurice Dillard, testified that someone forged his signature on the form, but he did not know who had done so. Both Thompson and Dillard admitted that the purpose of the room checks was to observe the resident to ensure, among other things, that he was not harming himself. Cunningham and Darius Howard, another former youth-care worker, corroborated Thompson's testimony that workers prefilled out the pink sheets at the beginning of their shifts. Cunningham also testified that "a lot of times" the supervisor directed employees to fill in the supervisor's initials as well and that workers were *trained* to prefill out the forms.

Similarly, Howard testified that he had been trained to prefill out the pink sheets at the beginning of his shift. He was also directed to sign the supervisor's name on the pink sheet in the spot designated for the supervisor's signature. Cunningham testified that the practice of prefilling out the pink sheets continued even after JQ's death.

According to Dillard, JQ did not seem like himself and appeared to be upset about something very shortly before he committed suicide. Dillard, Howard, Thompson, and Cunningham all testified that they were not aware of JQ's history of depression, self-harm, anxiety, claustrophobia, and panic attacks. They also testified that if they had been aware of JQ's psychiatric history, they would have known about his increased suicide risk and could have better assisted him.

Bobby Newsome, a nighttime security officer at Calumet, testified that defendants' employees were inadequately trained and overworked in addition to the facility being understaffed. He maintained that he was the only person with a flashlight, which was necessary to conduct

nighttime room checks, and that employees working on the pods were often asleep. He testified that he was not surprised to hear that a resident killed himself because "nobody does rounds." He maintained that he created a document "on Word" listing all of his concerns about the facility and traveled 40 miles on his day off to personally hand it to Fernandez, SJJS's former director. According to Newsome, Fernandez told him that someone would get back to him regarding his concerns, but nobody ever did and nothing changed.[6] Newsome further testified that instead of supervising the residents and performing room checks, some staff members slept and some engaged in sexual relations with coworkers or girlfriends they brought into the facility.

Newsome talked to JQ on many occasions because JQ was often awake when Newsome made his rounds. JQ asked Newsome why he was the only person who made rounds. Newsome tried to encourage JQ because JQ was "having a hard time." JQ told Newsome that JQ did not fit in at Calumet and that he was experiencing anxiety. Newsome testified that he quit his job because he was ostracized for trying to do his job properly and "couldn't do it anymore."

In contrast to the employee testimony, Fernandez denied the claims raised by the employees. And Barr testified that he expected that suicide attempts would be reported for investigation; however, he did not receive such reports in accordance with the claims made by the former employees.

The above evidence creates a genuine issue of material fact regarding whether the actions and inactions of staff members amounted to gross negligence such that SJJS is not immune under the SSALA.[7] *Moraccini*, 296 Mich App at 391. The evidence supports plaintiffs' allegations that staff members failed to conduct room checks at varying intervals not to exceed 15 minutes as required under Rule 400.4127(4) notwithstanding that the purpose of the room checks was to ensure resident safety. Further, JQ's journal entries indicate that he became increasingly more depressed and anxious as the days passed. The testimony also establishes a genuine issue of material fact regarding youth-care workers being *trained* to fill out the pink sheets at the beginning of their shifts before the room checks could possibly be made, that some supervisors also prefilled out the pink sheets, and that some workers forged their supervisor's signature.

Further, Dillard, Howard, Thompson, and Cunningham all testified that they did not know about JQ's history of depression, anxiety, panic attacks, and self-harm, and, if they had known, they could have been more watchful of him. In fact, Thompson testified that if she had been informed of JQ's psychiatric history, his suicide could have been prevented. Staff members testified that they were also unaware that JQ had been cutting himself, although TD was aware and testified that JQ's cuts were visible. Therefore, at a minimum, there exists a genuine issue of material fact regarding whether the evidence demonstrates "a substantial lack of concern for

[6] Fernandez denied meeting with Newsome one-on-one or receiving a document voicing his concerns.

[7] Because no evidence indicates that SHS qualifies as a "social services agency" under MCL 691.1633(d), SHS is not immune from liability under the SSALA.

whether an injury will result." MCL 691.1633(b). Accordingly, the trial court properly denied summary disposition with respect to immunity under the SSALA.[8]

IV. PIERCING THE CORPORATE VEIL

Defendants next contend that the trial court erroneously denied their motion for partial summary disposition with respect to SHS. They maintain that the evidence fails to support piercing SHS's corporate veil. We disagree and conclude that plaintiffs proffered sufficient evidence to create a genuine issue of material fact regarding piercing the corporate veil.

