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2012 IL App (3d) 110659-U

Order filed August 13, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

BRYNDY J. SHEETS, Administrator of the Estate of Scott Sheets, JR., Deceased,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Marshall County, Illinois
Plaintiff-Appellant,)	
v.)	Appeal No. 3-11-0659
WAYNE STRAWN,)	Circuit No. 08-L-5
Defendant-Appellee.)	Honorable David J. Dubicki, Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendant's motion for summary judgment as the pleadings, depositions, and affidavits on file failed to raise a genuine issue of material fact as to whether defendant's actions, in not preventing decedent from leaving the scene of an encounter, proximately caused decedent's death.

¶ 2 Plaintiff, Bryndy Sheets, as administrator of the estate of Scott Sheets, Jr. (Sheets), brought this wrongful death action against defendant, Wayne Strawn. The circuit court of Marshall County granted defendant's motion for summary judgment. Plaintiff appeals, claiming

genuine issues of material fact sufficient to preclude summary judgment exist as to whether defendant's conduct toward Sheets was willful and wanton and that conduct proximately caused decedent's death.

¶ 3

BACKGROUND

¶ 4 On April 29, 2007, Scott Sheets, Jr., charged at two police officers while wielding a 7-inch knife. The officers retreated numerous times and repeatedly instructed Sheets to put the knife down. Each charge of Sheets, except the final charge, resulted in the officers' retreat. Sheets continued to advance on the officers after each corresponding retreat. Sheets' last charge brought him within 10 feet of the officers. In fear of his life and while concerned for the safety of others, Marshall County Sheriff's Deputy Wayne Strawn shot and fatally wounded Sheets.

¶ 5 The events of the day began when Jenny Mannon, Bryndy Sheets' aunt, approached Lacon police officer Rich Weers. Mannon told Weers that Sheets had stopped taking his medication and was suicidal. Officer Weers attempted to locate Sheets without initial success. At 12:30 p.m. on the same day, Roger McMahan informed Weers that Sheets recently stated he was going to kill Bryndy and commit suicide.

¶ 6 Weers traveled to the residence of Bryndy's parents just south of Lacon on Route 26. Upon arrival, Weers observed Sheets' truck in the driveway. Sheets promptly drove the truck out of the driveway, heading south. Weers radioed dispatch and followed the truck. Sheets "cut through" a field to avoid a stop sign at Melody Lane and Route 26, entered onto Route 26, and almost collided with a white SUV.

¶ 7 Scott Sheets, Sr., decedent's father, testified in his deposition that Sheets called him while driving around on the day in question. Sheets was yelling and agitated. He stated he wanted

Bryndy to watch him kill himself and gave his father 20 minutes to deliver Bryndy to him.

Sheets informed his father that if Bryndy was not brought to him in 20 minutes, he would drive his truck through a house belonging to Dwayne and Patty Atherton. Sheets also noted that he had consumed a bottle of Jack Daniels.

¶ 8 Scott Sheets, Sr., stated that his son sounded drunk and erratic on the phone. Sheets called his father a second time. At the time of the second call, Scott Sheets, Sr., was en route to Sheets' location with other family members. Sheets explained during this second phone call that police were still behind him. He told his father that he loved him, but that his father was going to see him die.

¶ 9 After the second call to his father, Sheets stopped his truck in the middle of Route 26. He exited the truck holding a knife. Weers "began to exit" his squad car when he realized Sheets possessed a knife. Sheets began "waving it and yelling things at" Weers. Sheets "started kind of running towards the squad car." Weers reacted to Sheets' charge by getting "into the squad car, put[ting] it in reverse." By this time, Sheets' family members were arriving on the scene. Having backed up as far as he could, Weers exited the squad car. At that time, Sheets moved toward Weers demanding that he "turn that fucking car around."

