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STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL P. HOOFFSTETTER, Personal Representative of the ESTATE OF MICHAEL J. HOOFFSTETTER,

Plaintiff-Appellant,

v

CITY OF MUSKEGON, LEIGHANN MIKESELL, JAKOB EVANS, LEO EVANS, and MATT SCHWEMIN,

Defendants-Appellees.

UNPUBLISHED
November 04, 2026
9:16 AM

No. 376823
Muskegon Circuit Court
LC No. 2024-003495-NO

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

This case arose from a tragedy. On July 24, 2022, Michael J. Hooffstetter, lost his life in a drowning accident while swimming in Lake Michigan, just off the shores of the Pere Marquette Charter Park (Pere Marquette Park) in Muskegon, Michigan. He was 19 years old. His father, plaintiff, Michael P. Hooffstetter, filed this lawsuit as personal representative of his son's estate. Plaintiff now appeals a July 18, 2025 order granting summary disposition under MCR 2.116(C)(7) as to the first amended complaint and granting summary disposition under MCR 2.116(C)(8) as to only Count I of the first amended complaint.

The question before the Court is not whether plaintiff suffered a loss—which he undoubtedly did—but whether the law may authorize a remedy in tort. We agree with the circuit court that the allegations of Counts I through IV of the first amended complaint do not support the gross negligence exception to the governmental tort liability act (GTLA), MCL 691.1401 *et seq*., MCL 691.1407(2), and therefore, the individual defendants are entitled to immunity from the claims presented here. However, a question of fact remains as to whether the proprietary exception

to the GTLA applies to Counts V and VI;[1] therefore, we vacate and reverse the circuit court's order as to these counts. Plaintiff is entitled to discovery on Counts V and VI. This case is remanded to the circuit court for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

Because plaintiff appeals a decision granting summary disposition under MCR 2.116(C)(7) and (C)(8), we consider his claims using the following pertinent facts from the first amended complaint.

Around 5:30 p.m. on July 24, 2022, Michael J. Hooffstetter walked to the Pere Marquette Park with two friends, Tyson Shutler and Jacob Neukom. Pere Marquette Park is operated by the City of Muskegon and located on the shores of Lake Michigan. All three men were college athletes. It had rained for most of the day, the remnants of a significant thunderstorm that had rolled in the evening before. Warnings were in place from both the National Weather Service (NWS) and the National Oceanic and Atmospheric Administration (NOAA) urging individuals to stay out of Lake Michigan due to hazardous swimming conditions and potentially life-threatening waves and currents. The NOAA's warning for Muskegon on July 24, 2022, was "Do Not Swim!" The NWS issued a beach statement hours before the young men arrived at the park warning of "High wave action, strong current, and dangerous swimming conditions expected . . . Strong currents can pull swimmers into deeper water and high waves can sweep people off piers." The NWS's "precautionary/preparedness action" was to "[r]emain out of the water to avoid hazardous swimming conditions and do not venture out on piers. Please check with your local authorities on potential beach closures."

The NOAA's warnings were transmitted to a warning system installed at the park that consisted of traffic-signal style lights and a strobe attached to a kitehouse and bathhouse at the park. The system was custom-built for Pere Marquette Park by a company known as SwimSmart, and it pulled updates and data from the NOAA to determine what warning signal to light. The red strobe light blinked "only during high hazard" days on the beach, while the building-mounted light consisted of three colored lights (red/yellow/green) triggered by the NOAA's updates. The system has allegedly been discontinued. While it was functioning at the time that the young men arrived at the Pere Marquette Park on July 24, 2022, it was allegedly not visible from the direction that the young men entered the park, and the red strobe light was allegedly "designed to be seen at a distance of only a few hundred feet." The young men were farther away than this when they were on the beach and in the water.