"Under Michigan law, parent and subsidiary corporations are presumed to be separate and distinct entities absent some abuse of the corporate form." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 229-230; 933 NW2d 363 (2019). No single rule exists for determining whether a corporation's separate identity may be disregarded. *Glenn v TPI Petroleum, Inc*, 305 Mich App 698, 716; 854 NW2d 509 (2014). Factors to consider include:

> (1) whether the corporation is undercapitalized, (2) whether separate books are kept, (3) whether there are separate finances for the corporation, (4) whether the corporation is used for fraud or illegality, (5) whether corporate formalities have been followed, and (6) whether the corporation is a sham. [*Id*.]

Other factors include whether the parent and subsidiary share principal offices, have interlocking boards of directors, frequently interchange employees, and whether the parent company's revenues are entirely derived from the subsidiary. *Seasword v Hilti, Inc (After Remand)*, 449 Mich 542, 548 n 10; 537 NW2d 221 (1995).

SHS is the parent company of SJJS and three or four other subsidiaries. SHS and the subsidiaries all have their own boards of directors, but SHS's board of directors is comprised of a few board members from each of the subsidiaries' boards of directors, including that of SJJS. SHS approves SJJS's budget as well as SJJS's personnel policies and procedures. SHS also provides human resources services for all of its subsidiaries. SHS recruits employees for SJJS and conducts the initial screening of applicants, including background checks.

All of the companies, including SHS, have a combined budget of approximately $50 million. Joshua Swaninger, SHS's CEO, was unable to provide any information regarding SHS's budget alone. He testified that government funds are deposited into SJJS's bank account and that SJJS, and the other subsidiaries, pays SHS a certain amount each month. He maintained that approximately 90 percent of SHS's income is derived from payments from its subsidiaries.

Swaninger testified that SHS's CEO and board of directors make hiring decisions regarding SJJS's Executive Director. Fernandez, although she was SJJS's Executive Director, testified that

[8] Considering our determination that a question of fact regarding gross negligence under MCL 691.1635(3) precludes summary disposition on the issue of immunity, we need not address plaintiffs' alternative argument that there likewise exists a question of fact under MCL 691.1635(4).

she was "employed directly and paid by" SHS. She reported directly to Swaninger. Her office was in the Lincoln Center, a building located on the same premises as Calumet. She testified that every employee at the Lincoln Center was a SHS employee. She also testified that SHS operated all of the subsidiaries and that Swaninger had to approve any large purchases that she made for SJJS.

The trial court properly denied summary disposition regarding piercing the corporate veil. The testimony shows that there was significant overlap between SJJS and SHS. Some of SJJS's board members sat on SHS's board of directors, and the two companies shared a human resources department. Swaninger was unable to provide an estimate of SHS's budget alone and instead testified regarding the combined budget of all of the entities. Approximately 90 percent of SHS's income is derived from its subsidiaries, including SJJS. SHS hired SJJS's Executive Director and handled many employment-related matters for other positions, including paying all of the employees, including those who worked at Calumet. Accordingly, the evidence demonstrated a genuine issue of material fact with respect to piercing the corporate veil.

V. CAUSATION AND FORESEEABILITY

Defendants allege that the trial court erred by denying their motion for partial summary disposition regarding causation and foreseeability. We disagree and conclude that the trial court properly determined that there existed a question of fact regarding those issues.

A. NEGLIGENCE & GROSS NEGLIGENCE[9]

To establish a negligence or gross negligence claim, a plaintiff must prove: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Cummins v Robinson Twp*, 283 Mich App 677, 692; 770 NW2d 421 (2009). "Proof of causation requires both cause in fact and legal, or proximate, cause." *Haliw v Sterling Hts*, 464 Mich 297, 310; 627 NW2d 581 (2001). Cause in fact is established by showing that the injury would not have occurred but for the defendant's negligent conduct. *Id.* Proximate causation involves the foreseeability of consequences and whether the defendant should be held liable for the consequences of his negligence conduct. *Id.* A proximate cause is a cause that "created a foreseeable risk of the injury the plaintiff suffered." *Estate of Taylor v Univ Physician Group*, 329

[9] Although plaintiffs labeled their claim as one for negligence or gross negligence, their second amended complaint alleges gross negligence or willful misconduct in order to avoid the immunity afforded under SSALA. See MCL 691.1635(3). Indeed, "a complaint must be read as a whole, and it is well settled that this Court will look beyond the mere procedural labels used in the pleadings." *Mich Head & Spine Institute, PC v Mich Assigned Claims Plan*, 331 Mich App 262, 275; 951 NW2d 731 (2019) (quotation marks and citation omitted). Because "[a] party's choice of label for a cause of action is not dispositive," this Court is not bound by it when doing so exalts form over substance. *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011).

