

STATE OF MICHIGAN
COURT OF APPEALS

LARRY DARABAN, Personal Representative of
the Estate of RICHARD ALAN DARABAN,
Deceased,

UNPUBLISHED
March 5, 2002

Plaintiff-Appellant,

V

STATE OF MICHIGAN, DEPARTMENT OF
TRANSPORTATION and MACKINAC BRIDGE
AUTHORITY,

No. 223659
Court of Claims
LC No. 97-016706-CM

Defendants-Appellees.

Before: Bandstra, C.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the Court of Claims' entry of a judgment of no cause of action in this negligence suit for the wrongful death of plaintiff's decedent, who died when his vehicle drove off the Mackinac Bridge and into the Straits of Mackinac. The court found that the cause of death was not defendants' negligence, but rather the decedent's intentional act of suicide. We affirm.

Plaintiff first contends that the trial court erroneously admitted the "psychological autopsy" testimony of expert witness Dr. Cheryl King to prove that the decedent's death was a suicide. Although we agree that the trial court erred in admitting the testimony without addressing the mandatory standards set forth in MCL 600.2955, we conclude that the error does not require reversal. MCR 2.163(A). Our review of the trial record reflects that ample properly admitted and un rebutted evidence existed to support a finding of suicide, including the following: eyewitness accounts of the bridge accident that suggested the decedent's vehicle traveled at a high rate of speed and deliberately swerved toward the outer railing of the bridge; the state police accident reconstructionist's observations that the decedent's vehicle was traveling at approximately 60 to 65 miles per hour when it swerved toward the bridge railing and that no indication existed that the decedent had applied his brakes or attempted to steer away from the outer bridge railing; the conclusion of the medical examiner's report that characterized the decedent's death as a suicide; records documenting the decedent's prior hospitalizations and treatment for depression and substance abuse, including during the months immediately preceding decedent's death; testimony concerning the decedent's knowledge that, within months of his death, his former girlfriend and the mother of his child had moved in with another man

that she was dating; and coworkers' concerns that the decedent was suicidal just days before his unexplained drive to the Mackinac Bridge and recollections that on his last day of work before the accident, the decedent discussed with another coworker a previous accident during which a vehicle left the bridge and the possibility that a vehicle traveling fast enough could breach the bridge's outer railing.

Plaintiff offered some evidence that the decedent died accidentally because of an alleged bridge defect, but in light of the substantial evidence tending to prove that the decedent committed suicide we cannot characterize as clearly erroneous the trial court's finding that the decedent caused his death by purposefully driving off the bridge. MCR 2.613(C) (noting that the trial court's factual findings "may not be set aside unless clearly erroneous" and that "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it"). Because the trial court's proper finding regarding causation prevented plaintiff from establishing a necessary element of his negligence claims, we conclude that the court appropriately entered a judgment of no cause of action in favor of defendants.¹

Plaintiff also argues that the judge who conducted the trial should have disclosed that at the time of the trial his wife worked for the state attorney general's office, which entered an appearance in the case. We find, however, that because neither the judge's wife nor the attorney general's office represented a party to this case, the judge was not required to disclose the relationship. See MCR 2.003(B); *People v Dycus*, 70 Mich App 734, 736; 246 NW2d 326 (1976); Ethics Opinion R-3 (July 21, 1989). The fact that an assistant counsel from the attorney general's office made a brief appearance solely with respect to a motion that affected one nonparty state police officer, who had received a witness subpoena, does not create an appearance of impropriety. Because we find no appearance of impropriety and plaintiff does not allege that the judge acted impartially, we conclude that no error occurred when the judge failed to disclose the relationship.

Affirmed.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ William C. Whitbeck

¹ In light of our conclusion that the trial court properly determined the element of causation, we need not address plaintiff's further arguments on appeal alleging errors by the trial court with respect to its findings regarding the breach element of plaintiff's cause of action. We further note that we need not address plaintiff's additional issue criticizing the manner in which the trial court determined that the bridge median played no role in the decedent's death because defendants owed no duty with respect to the median of the bridge. *McIntosh v Dep't of Transportation (On Remand)*, 244 Mich App 705, 709-710; 625 NW2d 123 (2001) (explaining that the highway exception to governmental immunity, MCL 691.1402(1), does not extend to a highway median area, which "is, obviously, outside the actual physical structure of the roadbed surface designed for vehicular travel").