

Order

Michigan Supreme Court
Lansing, Michigan

July 22, 2020

Bridget M. McCormack,
Chief Justice

160877-8 & (39)

David F. Viviano,
Chief Justice Pro Tem

DEBORAH TSCHIRHART, Personal
Representative of the ESTATE OF SHAUN M.
TSCHIRHART,
Plaintiff-Appellant/Cross-Appellee,
v

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices
SC: 160877; 160878
COA: 345411; 345715
Oakland CC: 2018-165013-NO

CITY OF TROY, ALEXANDER YARBROUGH,
NICHOLAS YARBROUGH, MARY ALLEMAN,
and ALEXIS CALHOUN,
Defendants-Appellees,

and

SUSAN O'CONNOR,

Defendant-Appellee/Cross-Appellant.

On order of the Court, the application for leave to appeal the December 17, 2019 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant are considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the Court of Appeals erred in concluding that, under this Court's precedent, a lifeguard's delay, even if it constitutes gross negligence, is not a cause in fact of drowning for purposes of determining governmental immunity under MCL 691.1407(2)(c) because of the inherent uncertainty of successful rescue. See *Beals v Michigan*, 497 Mich 363 (2015); *Ray v Swager*, 501 Mich 52 (2017). In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellees shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellees shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellees' brief. The parties should not submit mere restatements of their application papers. The application for leave to appeal as cross-appellant is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 22, 2020

Clerk