Plaintiff also alleges that the SwimStart system had an error on the evening before, from approximately 9:45 p.m. on July 23, 2022, until 8:05 a.m. on July 24, 2022, but at the time the

[1] While not dispositive for purposes of this appeal, the application of the proprietary function exception to the GLTA and what record must be developed by each party at summary disposition is the subject of an unpublished case from this Court that is now before the Supreme Court on leave granted. *Leduke v South Haven*, unpublished per curiam opinion of the Court of Appeals, issued September 17, 2025 (Docket No. 371030), lv gtd 32 NW3d 470 (2026).

young men were at the beach, it displayed a red light, "meaning 'Do Not Swim!' " At least one other park along the lakeshore closed its beach on that date.

Despite the warnings and weather conditions, many people were allegedly at the beach on that day, and the young men entered the water. After 15 to 20 minutes, they felt the current pulling them farther from the beach and toward the pier break wall. Michael began visibly panicking and calling for help. Jacob, a former lifeguard, swam to Michael and with Tyson's help, lifted him onto a rock near the pier. The waves were unrelenting, eventually knocking all three young men off the rocks. Tyson and Jacob managed to swim to a spot of relative safety, but Michael was lost. First responders from the Muskegon Police Department, Muskegon Fire Department, Norton Shores Fire Department, Muskegon County Sherriff's Department, the United States Coast Guard, and the Michigan Department of Natural Resources all arrived at the scene. One firefighter attempted to enter the water, but the intensity of the waves slammed her body into the rocks such that her team struggled to pull her out using a rope. After several hours, the search was called off. The next morning, the United States Coast Guard located Michael's body at the bottom of the lake nearly 16 hours after he drowned.

On July 30, 2024, plaintiff filed this lawsuit against the City of Muskegon and several city officials claiming that they were grossly negligent in failing to close the beach at Pere Marquette Park on July 24, 2022. The first amended complaint was filed on February 24, 2025, and contains six counts. Counts I through IV allege gross negligence against the following defendants who allegedly held the following respective positions on the date of the incident: LeighAnn Mikesell, Muskegon City Manager; Leo Evans, Muskegon Public Works Director; Matt Schwemin, Muskegon Parks Supervisor; and Officer Jakob Evans, Muskegon Beach Patrol Officer. Plaintiff alleges that each of these individual's job duties included responsibilities related to public safety or operations or maintenance of public areas including the Pere Marquette Park, and that they had authority to close the beach. Plaintiff also alleges that each knew or should have known that the water conditions were too dangerous for swimming on July 24, 2022, that the SwimStart system experienced an error the night before July 24, 2022, and that defendants' failure to close the beach constituted gross negligence that was the proximate cause of Michael's death. In addition, with respect to defendant Officer Jakob Evans, plaintiff also alleged that he was on duty at the Pere Marquette Park on July 24, 2022, that he had the ability to enforce the SwimStart warning system, that he "saw or should have readily seen" many people swimming in the water at Pere Marquette Park, and that he had an obligation to order the patrons to get out of the water or otherwise close the beach.

Counts V and VI of the first amended complaint raise allegations against the City of Muskegon, rather than any individual defendant. Count V alleges that the beach pier at Pere Marquette Park "constitutes a nuisance at all times and under all circumstances, without regard to the case with which it is conducted or maintained." In Count VI, plaintiff alleges a claim for premises liability against the city based on allegations that Michael was swimming at the Pere Marquette Park as an invitee at a beach that the city was operating. In this count, plaintiff cites the proprietary function exception to the GTLA in MCL 691.1413, as a basis for avoiding governmental immunity and holding the city liable for the alleged failure to "exercise ordinary care and caution in and about the maintenance of the Pere Marquette Beach" and a failure to keep Michael and others "lawfully swimming in the area appropriately updated of swim conditions" as

well as failure to provide trained lifeguards to monitor the beach or careless or grossly negligent operation or maintenance of the Pere Marquette Beach."

