STATE OF MICHIGAN

COURT OF APPEALS

LOREN KROLL, by RONALD KROLL and SUSAN KROLL, Legal Guardians,

Plaintiffs-Appellees,

v

DELORES DEMORROW and MONTAGUE AREA PUBLIC SCHOOLS,

Defendants-Appellants.

UNPUBLISHED
February 26, 2019

No. 341895
Muskegon Circuit Court
LC No. 16-006224-NI

Before: METER, P.J., and SAWYER and CAMERON, JJ.

PER CURIAM.

In this action for personal injuries arising from a pedestrian-automobile collision, defendants, Delores DeMorrow and Montague Area Public Schools (MAPS), appeal by right from an order denying defendants' motion for summary disposition in favor of plaintiffs, Ronald and Susan Kroll, as legal guardians of Loren Kroll, pursuant to MCR 2.116(C)(7) and (10). We reverse and remand for entry of an order granting defendants summary disposition.

This action arises from an accident in which a private vehicle struck a student, Loren, as her school bus was arriving to pick her up. Allegedly, the bus driver, DeMorrow, failed to turn on the overhead caution lights as she stopped to pick up Loren. There are disputed issues regarding whether Loren began crossing the road early or whether the driver of the private vehicle, Ryan Yost, veered off the road and hit the student in her driveway.

A trial court's decision on a motion for summary disposition is a question of law that is reviewed de novo. *Ray v Swager*, 501 Mich 52, 61-62; 903 NW2d 366 (2017). The applicability of governmental immunity is also reviewed de novo. *Id*. When a claim is barred because of immunity granted by law, summary disposition is properly granted under MCR 2.116(C)(7). *Hannay v Dep't of Transp*, 497 Mich 45, 58; 860 NW2d 67 (2014). "The determination whether a governmental employee's conduct constituted gross negligence under MCL 691.1407 is generally a question of fact, 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). In ruling on a motion for summary disposition,

> a court accepts as true the plaintiff's well-pleaded allegations of fact, construing them in the plaintiff's favor. The Court must consider affidavits, pleadings, depositions, admissions, and any other documentary evidence submitted by the parties, to determine whether a genuine issue of material fact exists. These materials are considered only to the extent that they are admissible in evidence. [*Id*.]

We turn first to defendants' argument that the trial court erred in finding that there was a genuine dispute regarding whether DeMorrow's negligence was the proximate cause of the collision. We agree.

In addition to establishing gross negligence, plaintiffs must show that DeMorrow's gross negligence was the proximate cause of Loren's injuries for the gross negligence exception to governmental immunity to apply. See *Love v Detroit*, 270 Mich App 563, 565; 716 NW2d 604 (2006). "Proximate cause is an essential element of a negligence claim." *Ray*, 501 Mich at 63. Causation is an issue that is typically reserved for the trier of fact unless there is no dispute of material fact. *Holton v A+ Ins Assoc, Inc*, 255 Mich App 318, 326; 661 NW2d 248 (2003). Proximate cause requires an examination of the foreseeability of consequences and whether a defendant is legally responsible for those consequences. *Ray*, 501 Mich at 63. Proximate cause should not be confused with cause in fact, or factual causation, which means that a plaintiff's injury would not have occurred "but for" the actions of a defendant. *Id*. A court must determine that a defendant's negligence was a cause in fact of a plaintiff's injuries before it can conclude that it was the proximate or legal cause of the injuries. *Id*. at 64. "In a negligence action, a plaintiff must establish both factual causation, i.e., the defendant's conduct in fact caused harm to the plaintiff, and legal causation, i.e., the harm caused to the plaintiff was the general kind of harm the defendant negligently risked." *Id*. (quotations marks and citations omitted).

Proximate cause is "the one most immediate, efficient, and direct cause" preceding the injury. *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). "The" proximate cause is different from "a" proximate cause, which implies the possibility of many proximate causes. *Id*. at 459-462. The Michigan Supreme Court recently explained the proper process to determine proximate cause pursuant to the GTLA:

> We take this opportunity to clarify the role that factual and legal causation play when analyzing whether a defendant's conduct was "the proximate cause" of a plaintiff's injuries under the GTLA. In any negligence case, including one involving a government actor's gross negligence, a court must determine whether "the defendant's negligence was a cause in fact of the plaintiff's injuries . . . ." But the court must also assess proximate cause, that is, legal causation, which requires a determination of whether it was foreseeable that the defendant's conduct could result in harm to the victim. A proper legal causation inquiry considers whether an actor should be held legally responsible for his or her conduct, which requires determining whether the actor's breach of a duty to the

> plaintiff was a proximate cause of the plaintiff's injury. It is not uncommon that more than one proximate cause contributes to an injury. However, under the GTLA, we have held that when assessing whether a governmental employee was "the proximate cause" of the plaintiff's injuries, a court must determine whether the defendant's conduct was "the one most immediate, efficient, and direct cause of the injury . . . ." [*Ray*, 501 Mich at 64-65.]

Proximate cause may not be determined by weighing factual causes. *Id*. at 66. Breaches of a duty by a human actor can be a proximate cause; however, "nonhuman and natural forces" cannot be a proximate cause, but can be "superseding causes that relieve the actor of liability if the intervening force was not reasonably foreseeable." *Id*. at 72. Although causation cannot be established by mere speculation, see *Weymers v Khera*, 454 Mich 639, 648; 563 NW2d 647 (1997), a plaintiff's evidence of causation is sufficient at the summary disposition stage to create a question of fact for the jury "if it establishes a logical sequence of cause and effect, notwithstanding the existence of other plausible theories, although other plausible theories may also have evidentiary support," *Wilson v Alpena Co Rd Comm*, 263 Mich App 141, 150; 687 NW2d 380 (2004), aff'd 474 Mich 161 (2006).

In this case, plaintiffs' evidence of causation fails to establish a logical sequence of cause and effect. The failure to activate the caution lights did not cause Yost to allegedly drive into plaintiffs' driveway nor can it be said to have caused Loren to walk out into the road. These are the two possible scenarios for how the accident occurred. There is no guarantee beyond Yost's mere speculation that he would have stopped if the caution lights were activated, even though he was not required to. Similar to the *Ray* case, there are other possible factual causes of Loren's injuries. However, this case fails to prove that DeMorrow's failure to activate the caution lights was a cause in fact. As a result, the issue of legal causation should not even be reached. This case can be distinguished from *Ray* because in that case, the coach's act of saying "Let's go" arguably induced the plaintiff to do something he would not otherwise do, demonstrating, at least, "but for" causation. DeMorrow's failure to activate the caution lights cannot be said to foreseeably induce Loren's or Yost's hypothetical actions. Therefore, DeMorrow's failure to activate the caution lights cannot be the proximate cause of the accident. Defendants were entitled to summary disposition on this basis.

Given that summary disposition should have been granted regarding proximate cause, we need not address the issue of whether MAPS is vicariously liable nor whether there was a genuine issue of material fact regarding gross negligence.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendants may tax costs.

/s/ Patrick M. Meter
/s/ David H. Sawyer
/s/ Thomas C. Cameron