STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

WILLIAM MYRE and SHERI MYRE, as Co-Personal Representatives of the Estate of TATE MYRE, and WILLIAM MYRE and SHERI MYRE, individually; CRAIG SHILLING and JILL SOAVE, as Co-Personal Representatives of the Estate of JUSTIN CHARLES SHILLING, and CRAIG SHILLING and JILL SOAVE, individually; CHAD GREGORY, as Next Friend for KEEGAN GREGORY, a minor, and CHAD GREGORY and MEGHAN GREGORY, individually; LAUREN ALIANO, as Next Friend for SOPHIA KEMPEN, a minor, and GRACE KEMPEN, a minor, and LAUREN ALIANO, individually; LAURA LUCAS, as Next Friend for ASHLYNNE SUTTON, a minor, and LAURA LUCAS, individually,

Plaintiffs,

v

PAM PARKER FINE, SHAWN HOPKINS, NICHOLAS EJAK, JACQUELYN KUBINA, BECKY MORGAN, ALLISON KARPINSKI, KIMBERLY POTTS, ETHAN CRUMBLEY, JENNIFER CRUMBLEY, JAMES CRUMBLEY, and OXFORD COMMUNITY SCHOOLS,

Defendants.

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Case No. 22-192262-NO

Hon. Mary Ellen Brennan

OPINION AND ORDER RE: OXFORD DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AS TO PLAINTIFFS' FOURTH AMENDED COMPLAINT PURSUANT TO MCR 2.116(C)(7) AND (8)

At a session of Court
Held in Pontiac, Michigan
On

3/3/2023

This matter is before the Court on Defendants Pam Fine, Shawn Hopkins, Nicholas Ejak, Jacquelyn Kubina, Becky Morgan, Alison Karpinski, Kimberly Potts ("the individual Oxford Defendants") and Oxford Community Schools' Motion for Summary Disposition as to Plaintiffs' Fourth Amended Complaint Pursuant to MCR 2.116(C)(7) and (8).[1]

Facts

This case arises from a shooting at Oxford High School on November 30, 2021. Defendant Ethan Crumbley, who was 15 years old and a student at the school, killed four students and injured seven others with a gun that he brought into the school. Plaintiffs' Fourth Amended Complaint alleges claims against Oxford Community Schools and several individual school employees, based on negligence, gross negligence, and violation of the Child Protection Law.

Summary Disposition Standards

Summary disposition is appropriate under MCR 2.116(C)(7) when a claim is barred by governmental immunity. *Dextrom v Wexford County,* 287 Mich App 406, 428-429; 789 NW2d 211 (2010). When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. *Id.* If affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. *Id.* "If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question

[1] Defaults were entered against Defendant Ethan Crumbley, Jennifer Crumbley, and James Crumbley in April 2022.

whether the claim is barred is an issue of law for the court." *Id.* at 429. A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Simko v Blake,* 448 Mich 648, 654; 532 NW2d 842 (1995). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the non-moving party. *Id.* A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.*

Claims Against Defendant Oxford Community Schools

Defendant Oxford Community Schools argues that the claims against it in Plaintiffs' Fourth Amended Complaint are barred by governmental immunity. MCL 691.1407(1) provides that, "[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." Whether an activity was a governmental function focuses on the general activity involved rather than on the specific activity engaged in when the injury occurred. *Ward v Michigan State University (On Remand),* 287 Mich App 76, 84; 782 NW2d 514 (2010). It is well-settled that a school district is a governmental agency, and its operation is a governmental function. *Stringwell v Ann Arbor Public School District,* 262 Mich App 709, 712; 686 NW2d 825 (2004) (noting that "[t]he operation of a public school is a governmental function"); *Nalepa v Plymouth-Canton Community School District,* 207 Mich App 580, 587; 525 NW2d 897 (1994) (concluding that "a school district is a level of government of the type contemplated by the Legislature in the statute regarding absolute governmental immunity.") In addition, Plaintiffs acknowledged on the record that the school district was involved in the exercise of a governmental function at

the times relevant to this case. Accordingly, tort claims against Defendant Oxford Community Schools are barred by governmental immunity unless an exception to governmental immunity applies.

There are six statutory exceptions to governmental immunity. *Wesche v Mecosta County Road Commission,* 480 Mich 75, 84; 746 NW2d 847 (2008). The six statutory exceptions are: the highway exception, MCL 691.1402, the motor vehicle exception, MCL 691.1405, the public building exception, MCL. 691.1406, the proprietary function exception, MCL 691.1413, the governmental hospital exception, MCL 691.1407(4), and the sewage system disposal event exception, MCL 691.1417. *Wesche,* 480 Mich at 84 n 10. Plaintiffs do not argue that any of the six exceptions applies to the facts of this case. In fact, Plaintiffs acknowledged on the record that none of the six exceptions to governmental immunity has been pled in this case.