¶ 10 Weers testified that he responded telling Sheets, "I can't turn around, it's blocked." Weers also instructed Sheets to "put the knife down, let's talk." Sheets was approximately 50 yards from Weers at this time. Weers also yelled at the family members on the scene to "stay back away from him." Family members were yelling at both men. During the shouting, Sheets returned to his truck and drove southbound. Weers radioed that Sheets was back in the truck driving again.

¶ 11 While listening to transmissions between Weers and dispatch, Marhsall County Sheriff's Deputy Wayne Strawn decided to assist Weers and drove to his location. As Strawn's squad car, with lights and sirens activated, approached Sheets' truck, Sheets drove into a field and began doing "donuts."

¶ 12 Strawn parked his squad car a few feet from Weers' squad car. Weers told Strawn that Sheets appeared to be suicidal. Strawn indicated he had been listening to the events unfold on his police radio. Sheets again exited his truck, jumped on the cab of the truck and started slashing his wrists with the knife. The officers ordered Sheets to stop, but their demands had no effect. Sheets screamed out to Weers saying, "goddamn you Richy, this is all your fault. You watch this. You go to hell." The next thing Weers remembers is Sheets getting off the vehicle, cutting himself some more, then getting in his truck and leaving.

¶ 13 Deputy Strawn testified that once Sheets jumped down from his truck, he advanced on the officers, who were both positioned next to their squad cars. Sheets stopped in the field some 30 to 40 feet from their location on the road and began cutting his neck. A witness, Sheila Adams, claims to have called out to Sheets at this time informing him to "take it easy" and "calm down." Strawn stated that the officers made repeated demands that Sheets put the knife down.

¶ 14 Sheets did not put the knife down but, instead, returned to his truck and drove out of the field, heading south on Route 26 at a high rate of speed. Scott Johnson, another witness, noted that Sheets drove erratically and dangerously.

¶ 15 Within seconds, Sheets turned his truck around to head northbound on Route 26 in the southbound lane. Sheets returned to the area of the field near where Strawn, Weers and onlookers were located. Strawn testified that he was fearful for everyone's safety, including

Sheets. Strawn characterized Sheets' driving as "like a maniac."

¶ 16 Blaine Adams noted that Sheets' driving forced several other cars to veer off the roadway. Sheets stopped his truck about 30 yards north of the two police cars.

¶ 17 Sheets possessed the knife when he exited his truck for this third and final time. The officers told Sheets to "stop," "don't do that," and to "put the knife down." Sheets' aunt, Fran Sheets, tried to grab him, but he pushed his aunt to the side and approached the officers.

¶ 18 Initially, Sheets was 30 yards away from the officers, but approached them rapidly. One witness, Debra Logue, described Sheets as looking "angry" and "wild." She heard Sheets proclaim, "keep her the fuck away from me" when Fran Sheets approached him. Debra was fearful for her safety and afraid Sheets might attack her. Witness Forrest Vincent stated that officers gave Sheets "all of the room he wanted," but that Sheets "kept advancing on the officers."

¶ 19 The officers were positioned in the middle of the roadway and drew their weapons as Sheets advanced. Sheets stopped, so the officers holstered their weapons for a moment, but drew again as Sheets moved toward them. During this exchange, the officers holstered their weapons at least twice before redrawing them upon Sheets' further advances. Witnesses indicated that Sheets asked, "If I come at you, will you shoot me?" and "What will it take for you to shoot me?" at this period during the encounter. Deputy Strawn noted that Sheets stated that he would kill the officers if they did not kill him.

¶ 20 Strawn stated he felt threatened by Sheets' actions and was concerned that Sheets would stab him if Sheets got close enough to do so. After one rush, Sheets closed the distance from 30 yards to between 15 to 20 yards. The two officers continued to backpedal, retreating behind

Weers' squad car. In an attempt to keep a safe distance, the officers circled around Weers' squad car at least once. Sheets continued hollering and advancing on the officers.

