

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EDDIE DANIELS and FAYE DANIELS,  
Deceased,

UNPUBLISHED  
September 14, 2001

Plaintiffs-Appellants,

v

No. 173275  
Ingham Circuit Court  
LC No. 93-074802-NO

PAUL PETERSON and DONALD RIEL,

Defendants-Appellees.

ON REMAND  
ON REHEARING

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Before: Saad, P.J., and Zahra and Collins, JJ.

PER CURIAM.

I. Facts and Proceedings

On December 27, 1990, plaintiff Eddie Daniels sustained injuries after his semi truck collided with a Grand Trunk Western Railroad (Grand Trunk) train at a crossing in Imlay Township. While driving down West Fourth Street near the intersection of West Fourth and Black Corners Road, Daniels crossed the railroad tracks and collided with the train.

Plaintiffs sued defendants individually as employees of the Railroad Safety and Tariffs Division of the Michigan Department of Transportation (Division). In their complaint, plaintiffs claimed that Peterson, an inspector in the Division, was grossly negligent for failing to timely issue a report to remedy hazardous conditions at the crossing after he inspected the crossing approximately one year before Daniels' collision. Plaintiffs also alleged that Riel, the acting administrator for the Division, was grossly negligent for failing to order Peterson to submit the inspection report or, if Peterson did issue the report, for failing to order Grand Trunk to install warning bells and gates at the Black Corners crossing.

In lieu of filing an answer, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), arguing that plaintiffs failed to present a viable claim of gross negligence to overcome the governmental immunity conferred by MCL 691.1407(2), which provides, in pertinent part:

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each ... employee of

a governmental agency ... is immune from tort liability for an injury to a person or damage to property caused by the ... employee ... while in the course of employment ... while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The ... employee's ... conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Much of the subsequent procedural events are set out in the Supreme Court's opinion and remand:

The trial court in this case granted summary disposition to defendants primarily on the ground that, under the Court of Appeals decision in *Dedes v South Lyon Community Schools*, 199 Mich App 385, 502 NW2d 720 (1993), defendants' conduct was not actionable because, for purposes of the governmental immunity statute, MCL 691.1407(2)(c); MSA 3.996(107)(2)(c), it was not the proximate cause of plaintiff's injuries. Before the Court of Appeals had an opportunity to decide this case, this Court invalidated the trial court's proximate cause ruling in *Dedes v Asch*, 446 Mich 99, 521 NW2d 488 (1994). The Court of Appeals in this case thereafter upheld summary disposition for defendants on the alternate basis of the public-duty doctrine.

In [*Robinson v Detroit* and *Cooper v Wade*, 462 Mich 439, 613 NW2d 307 (2000)], we overruled our decision in *Dedes*. Therefore, the trial court's original basis for granting summary disposition to defendants in this case, that defendants were immune from suit because their conduct was not the proximate cause of plaintiff's injuries, has again become the proper focus of this appeal. Consequently, given this procedural history, we remand this case to the Court of Appeals for reconsideration in light of *Robinson/Cooper*. [*Daniels v Peterson*, 462 Mich 915; 615 NW2d 14 (2000).]

On remand from the Supreme Court, this Court vacated the trial court's order granting defendants' motion for summary disposition and remanded the case to the trial court for consideration whether plaintiffs could establish that defendants were the proximate cause of plaintiffs' injuries. *Daniels v Peterson*, unpublished opinion per curiam of the Court of Appeals, entered 4/6/01 (Docket No. 173275). Defendants filed a motion for rehearing. For the following reasons, we grant defendants' motion for rehearing, vacate our decision on remand and hold that the trial court properly granted summary disposition for defendants.

## II. Analysis

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Motions under MCR 2.116(C)(8) test the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. *Id.* The trial court must grant the motion if no factual development could justify the plaintiff's claim for relief. *Id.*

In *Dedes, supra*, 446 Mich 99, the Supreme Court determined that the employee provision of the governmental immunity act, MCL 691.1407(2), is ambiguous and that the phrase "the proximate cause" does not mean the sole cause, but a proximate cause of injury. *Dedes, supra*, 446 Mich 115-119. However, in *Robinson/Cooper*, the Supreme Court abrogated its holding in *Dedes*, specifying that "the proximate cause" as used in MCL 691.1407(2) means the most immediate, efficient, and direct cause, not "a proximate cause." *Robinson/Cooper, supra* at 445-446. The Court explained:

[R]ecognizing that "the" is a definite article, and "cause" is a singular noun, it is clear that the phrase "the proximate cause" contemplates one cause. Yet, meaning must also be given to the adjective "proximate" when juxtaposed between "the" and "cause" as it is here. We are helped by the fact that this Court long ago defined "the proximate cause" as "the immediate efficient, direct cause preceding the injury." The Legislature has nowhere abrogated this, and thus we conclude that in MCL 691.1407(2)(c); MSA 3.996(107)(2)(c) the Legislature provided tort immunity for employees of governmental agencies unless the employee's conduct amounts to gross negligence that is the one most immediate, efficient, and direct cause of the injury or damage, i.e., the proximate cause. [*Id.* at 462 (citation omitted).]

Significantly, at the time plaintiffs' complaint was originally dismissed by the trial court, *Dedes, supra*, 199 Mich App 391-393, required plaintiffs to plead that defendants' gross negligence was **the** proximate cause of plaintiffs' injuries. Our Supreme Court's holding in *Robinson/Cooper* reinstated that rule. The Supreme Court directed us on remand to reconsider this case in light of *Robinson/Cooper*. Thus, the legal question presented to us is whether plaintiffs pleaded facts to support the conclusion that these defendants were **the** proximate cause of plaintiffs' injuries.

In regard to causation, plaintiffs' first-amended complaint alleged:

That as a direct and proximate result of the gross negligence and deliberate indifference of the Defendant's joint conduct, or individual conduct, the defendants proximately caused Plaintiff, Eddie Daniels' severe and permanent injuries on December 27, 1990, when his semi-rig was struck by a westbound Grand Trunk train.

That allegation plainly does not allege that defendants' conduct was **the** proximate cause of plaintiffs' injuries. Neither the above allegation nor any other statement within plaintiffs' pleadings may be construed as pleading that defendants' conduct was "the one most immediate,

efficient, and direct cause” of plaintiffs’ injuries. Plaintiffs’ allegation that defendants were merely a proximate cause of their injuries is insufficient as a matter of law. *Robinson/Cooper, supra*. Accordingly, defendants are entitled to summary disposition.

Affirmed.

/s/ Brian K. Zahra

/s/ Jeffrey G. Collins