Mich App 268, 278; 941 NW2d 672 (2019). An injury can have more than one proximate cause. *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 496-497; 791 NW2d 853 (2010).

Plaintiffs submitted sufficient evidence to create a genuine issue of material fact that JQ's suicide was foreseeable. His journal entries, contained in the complaint, show that he was having a very difficult time coping. He was having trouble sleeping, was often tired, and felt extremely depressed and anxious. His mental condition appeared to be getting worse the longer he was at Calumet, and medical personnel more than tripled his dose of Zoloft, a psychotropic medication, after he arrived. JQ's journal entries indicate that his dosage of Zoloft was still being "upped." JQ also engaged in self-harm by cutting himself on his leg. According to TD, JQ threatened to kill himself "[d]amn near every day." TD stated that JQ threatened to kill himself only a few hours before he actually did so. Although TD testified that threatening suicide could be a means of obtaining a supervisor's attention, TD thought that the threat was credible enough to report it to staff members. In addition, JQ questioned other residents who engaged in self-harm or threatened suicide by asking them "[w]hy you keep playing? Just do it." Thus, the evidence supports plaintiffs' assertion that it was foreseeable that JQ may attempt suicide considering his mental condition and statements that he made to others concerning suicide.

Plaintiffs also alleged that the staff members' failure to conduct room checks as required made it possible for JQ to commit suicide. Rule 400.4127(4) did not require Calumet staff members to conduct room checks every 15 minutes. Rather, the state regulation required staff members to conduct eye-on checks *at varying intervals* not to exceed 15 minutes. Dr. Werner Spitz, plaintiffs' expert, opined that it would have taken JQ a significant amount of time to tie the bedsheet to the vent and to secure the other end around his neck. Dr. Spitz further testified that if staff members had conducted room checks as required under Rule 400.4127(4), doing so would likely have deterred JQ from hanging himself altogether.[10]

Further, as previously discussed, plaintiffs presented evidence to support their allegation that defendants were aware of residents using the vents as an anchor point to hang themselves. Accordingly, plaintiffs presented sufficient evidence to establish a genuine issue of material fact regarding causation and foreseeability pertaining to plaintiffs' negligence and gross negligence claims.

B. NEGLIGENT HIRING OR RETENTION[11]

A claim of negligent hiring or retention of employees "depend[s] on the particular misconduct complained of being foreseeable." *Mueller v Brannigan Bros Restaurants & Taverns LLC*, 323 Mich App 566, 577; 918 NW2d 545 (2018). In other words, "a claim of negligent hiring or retention requires actual or constructive knowledge by the employer that would make the

[10] To the extent Dr. Spitz made conclusions regarding the psychology of suicide, defendants did not challenge the foundation for his opinion.

[11] Again, plaintiffs' verbiage is not controlling and plaintiffs' second amended complaint alleges gross negligence or willful misconduct. See footnote 9.

specific wrongful conduct perpetrated by an employee predictable." *Id*. at 575 (emphasis in original).

Plaintiffs allege that it was foreseeable that staff members would not conduct room checks as required under Rule 400.4127(4) because it was widely known that they failed to do so. The testimony showed that even supervisors failed to conduct room checks as required, new employees were trained to prefill out the pink sheets, and some employees even signed their supervisor's signature on the forms. Newsome testified that he personally informed Fernandez that rounds were not being made. Because the very purpose of the room checks was to ensure the safety of the residents, plaintiffs assert it was inevitable that the employees' failure to conduct room checks would result in an incident such as the one that occurred. Thus, the evidence, at a minimum, demonstrated a genuine issue of material fact regarding foreseeability as it pertains to plaintiffs' negligent hiring or retention claim.

VI. COMPARATIVE FAULT

Finally, defendants contend that the trial court erred by determining that JQ could not be comparatively at fault for causing his own death. They also contend that because JQ was more than 50% at fault, MCL 600.2959 precludes plaintiffs from recovering noneconomic damages. We agree that the trial court erroneously granted summary disposition in plaintiffs' favor under MCR 2.116(I)(2) regarding comparative fault, but conclude that there exists a jury question regarding the ultimate issue.