¶ 21 Witnesses, other than the officers, described Sheets as irrational and testified that he aggressively pursued the officers with the knife in his hand. Witness Johnson stated that, in his opinion, the officers did everything they could to avoid engaging Sheets and having to shoot him.

¶ 22 Sheets' father noted that Sheets moved quicker in his second advance than he had in the previous one. This advance left Sheets within a foot of the front bumper of Weers' squad car while Deputy Strawn was at the "passenger side rear part" of the squad car. Sheets was within 10 feet of Strawn who, again, ordered him to "Just stop, put the knife down." Sheets did not comply. Sheets was leaning forward with the knife in his hand when Deputy Strawn fired two or three shots in rapid succession. The bullets struck Sheets in the chest and neck, killing him.

¶ 23 Officer Weers, who was behind Strawn when the shots were fired, testified that he feared for his life at the time Strawn fired. Deputy Strawn also stated he feared for his life and the lives of others at the moment he fired his weapon.

¶ 24 Deputy Strawn's testimony indicated he was familiar with the concept of "suicide by cop." He had received no specific training with regard to that concept, but did receive training on how to "deal with suicidal subjects." His training taught him to assess the situation, talk to the person and try to calm him or her down. It further taught him to try to get the person to talk and not to say anything negative to him or her while agreeing with the individual as much as possible until an ambulance or other personnel arrive.

¶ 25 Deputy Strawn also received training on handling individuals suspected of driving under the influence of drugs and alcohol. He stated that he has let individuals "drive away" from traffic

stops who he could tell have been drinking "if they pass the field sobriety test." He further opined that he would not let someone who is "above the limit" continue driving "because they might kill somebody else."

¶ 26 The autopsy revealed that Sheets' blood alcohol level was .171 at the time of his death. The pathologist determined that Sheets did most of his drinking within one hour of his death.

¶ 27 The Illinois State Police investigated the shooting. Master Sergeant Gregg Cavanaugh led the investigation. Cavanaugh stated that 22 witnesses were interviewed in connection with the shooting. Cavanaugh concluded that both Deputy Strawn and Officer Weers acted appropriately on the day in question. Cavanaugh's investigation concluded that Sheets was only 5 to 10 feet away from Strawn at the time of the shooting.

¶ 28 The plaintiff disclosed Rick Parent as an expert witness in the case. Parent has a Ph.D. in criminology from Simon Fraser University in British Columbia. He opined that Deputy Strawn's conduct "leading up to the fatal shooting of Scott Sheets, Jr., on April 29, 2007, showed an utter indifference to or conscious disregard for the safety of Scott Sheets, Jr., and others." Parent claimed to be an expert in the field of police tactics and the phenomenon known as "suicide by cop." He opined that Strawn "should never have allowed a drinking, suicidal person to get back in a vehicle and drive out of the field."

¶ 29 Parent further opined that Strawn should have formulated a crises intervention plan, used verbal "de-escalation" techniques, and should have called another officer for backup, who had experience dealing with suicidal individuals. In Parent's opinion, Deputy Strawn was not properly trained in crisis intervention and crisis negotiations. Parent stated that Strawn missed an excellent opportunity to resolve the crises while Sheets was in the field before leaving it. Parent

noted that Strawn "should have gone into the field and disabled" Sheets' truck and "should have engaged [Sheets] in a calm, helpful and understanding manner to diffuse the situation." Parent ultimately concluded that allowing Sheets "to leave the field led directly to Scott Sheets, Jr., committing suicide by cop by providing an opportunity to escalate the situation."

¶ 30 Parent's opinions are contained within an affidavit supplied by the plaintiff. The affidavit reveals that Parent had no personal knowledge of the facts giving rise to the litigation nor did he interview any of the witnesses in the matter. He came to his conclusions after reading the deposition transcripts of Deputy Strawn and Scott Sheets, Sr. Parent's affidavit gives no indication that he reviewed the transcripts of Officer Weers' deposition testimony or testimony from any other witness.