On March 28, 2025, defendants moved to dismiss plaintiff's first amended complaint, and oral argument was held on July 18, 2025. The circuit court granted summary judgment in favor of Mikesell under MCR 2.116(C)(7) and MCR 2.116(C)(8) because it found that she was entitled to absolute immunity under MCL 691.1407(5); granted summary judgment in favor of the individual defendants under MCR 2.116(C)(7) because of undisputed facts counteracting a finding of proximate cause and gross negligence by any defendant (i.e., no individual defendant allegedly had direct involvement with Michael prior to his death and that the city was utilizing a light warning system);[2] and granted summary judgment in defendants' favor under MCR 2.116(C)(7) as to Counts V and VI because the charge for parking does not evidence a business model with the primary purpose of procuring a profit. On appeal, plaintiff does not dispute that defendant Mikesell is entitled to absolute immunity, but claims the circuit court erred in its other analyses.

II. ANALYSIS

A. STANDARD OF REVIEW

This Court reviews a lower court's grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The purpose of summary disposition is to "avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved on an issue of law." *Shepherd Montessori Ctr Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 324; 675 NW2d 271 (2003).

Plaintiff challenges the circuit court's grant of summary disposition under MCR 2.116(C)(7).[3] Summary disposition may be granted under MCR 2.116(C)(7) if the plaintiff's claims must be dismissed because of "immunity granted by law." MCR 2.116(C)(7). As parties moving for summary disposition, defendants may, but are not required to support their claims of immunity "with 'affidavits, depositions, admissions, or other documentary evidence,' the substance of which would be admissible at trial." *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008) (citation omitted). "A plaintiff must allege facts justifying the application of an exception to governmental immunity," and the contents of its complaint are accepted as true unless contradicted by documentation submitted by the defendants. *Tarlea v Crabtree*, 263 Mich App 80, 87-88; 687 NW2d 333 (2004) (quotation marks and citation omitted); *Maiden*, 461 Mich at 119-120.

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[2] The circuit court denied defendants' motion for summary disposition under MCR 2.116(C)(8) because the pleadings alleged gross negligence in Counts II, III, IV, V and VI.

[3] Plaintiff's brief on appeal claims that it challenges the circuit court's decision under MCR 2.116(C)(8) as well as MCR 2.116(C)(7). However, the circuit court denied defendants' motion for summary disposition under MCR 2.116(C)(8) with respect to Counts II, III, IV, V, and VI, explaining that the first amended complaint alleged gross negligence. Plaintiff does not appeal the grant of summary disposition as to Count I, which alleged gross negligence by defendant Mikesell.

B. GOVERNMENT TORT LIABILITY ACT

"Under the GTLA, governmental agencies and their employees are generally immune from tort liability when they are engaged in the exercise or discharge of a governmental function." *Ray v Swager*, 501 Mich 52, 62; 903 NW2d 366 (2017); see also MCL 691.1407. This immunity applies only if the governmental employee's conduct "does not amount to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2)(c). To demonstrate gross negligence, it must first be established that the tortfeasor held a duty to the injured party. *Downs v Saperstein Assoc Corp*, 265 Mich App 696, 699; 697 NW2d 190 (2005).

Moreover, the allegations must support a finding that the alleged conduct constituted gross negligence as defined in the GTLA, i.e., "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). Such conduct has been "characterized 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). Moreover, "allegations or evidence of inaction or claims that a defendant could have taken additional precautions are [an] insufficient" basis for claiming a governmental employee's conduct constituted gross negligence. *Bellinger v Kram*, 319 Mich App 653, 660; 904 NW2d 870 (2017).

In addition, the alleged conduct must be the proximate cause of the injury—in this case, Michael's tragically premature death. A prerequisite to finding proximate cause is a finding of factual causation, i.e., that "but for the defendant's actions, the plaintiff's injury would not have occurred." *Ray*, 501 Mich at 63 (quotation marks and citation omitted). Then, proximate or "legal causation" must be established, which considers whether "the harm caused to [Michael] was the general kind of harm the defendant[s] negligently risked." *Id.* at 64. (quotation marks and citation omitted). In addition, because the GTLA exception applies only if the gross negligence is "the" proximate cause of the plaintiff's injury, plaintiff must demonstrate that the alleged gross negligence was the "one most immediate, efficient, and direct cause preceding an injury." *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). The focus is on the foreseeability of the injury resulting from the alleged conduct; therefore, natural or nonhuman forces cannot be considered a proximate cause of plaintiff's injuries for purposes of the GTLA. They may "bear on the question of foreseeability, in that they may constitute superseding causes that relieve the actor of liability if the intervening force was not reasonably foreseeable." *Ray*, 501 Mich at 72.