Before 1979, Michigan was a contributory negligence state. *Placek v Sterling Hts*, 405 Mich 638, 650, 653; 275 NW2d 511 (1979). "Under a contributory negligence scheme, where the plaintiff's injury resulted from the fault or negligence of himself, or where it has resulted from the fault or negligence of both parties, the plaintiff was completely barred from recovery." *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 113; 1 NW3d 44 (2023) (quotation marks and citation omitted). Even if a small amount of fault was attributed to the plaintiff, that amount nonetheless served as an absolute bar to recovery. *Id*. To eliminate this inequity, our Supreme Court adopted the doctrine of pure comparative negligence. *Placek*, 405 Mich at 661-662. It also explained:

> The doctrine of pure comparative negligence does not allow one at fault to recover for one's own fault, because damages are reduced in proportion to the contribution of that person's negligence, whatever that proportion is. The wrongdoer does not recover to the extent of his fault, but only to the extent of the fault of others. To assume that in most cases the plaintiff is more negligent than the defendant is an argument not based on equity or justice or the facts. What pure comparative negligence does is hold a person fully responsible for his or her acts and to the full extent to which they cause injury. That is justice. [*Id*. at 661 (quotation marks and citation omitted).]

Our Supreme Court specifically addressed comparative fault in the context of a jail suicide. *Hickey v Zezulka (On Resubmission)*, 439 Mich 408, 413, 415-416; 487 NW2d 106 (1992) (BRICKLEY, J.), reh den and amended 440 Mich 1203 (1992), superseded by statute. In that case, the decedent was driving erratically in East Lansing, Michigan, on October 3, 1982, when he was stopped by the defendant Linda Zezulka, an officer with the Michigan State University Department

of Public Safety (DPS). After the administration of field sobriety tests, the decedent was placed under arrest for driving under the influence of intoxicating liquor and transported to the East Lansing Police Department for breathalyzer tests. At the station, Zezulka and a sergeant observed that the decedent appeared to be in a good mood with a positive demeanor. Because of staffing shortages, Zezulka's request to transport the decedent to the Ingham County Jail was denied. Instead, Zezulka complied with her superior's order to take the decedent to the DPS for processing. Zezulka placed the decedent in a holding cell at 3:20 a.m., but she did not remove any of his personal articles or clothing, contrary to DPS's written policy. Specifically, a prisoner was to be searched before being left unattended in a segregation room. Additionally, the policy required that weapons and any object that could harm an officer, the prisoner, or other prisoners "shall" be removed and properly secured. *Id.*

Zezulka placed the decedent in the holding cell, but did not remove his belt, and advised him that he would soon be taken to the county jail. There was a concrete bench in the holding cell and above the bench was a heater secured by metal brackets that extended from the wall. There was a 10 x 10-inch window in the holding cell door, and the desk officer monitored sounds from the area through a microphone located in the cell.[12] After placing the decedent in the holding cell, Zezulka attended to her other duties. The DPS had another policy that an officer that brought a detainee into the department was responsible for checking on the detainee. When Zezulka next checked on the decedent at 3:57 a.m., he was hanging from the heater in a noose he had made from his belt and socks. Pertinent to this appeal, the decedent's father filed a complaint against Zezulka alleging negligence, gross negligence, and intentional and grossly negligent acts in violation of the decedent's civil rights under 42 USC 1983. *Id.* at 415-417.

But, Justice BRICKLEY's lead opinion in *Hickey* did not resolve the issue of comparative fault between the decedent and Zezulka. Rather, it noted that "the signers of [his] opinion *would hold* that the trial court also correctly refused to give an instruction on comparative fault." *Id.* at 414 (emphasis added). Instead, a majority of the Supreme Court[13] concurred in Justice RILEY's opinion and held the "error in the failure to instruct on comparative fault" required reversal and remand for a new trial limited to the issue of damages. *Id.*

As rendered by Justice RILEY, the *Hickey* Court's majority held:

> I disagree with the holding . . . that a comparative fault instruction was unnecessary in this case. Considering the finding by the jury that [the decedent's] suicide was a foreseeable consequence of Officer Zezulka's negligence in this custodial setting, I agree with the finding that no intervening cause instruction need be given. I believe, however, that a comparative fault instruction should have been given.
>
> As a general rule, a plaintiff may not recover damages in negligence for the intentional suicide of another. Where a plaintiff intentionally commits an act that brings about an injury, the risk of which was increased by the defendant's

[12] The *Hickey* opinion issued in 1992, and predated present-day monitoring equipment.