¶ 31 The defendant filed a motion for summary judgment, claiming that the shooting of Sheets was reasonable and justified and that no evidence existed to support a finding that defendant acted with "a deliberate intention to harm or an utter indifference to or conscious disregard for the welfare of the plaintiff." The trial court agreed and entered an order granting defendant's motion for summary judgment. This timely appeal followed.

¶ 32 ANALYSIS

¶ 33 The principles associated with reviewing an order granting summary judgment are familiar. Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *Irwin Industrial Tool Co. v. Illinois Department of Revenue*, 238 Ill. 2d 332, 339-40 (2010). "When reviewing a grant of summary judgment, this court must determine whether,

when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal any genuine issues of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." *Brugger v. Joseph Academy, Inc.*, 202 Ill. 2d 435, 446 (2002). We review *de novo* the trial court's grant of summary judgment. *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 322 (2010). This court may affirm a trial court's grant of summary judgment on any basis apparent in the record, regardless of whether the trial court relied on that basis or whether the court's reasoning was correct. *Harlin v. Sears Roebuck & Co.*, 369 Ill. App. 3d 27, 31-32 (2006).

¶ 34 Plaintiff claims the trial court erred when granting defendant's motion for summary judgment as there "is ample evidence in the record to prove the allegations of willful and wanton conduct as alleged" in the amended complaint. Plaintiff continues, claiming it "appears that the circuit court concluded defendant Strawn's conduct was, in fact, willful and wanton but was simply not a proximate cause of [Sheet's] death." Plaintiff argues that the circuit court must have considered Strawn's conduct willful and wanton or it never would have reached the issue of proximate cause.

¶ 35 Plaintiff's argument to this court concerning the conduct of Deputy Strawn is very specific. Plaintiff does not argue that shooting Sheets during his final advance on the officers was improper willful and wanton conduct upon which liability can be premised. Quite the opposite. During oral arguments in the circuit court, plaintiff acknowledged that case law supports "the use of deadly force" by Deputy Strawn. The trial court repeatedly asked plaintiff to identify improper conduct engaged in by Deputy Strawn in the 30 to 60 seconds prior to the shooting. Plaintiff voiced "some criticism with some of the testimony on the scene," noting the

existence of somewhat conflicting testimony as to what exactly was said by the officers when directing Sheets to put down his weapon in the moments before the shooting. Nevertheless, plaintiff's argument to the trial court and this court does not suggest Deputy Strawn acted improperly by shooting Sheets but, instead, focuses on the belief that the "officers had the perfect opportunity to solve or resolve this problem or situation when they were [initially] in the field."

¶ 36 Essentially, it is the act of allowing Sheets to leave the field during his initial confrontation with both officers, which plaintiff claims equates to the willful and wanton conduct that proximately caused Sheets' death. Specifically, plaintiff asserts that Deputy Strawn's acts, which constitute willful and wanton conduct, include: watching Sheets leave his truck in the middle of a field and walk approximately 50 yards toward the officers; "simply" watching Sheets walk "50 yards back to his truck" while knowing that Sheets was intoxicated, irrational and suicidal; making a "conscious decision to allow [Sheets] to drive off;" and doing "absolutely nothing even though he admitted that he knew [Sheets] was a dangerous person and that by driving away he might kill himself and/or others." These actions were a proximate cause of Sheets' death and any finding to the contrary, plaintiff argues, is erroneous.

¶ 37 We find it unnecessary to reach the issue of whether Deputy Strawn's actions equate to willful and wanton conduct evincing an actual or deliberate intention to cause harm or which shows an utter indifference to or conscious disregard for the safety of others. Plaintiff acknowledges that even were we to find that Strawn engaged in willful and wanton behavior, plaintiff still must show that such behavior "was a proximate cause of [Sheet's] death." This, he has not done and, as such, we hold the trial court did not err in granting defendant's motion for summary judgment.