While Plaintiffs allege claims against Defendant Oxford Community Schools for gross negligence and vicarious liability, such claims do not fall within any of the six recognized exceptions. *Gracey v Wayne County Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), overruled on other grounds, *American Transmissions, Inc v Attorney Genera*l, 454 Mich 135, 143; 560 NW2d 50 (1997) (noting that the gross negligence exception to governmental immunity applies to officers, employees, members, or volunteers of governmental agencies but not to governmental agencies themselves); *Yoches v City of Dearborn,* 320 Mich App 461, 476; 904 NW2d 887 (2017) (holding that the language of MCL 691.1407 "does not provide that a governmental agency otherwise entitled to immunity can be vicariously liable for the officer's or employee's gross negligence.")

Because it is undisputed that the school district was a governmental agency engaged in the exercise or discharge of a governmental function at all relevant times and that none of the statutory exceptions has been alleged or is applicable, it follows that, pursuant to MCL 691.1407(1), the school district is immune from tort liability for the claims alleged against it in the Fourth Amended Complaint.

Plaintiffs next argue, however, that the Government Tort Liability Act (GTLA) violates the Equal Protection Clause of the Michigan Constitution, Const 1963, art 1, § 2, by requiring public school plaintiffs to meet the higher "gross negligence" and proximate cause standards to recover damages against a school employee, while a private school plaintiff would be required to meet only ordinary negligence and proximate cause standards.

When there is no fundamental right or suspect classification involved, courts use the rational-basis standard of review to evaluate the constitutionality of a statute challenged on equal protection grounds. *Vargo v Sauer,* 457 Mich 49, 60; 576 NW2d 656 (1998). Under the rational basis standard, a statute will be upheld if it furthers a legitimate governmental interest and if the challenged classification is rationally related to achieving that interest. *Id.* Under the rational basis test, the legislation is presumed to be constitutional and the party challenging the statute has the burden of proving that the legislation is arbitrary and irrational. *People v Pitts,* 222 Mich App 260, 273; 564 NW2d 93 (1997). When challenged on equal protection grounds, the constitutionality of the GTLA has been upheld repeatedly. See *Smith v Dep't of Public Health,* 428 Mich 540, 611 n 22; 410 NW2d 749 (1987) (finding that the GTLA is rationally related to several valid state purposes); *Duncan v City of Detroit,* 78 Mich App 632, 634; 261 NW2d 26

(1977) ("It is also implicit within the recent Michigan Supreme Court cases that the governmental immunity statute does not violate the equal protection or due process clauses of the United States or Michigan Constitutions.") Plaintiffs have not shown that the GTLA is arbitrary or irrational. *Pitts,* 222 Mich App at 273. The Court will not depart from the well-established precedent holding the GTLA to be constitutional when challenged on equal protection grounds.

Accordingly, the Court grants summary disposition under MCR 2.116(C)(7) and (8) in favor of Defendant Oxford Community Schools with respect to claims against it in the Fourth Amended Complaint.

Claims Against the Individual Oxford Defendants

The individual Oxford Defendants argue that the claims against them are barred by governmental immunity because their conduct was not the proximate cause of Plaintiffs' injuries.

According to MCL 691.1407(2)(c), an employee of a governmental agency is immune from tort liability for an injury caused by the employee while in the course of employment if (1) the employee is acting or reasonably believes he or she is acting within the scope of his or her authority, (2) the governmental agency is engaged in the exercise or discharge of a governmental function, and (3) the employee's conduct "does not amount to gross negligence that is the proximate cause of the injury or damage." The only element in dispute in this case is whether the conduct of any of the individual Oxford Defendants amounted to "gross negligence that is the proximate cause of the injury or damage." The Michigan Supreme Court has defined the phrase "the proximate cause," as used in MCL 691.1407(2)(c), to mean "the one most immediate, efficient, and direct

cause of the injury or damage, i.e., the proximate cause." *Robinson v City of Detroit*, 462 Mich 439, 459-462; 613 NW2d 307 (2000).