[13] Justice RILEY's opinion was joined by Justices CAVANAGH, BOYLE, and GRIFFIN.

> negligence, the plaintiff ordinarily loses any cause of action he might have because of defendant's negligence. Where, however, the defendant assumes a duty to protect the plaintiff from that injury, as in this involuntary custody situation, I agree that the plaintiff should not lose his cause of action. I disagree, however, that the other extreme should be adopted—that the defendant then assumes all responsibility, and liability, for injuries that the plaintiff intentionally commits upon himself. The assumption of a duty to protect the decedent while in [the] defendant's custody merely establishes a legal basis for holding [the] defendant negligent. The mere existence of a duty does not automatically lead to the conclusion that the decedent's fault should not be considered. Decedent's fault, or contributing cause of his injury, is his intentional and unreasonable exposure to the danger created by defendant's negligence. 2 Restatement Torts, 2d, § 466, p 511.
>
> The conceptual difficulty which appears to blind the signers of the lead opinion arises from the use of the word "negligence" in *Placek*'s reference to the conduct of the plaintiff. It is clear from *Placek* that the goal of the Court was to establish "a fair system of apportionment of damages." *Id*. at 660. This goal is not served; rather, it is thwarted when a slightly negligent defendant is held liable for one hundred percent of the damages caused principally by the wrongful intentional conduct of a plaintiff.
>
> Jurors are capable of reaching a rational and sensible balance between the decedent's fault and the negligent jailer's fault. Comparison of "qualitatively different" conduct, which the signers of the lead opinion find to be "not capable of intelligent comparison," is not only possible, but is required by this Court's adoption of "pure" comparative fault. Many courts, including Michigan courts, have successfully compared the fault of both parties in similar instances. With the proper instruction, a jury will not necessarily preclude recovery for the plaintiff by finding the plaintiff one hundred percent at fault because of his intentional act of suicide. An instruction on comparative fault is necessary to apportion the damages between two parties responsible for the injury.
>
> In the present case, the jury found Officer Zezulka negligent for failing to remove [the decedent's] belt. While she should be held accountable for enhancing the risk of suicide, [the decedent] should be responsible for his own conduct. [*Hickey*, 439 Mich at 447-450 (RILEY, J (concurring in part and dissenting in part)) (footnotes omitted).]

After the *Hickey* decision was released, the Legislature codified the law governing comparative fault. In MCL 600.2957(1), the Legislature provided for the allocation of fault among parties and nonparties, stating:

> In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each person shall be allocated under this section by the trier of fact and, subject to [MCL 600.6304], in direct proportion to the person's percentage of fault. In assessing percentages of fault under this subsection, the trier of fact shall consider

> the fault of each person, regardless of whether the person is, or could have been, named as a party to the action.

The Legislature also determined that a plaintiff's fault would not bar recovery:

> Subject to [MCL 600.2959], in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, a plaintiff's contributory fault does not bar that plaintiff's recovery of damages. [MCL 600.2958.]

And, in MCL 600.2959, the Legislature explained the allocation of comparative fault and its impact on damages:

> In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the court shall reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in [MCL 600.6306] or [MCL 600.6306a], as applicable. If that person's percentage of fault is greater than the aggregate fault of the other person or persons, whether or not parties to the action, the court shall reduce economic damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in [MCL 600.6306] or [MCL 600.6306a], as applicable, and noneconomic damages shall not be awarded.

In MCL 600.6304, the Legislature described how courts should address the parties' fault and the trier of fact's allocation of fault. In pertinent part, MCL 600.6304 reads:

> (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death involving fault of more than 1 person, including third-party defendants and nonparties, the court, unless otherwise agreed by all parties to the action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating both of the following:
>
> (a) The total amount of each plaintiff's damages.
>
> (b) The *percentage of the total fault of all persons that contributed to the death or injury, including each plaintiff* and each person released from liability under [MCL 600.2925d], regardless of whether the person was or could have been named as a party to the action.
>
> (2) In determining the percentages of fault under subsection (1)(b), the trier of fact shall consider both the nature of the conduct of each person at fault and the extent of the causal relation between the conduct and the damages claimed.
>
> (3) The court shall determine the award of damages to each plaintiff in accordance with the findings under subsection (1), subject to any reduction under subsection (5) or [MCL 600.2955a] or [MCL 600.6303], and shall enter judgment against each party, including a third-party defendant, except that judgment shall not be entered

> against a person who has been released from liability as provided in [MCL 600.2925d].
>
> (4) Liability in an action to which this section applies is several only and not joint. Except as otherwise provided in subsection (6), a person shall not be required to pay damages in an amount greater than his or her percentage of fault as found under subsection (1). This subsection and [MCL 600.2956] do not apply to a defendant that is jointly and severally liable under [MCL 600.6312].
>
> * * *
>
> (8) As used in this section, "fault" includes an act, an omission, conduct, *including intentional conduct*, a breach of warranty, or a breach of a legal duty, *or any conduct that could give rise to the imposition of strict liability*, that is a proximate cause of damage sustained by a party. [Emphasis added.]