While "the issue whether a governmental employee's conduct constituted gross negligence under MCL 691.1407 is generally a question of fact, a court may grant summary disposition under MCR 2.116(C)(7) if, on the basis of the evidence presented, reasonable minds could not differ." *Tarlea*, 263 Mich App at 87-88 (quotation marks and citations omitted). "[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence." *Maiden*, 461 Mich at 122-123.

1. DUTY

We agree with the circuit court that there is no question of fact as to whether any defendant owed a duty to Michael that would support a gross negligence claim. The existence of a duty is a question of law for the courts to decide. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). Where, as here, there is no statute alleged to create such a duty, plaintiff "must

establish that the governmental employee owed [Michael] a common-law duty without regard to the defendant's status as a government employee." *Dougherty v Detroit*, 340 Mich App 339, 347; 986 NW2d 467 (2021) (quotation marks and citation omitted).

Factors relevant to determining whether a common-law duty should be imposed include: "the relationship of the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented." *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997). "Generally, absent a special relationship, a party has no duty to take actions to benefit a third party." *Downs*, 265 Mich App at 701. A special relationship "only exist[s] where a party entrusts himself to the protection and control of another and, in so doing, the party loses the ability to protect himself." *Id*.

The allegations in the amended complaint do not raise a genuine question of fact as to whether any individual defendant had a duty to Michael or his friends. Defendants are named as parties because of their status as city officials or employees who allegedly held authority over the operation and maintenance of all Muskegon parks, including the Pere Marquette Park; and with respect to defendant, Officer Evans, the public safety thereon. This is insufficient to create a duty as a matter of law. *Dougherty*, 340 Mich App at 347. There is no allegation that Michael or his friends spoke to any defendant, nor did they know them personally or entrust themselves to any of them, or that any defendant had reason to know that these young adult college students were not aware of warnings from national organizations like the NWS and the NOAA. Michael entered the water of his own volition; one of his friends had lifeguard training; a member of the public provided them with a flotation device that was apparently available at the park; and first responders arrived from multiple jurisdictions. There is no allegation that would suggest a reason to infer a special relationship existed between defendants and Michael or any other basis for a duty recognized in the common law.

Defendants' relationship to Michael and his friends is similar to *Downs* and *Dougherty*, where this Court declined to impose a duty on firefighters toward individuals who passed away in fires at their residence, despite allegations that the firefighters' actions fell below a reasonable standard of care. *Downs*, 268 Mich App at 697-701; *Dougherty*, 340 Mich App at 347-350. Allegations that the decedent entrusted himself to the fire department as a whole was insufficient to create a duty in either case when there was no allegation that the named-defendant knew the individual needing rescue or, in *Dougherty*, knew that the individual remained in the home during the fire. This Court stated that it is "too heavy a burden to impose an affirmative duty on firefighters to ensure the survival of individuals that are unobservable at the scene of a fire." *Dougherty*, 340 Mich App at 349. Similarly, here, it is too heavy a burden to impose an affirmative duty on city officials to ensure the survival of individuals who choose to enter the water on their own volition despite a warning system advising them of a high risk due to heavy currents.

This case is distinguishable from *Beaudrie*, which plaintiff cites in his brief, where the defendant was a police dispatcher who was a personal friend of the assailant and who was contacted by the assailant's mother—while working dispatch—with notice that the assailant was missing, appeared to be armed and dangerous, and had taken the victim with him to the location where the crime occurred. The defendant allegedly agreed to withhold information from the police to allow the assailant's mother time to contact the assailant's attorney, and in that time, the victim was abducted, assaulted, and raped by the assailant. *Beaudrie*, 465 Mich at 125-129. Our Supreme

Court did not determine that the defendant held a duty to the victim but, rather, held that the public-duty doctrine did not provide immunity from any duty that may be available under common law. It remanded the case to the circuit court for further proceedings. *Id.* at 142. In this case, no defendant had any relationship with Michael. When city officials were notified that Michael was in crisis, they allegedly arrived on the scene from multiple jurisdictions and attempted a rescue. Tragically, it was unsuccessful. The allegations in plaintiff's first amended complaint do not support a finding of a duty as a matter of law.