¶ 38 Plaintiff bought this complaint pursuant to the Wrongful Death Act (740 ILCS 180/01 *et seq.* (West 2010)). In this case to prevail, plaintiff must set forth facts establishing the existence of a duty owed by the defendant to the plaintiff, a willful and wanton breach of that duty and an injury proximately caused by that breach. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006). The term "proximate cause" encompasses two distinct requirements: cause in fact and legal cause. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 455 (1992). The first requirement, cause in fact, is present "when there is a reasonable certainty that a defendant's acts cause the injury or damage." *Id.* In deciding that question, we first ask whether the injury would have occurred absent the defendant's conduct. *Id.* Our supreme court has also referred to cause in fact as "actual cause," noting it "can be established only where there is a reasonable certainty that a defendant's acts caused the injury or damage." (Internal quotation marks omitted.) *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002).

¶ 39 The second requirement, legal cause, is established only if the defendant's conduct is so closely tied to the plaintiff's injury that he should be held legally responsible for it. *Id.* A determination as to legal cause is a policy decision that limits how far a defendant's legal responsibility should be extended for conduct that, in fact, caused the harm. *Id.* Stated another way by our supreme court, "[t]he relevant inquiry is whether the injury is of a type that a reasonable person would see *as a likely result* of his or her conduct." (Emphasis in original.) (Internal quotation marks omitted.) *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004). "Liability cannot be based on guess, speculation, or conjecture as to the cause of the injury." *Newsom-Bogan v. Wendy's Old Fashioned Hamburgers of New York, Inc.*, 2011 IL App (1st) 092860, ¶ 16. "Proximate cause can only be established if it is reasonably certain the defendant's

acts caused the plaintiff's injury." *Id.*

¶ 40 "Although proximate cause is generally a question of fact [citation], the lack of proximate cause may be determined by the court as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause." *Young v. Bryco Arms*, 213 Ill. 2d 433, 447 (2004). Proximate cause "may be determined as a matter of law by the court where the facts as alleged show that the plaintiff would never be entitled to recover." *Abrams v. City of Chicago*, 211 Ill. 2d at 257.

¶ 41 Plaintiff has failed to put forth any facts beyond speculation and conjecture, which establish that Strawn's conduct of failing to subdue Sheets during their first encounter in the field is a proximate cause of Sheet's death. It is undisputed that the officers faced the exact same situation during their second encounter with Sheets as they did during their first encounter, albeit on a roadway instead of in a field. That situation involved two officers attempting to persuade an intoxicated and suicidal subject to stop advancing on them and relinquish his deadly weapon. During the first encounter, the subject stopped his advance and returned to his vehicle and fled only to return moments later. The final encounter began in the exact same manner as the first encounter with the subject exiting his vehicle holding a 7-inch knife. It is pure conjecture to conclude that the end result would have been any different had the officers got close enough to subdue Sheets during the first encounter. Based on these facts, there is no reason to believe officers could have subdued Sheets in the field without using deadly force.

¶ 42 Unfortunately, during the final encounter, Sheets refused to stop his advance on the officers. Despite their attempts to retreat, Sheets advanced to within feet of Deputy Strawn. Fearing for his safety and that of the others at the scene, Deputy Strawn was forced to use deadly

force, which plaintiff's counsel acknowledged was justified.

¶ 43 Viewing the evidence in the light most favorable to the plaintiff, plaintiff has not raised a genuine issue of material fact as to whether the failure to subdue Sheets during his initial encounter with Deputy Strawn and Officer Weers was the actual cause, or cause in fact, of his death. Plaintiff has further failed to show that such actions or inactions were the legal cause of Sheets' death. As such, as a matter of law, we find the allegations of wrongdoing levied against Deputy Strawn were not a proximate cause of Sheets' death. Therefore, the trial court properly granted defendant's motion for summary judgment.

¶ 44 CONCLUSION

¶ 45 For the foregoing reasons, the judgment of the circuit court of Marshall County is affirmed.

¶ 46 Affirmed.