Notably, after *Hickey* was decided, MCL 600.6304 was amended to define the term "fault" to include intentional conduct. 1995 PA 161. And this Court has recognized that the comparative fault statutes apply to all persons who were at fault:

> [O]ur comparative fault statutes, particularly MCL 600.6304, MCL 600.2957, and MCL 600.2959, mandate the allocation of liability among all persons who contributed to the accrual of a plaintiff's damages. These statutes do not distinguish between types of at-fault conduct that resulted in the plaintiff's sustaining damages. Consequently, the comparative fault statutes apply to all persons, including the plaintiff, who are found to be at fault, i.e., whose conduct is a proximate cause of the plaintiff's damages. A plaintiff will be considered at fault if a defendant proves that the plaintiff's conduct was both a cause in fact and a legal, or proximate, cause of his own damages. Once the at-fault persons are determined, the trier of fact assigns percentages of fault to each person after considering the nature of each person's conduct and the extent of the causal relation between the conduct and the resulting damages. See MCL 600.6304(1)(b); MCL 600.6304(2). [*Lamp v Reynolds*, 249 Mich App 591, 605; 645 NW2d 311 (2002).]

Yet, the application of fault is different in the context of minors. Contrary to the trial court's treatment of JQ, a 15-year old, the line of demarcation for minors is the age of seven. *Estate of Goodwin v Northwest Mich Fair Ass'n*, 325 Mich App 129, 159-162; 923 NW2d 894 (2018).

In sum, after our Supreme Court abandoned the harsh consequences of contributory negligence and its bar of recovery in favor of comparative fault in *Placek*, our Legislature codified those principles. The plain language of MCL 600.2957 (allocating the liability of each person in direct proportion to the person's percentage of fault), MCL 600.2959 (reducing the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based and eliminating noneconomic damages), MCL 600.6304(1)(b) (requiring the allocation of liability among *all* persons who contributed to the plaintiff's damages), and MCL 600.6304(8) (defining fault to include intentional conduct or acts that are a proximate cause of damage sustained

by a party), require the allocation of liability among all persons who contributed to the plaintiff's damages. *Le Gassick*, 330 Mich App at 495. Thus, the comparative fault statutes apply to all persons, including the plaintiff, who are found to be at fault, i.e., whose conduct is a proximate cause of the plaintiff's damages.

A plaintiff will be considered at fault if a defendant proves that the plaintiff's conduct was both a cause in fact and a legal, or proximate, cause of his own damages. *Lamp*, 249 Mich App at 598-599. And, the allocation of fault even applies to a plaintiff's intentional conduct. The defendant bears the burden of proving the plaintiff's conduct was a proximate cause of his own damages. *Id*. at 599. It is apparent from Michigan's adoption of comparative fault, the plain language of the comparative fault statutes, and the principles of causation that the intentional acts of a plaintiff are considered when apportioning fault and allocating damages. Consequently, JQ's intentional act of committing suicide must be considered, and his age, 15 years old at the time of his death, does not relieve him from fault for the commission of an intentional act. Accordingly, the trial court erred in granting summary disposition in favor of plaintiffs under MCR 2.116(I)(2) because the issue presents a factual question for the jury.[14] Similarly, a jury must determine whether plaintiffs met their burden of proving causation by a preponderance of the evidence when it evaluates the witnesses' credibility.

VII. CONCLUSION

We conclude that the SSALA applies in this case and that the evidence established a genuine issue of material fact regarding gross negligence, which precludes immunity under the act. Similarly, there exist questions of material fact for trial regarding piercing the corporate veil, causation and foreseeability, negligent hiring or retention, and comparative fault. Accordingly, we affirm the trial court's orders in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Kathleen A. Feeney

[14] For example, the deposition of Dillard exemplifies that resolution of credibility issues will be important. At the start of Dillard's deposition, plaintiff's counsel reminded him that he was not represented by counsel and that he had been fired by SJJS before informing him that SJJS was blaming him for everything that happened.