2. GROSS NEGLIGENCE

We agree with the circuit court that plaintiff does not allege conduct by any defendant that rises to the level of gross negligence as defined in the GTLA, nor was such gross negligence the proximate cause of Michael's tragic death. The conduct to which plaintiff points is the failure to close the beach on July 24, 2022, despite defendants either knowing, or should have known of the NOAA and NWS warnings. Even if this failure demonstrated an "unreasonable risk of harm"—the standard for ordinary negligence—the record refutes a finding that any defendant demonstrated a substantial lack of concern for whether injury results, which is the standard for gross negligence under the GTLA. See MCL 691.1407(8)(a); *Moning v Alfono*, 400 Mich 425, 433; 254 NW2d 759 (1977) (recognizing that "[n]egligence is conduct involving an unreasonable risk of harm.").

To the contrary, it is unrefuted that defendants took several measures to address the risk posed by swimming in Lake Michigan when the NOAA and NWS warned against it. This included installing a SwimStart system on both bathhouses at the beach, which was allegedly functioning on July 24, 2022, and which informed patrons of the "High Hazard" presented by the water conditions, i.e., "High Waves and/or strong currents." This system not only included a signal attached to each bathhouse, but also a beacon that flashed red during hazardous conditions. In addition, the city assigned a police officer to beach patrol and posted information on its website related to weather and lake conditions. These measures contradict a finding that any defendant exhibited "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(8)(a). Defendants had several measures in place on July 24, 2022, to warn residents of the risk that ultimately cost Michael his life. The conduct alleged here does not rise to the level of gross negligence necessary to avoid immunity under the GTLA.

3. PROXIMATE CAUSE

Moreover, the failure to close the beach is not the most immediate, efficient, and direct cause preceding the injury and, therefore, is not the proximate cause of Michael's tragic death. *Robinson*, 462 Mich at 458-459. The failure to close the beach was not a cause in fact or proximate cause of Michael's passing.

Beals v Michigan, 497 Mich 363, 373-374; 871 NW2d 5 (2015), overruled in part on other grounds by *Ray*, 501 Mich at 72 n 49, is instructive. In *Beals*, the Michigan Supreme Court held that a lifeguard's inaction was not the "most immediate, efficient, and direct cause" of a child's drowning because the lifeguard did not cause the child to enter the pool or swim to the deep end. The child did this voluntarily. Similarly, no defendant caused Michael to enter the water. To the contrary, warning lights were installed warning visitors to the park that the water conditions presented a high hazard. At best, defendants merely failed to prevent it from happening.

This distinguishes this case from *Ross v Glaser*, 220 Mich App 183, 187-188; 559 NW2d 331 (1996), in which a father's act of handing a loaded gun to his adult son, who was mentally unstable and in the midst of a neighborhood conflict, constituted a breach of a duty that was the proximate cause of the plaintiff's decedent's shooting. This case did not involve a governmental actor or consider the standard for proximate cause applied to claims of gross negligence under the GTLA. However, even in *Ross*, this Court acknowledge that Michigan courts have distinguished between "active misconduct causing personal injury (misfeasance) and passive inaction or the failure to protect others from harm (nonfeasance)." *Id.* at 186. Nonfeasance generally does not create a legal duty to protect or aid another, absent a special relationship between the parties, which misfeasance does. This case is one of alleged nonfeasance, i.e., a failure to prevent Michael from entering the water; and *Ross* involved a case of misfeasance. *Id.* at 187. A legal duty arises from the second alone. The circuit court appropriately granted summary disposition in defendants' favor.