Plaintiffs essentially allege that Defendants Fine, Hopkins, Ejak, Kubina, Morgan, and Karpinski failed to properly respond to Ethan Crumbley's conduct in the day and a half before the shooting and that Defendant Potts failed to properly respond after she heard the initial shots. Given the undisputed facts in this case, the Court concludes that Ethan Crumbley's act of firing the gun, rather than the alleged conduct of the individual Oxford Defendants, was "the one most immediate, efficient, and direct cause of the injury or damage." In reaching this conclusion, the Court relies on *Robinson*, 462 Mich 439. In *Robinson*, the plaintiffs, who were passengers in stolen vehicles, were injured when the stolen vehicles crashed during a police pursuit. The plaintiffs sued the defendant police officers, who argued that the claims were barred by governmental immunity. After concluding that "[t]he one most immediate, efficient, and direct cause of the plaintiffs' injuries was the reckless conduct of the drivers of the fleeing vehicles," the Court concluded that summary disposition was properly granted in favor of the defendant police officers because "reasonable jurors could not find that the officers were "the proximate cause" of the injuries." *Id.* at 462-463; see also, *Beals v Michigan,* 497 Mich 36; 871 NW2d 5 (2015) (concluding that the trial court should have granted summary disposition in favor of the defendant lifeguard, a governmental employee, where "no jury could reasonably find that [the defendant lifeguard's] failure to intervene in [the plaintiff's] drowning was the proximate cause of his death.")

In reliance on *Ray v Swager*, 501 Mich 52; 903 NW2d 366 (2017), Plaintiffs urge the Court to conclude that genuine issues of material fact exist with respect to the

negligence of each individual defendant for the purpose of determining proximate cause. In *Ray*, the Court instructed that, to determine proximate cause under the GTLA, a court must first determine whether a defendant is a factual cause of the injuries and, if so, then assess the legal responsibility of the actors "by assessing foreseeability and whether the defendant's conduct was *the* proximate cause." *Id.* at 74. The Court then explained:

> Finally, even if the panel had determined that another actor was negligent and was a proximate cause of plaintiff's injuries, it still would have needed to determine whether defendant's actions were "the proximate cause." This would require considering defendant's actions alongside any other potential proximate causes to determine whether defendant's actions were, or could have been, "the one most immediate, efficient, and direct cause" of the injuries. If, on the basis of the evidence presented, reasonable minds could not differ on this question, then the motion for summary disposition should be granted.

Here, even assuming the individual Oxford Defendants were grossly negligent in their responses to Ethan Crumbley's conduct on November 29-30, 2021, and that they were *a* proximate cause of the injuries,[2] where Ethan Crumbley intentionally shot the victims with a gun he brought into the school for that purpose, no reasonable trier of fact could conclude that the conduct of any of the individual Oxford Defendants was "the one most immediate, efficient, and direct cause of the injury or damage" to the Plaintiffs. *Robinson,* 462 Mich at 462-463; *Tarlea v Crabtree,* 263 Mich App 80, 92-93; 687 NW2d 333 (2004). Accordingly, the Court grants summary disposition in favor of the individual defendants under MCR 2.116(C)(7) with respect to the claims based on negligence/gross negligence.

[2] The Court emphasizes that it has not found or concluded that Defendants were negligent or a proximate cause of the injuries.

Plaintiffs also allege that the individual Oxford Defendants violated the Child Protection Law, MCL 722.623, by failing to report suspected abuse of Ethan Crumbley by his parents. Plaintiffs allege that the individual Oxford Defendants' failures to report the suspected abuse was the proximate cause of Plaintiffs' injuries. In *Jones v Bitner*, 300 Mich App 65, 76-77; 832 NW2d 426 (2013), the Court concluded that "the mandatory reporting statute does not provide an exception to the general statutory rule of governmental immunity for individual governmental employees." Thus, for a defendant to be liable under the mandatory reporting statute, the defendant's conduct must have been grossly negligent and the proximate cause of the injury. *Id.* at 77. The Court in *Jones* concluded that, where the child's mother was convicted of involuntary manslaughter for causing the child's death, it appeared that only the mother's acts or omissions were the proximate cause of the child's death and the alleged failure to report could not have been the proximate cause of the death. Here, Plaintiffs allege that the failure to report resulted in injuries not to the child that would have been the subject of the report, but to others. Because, as discussed above, the Court concludes that Ethan Crumbley was "the proximate cause" of Plaintiffs' injuries for purposes of governmental immunity, the Court concludes that Plaintiffs' claim for violation of the Child Protection Law is barred by governmental immunity. Accordingly, the Court grants summary disposition of the claim for violation of the Child Protection Law under MCR 2.116(C)(7).

WHEREFORE, IT IS HEREBY ORDERED that Defendants' motion for summary disposition is granted.

IT IS SO ORDERED.

Mary Ellen Brennan

Hon. Mary Ellen Brennan
Circuit Court Judge