C. PROPRIETARY EXEMPTION

Counts V and VI of the first amended complaint seek to impose liability on the City of Muskegon for operation and maintenance of the Pere Marquette Park, which is unquestionably a governmental function. The city, as a "political subdivision," MCL 691.1401(d) and (e), is a "governmental agency" for purposes of the GTLA, MCL 601.1401(a), and therefore can be liable for these torts only if an exception applies. MCL 691.1407(1).

Plaintiff relies on the proprietary function exception, which recognizes that the "immunity of the governmental agency shall not apply to actions to recover for bodily injury or property damage arising out of the performance of a proprietary function," which is defined as "any . . . conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees." MCL 691.1413. To be a proprietary function, two tests must be satisfied: (1) the activity must be conducted primarily for the purpose of producing a pecuniary profit; and (2) the activity cannot be normally supported by taxes and fees. *Coleman v Kootsillas*, 456 Mich 615, 621; 575 NW2d 527 (1998). With respect to the first test, the existence of a profit is relevant, but not determinative. "A governmental agency may conduct an activity on a self-sustaining basis without being subject to the proprietary function exception." *Harris v Univ of Mich Bd of Regents*, 219 Mich App 679, 690; 558 NW2d 225 (1996). Courts also consider "where the profit generated by the activity is deposited and how it is spent." *Coleman*, 456 Mich at 621 (quotation marks omitted). Profits used to defray expenses of the activity, as opposed to deposits into the general fund, indicate a nonpecuniary purpose. *Goodhue v Dep't of Transp*, 319 Mich App 526, 532; 904 NW2d 203 (2017). With respect to the second test, "an activity need not actually be supported by taxes or fees if it is a kind normally supported by taxes or fees" or if it is "conducted for profit in such a scope as to render it a private profit-making enterprise." *Herman v Detroit*, 261 Mich App 141, 145-146; 680 NW2d 71 (2004).

In this case, plaintiff alleges that the city collected approximately $800,000 in revenue from parking at Pere Marquette Park for the fiscal year 2022, in addition to $1,042.41 in parking fees and tickets. This is supported by a news article attached to plaintiff's motion. Defendants refute this by pointing to the city's public financial reports; however, it is unclear where the parking fees or cost of operating just Pere Marquette Park are line-itemed on this report. There is a community fund for the Pere Marquette and Elliot Parks; however, the dollar amounts in these funds are

significantly less than the amount reported in the news article from parking, and there is no identified contribution. The circuit court erred in finding as a matter of law that defendants are entitled to summary disposition as to this exception. While revenue is not the same as profit, the city has not pointed to any particular financial record demonstrating the cost of operating Pere Marquette Park or refuting application of the proprietary function exception as a matter of law. As a result, plaintiff is entitled to discovery here, and the trial court granting summary disposition was premature.

We also agree with plaintiff that the recreational land use act (RUA), MCL 324.73301, does not apply. The RUA prohibits a cause of action "for injuries to a person who is on the land of another without paying to the owner, tenant, or the lessee of the land a valuable consideration for the purpose of [outdoor activities] unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner . . . ." MCL 324.73301(1). The Pere Marquette Park and Lake Michigan are public lands and, therefore, the RUA does not apply. Our Supreme Court made this clear in *Ballard v Ypsilanti Twp*, 457 Mich 564, 573; 577 NW2d 890 (1998), by distinguishing the GTLA from the RUA because the "GTLA limits liability on government-owned property and the [RUA] limits liability on privately owned property." The Supreme Court stated that "the [RUA] does not apply to public property . . . looking at the purpose behind the act and the circumstances surrounding its passage, it becomes clear that the Legislature did not intend the [RUA] to apply to publicly owned property." *Id*. at 576. Accordingly, we decline the invitation to extend it here.

Reviewing the record in a light most favorable to plaintiff, the nonmoving party, we find a genuine question of fact as to whether the proprietary exception to the GTLA applies. We vacate and reverse the circuit court's decision granting summary disposition to defendants as to Counts V and VI, and remand this case to the trial court for further proceedings as to these counts. We affirm the circuit court's grant of summary disposition as to the individual defendants because the conduct alleged does not rise to the level of gross negligence that was the proximate cause of this tragedy. We do not retain jurisdiction.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney