

# Appellate Court Reverses Trial Court's Denial of Governmental Immunity for Firefighter

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In a recently published decision, the Michigan Court of Appeals reversed the trial court's denial of governmental immunity in a case stemming from a house fire death.

The trial court originally denied a Detroit firefighter governmental immunity after finding a question of fact as to whether he committed an act of gross negligence by failing to locate the plaintiff's decedent's body in the fire.

Fire crews arrived on scene approximately five minutes after being dispatched and began extinguishing the fire and searching the home. Firefighters cleared the basement and second floor, finding neither fire nor occupants. They then turned their attention to the first floor, where the fire was actively burning.

Multiple firefighters, including the defendant, were in the kitchen of the home extinguishing the fire. The room was reportedly well lit and free of smoke at the time it was searched. The crew found no bodies in the kitchen, despite multiple searches, but the plaintiff's decedent's body was found in the kitchen five days later in a "cubby" between the cabinets and the stove in the kitchen. The medical examiner determined he died of smoke and soot inhalation and thermal burns. The defendant maintained he did not know how the body ended up there, but he was ultimately disciplined for failing to supervise a proper search of the premises.

The plaintiff filed suit against the firefighter and the Detroit Fire Department, alleging they negligently caused the plaintiff's decedent's death and negligently inflicted severe emotional distress. The defendants moved for summary disposition, arguing that they were immune from liability because they owed no duty to the plaintiff or the plaintiff's decedent and because the defendant firefighter was not grossly negligent, nor were his actions the proximate cause of the plaintiff's decedent's death.

Although the trial court found a question of fact as to whether the defendant was grossly negligent and whether his gross negligence was the proximate cause of the plaintiff's decedent's death, the appellate court reversed.

In its ruling, the appellate court held that the defendant firefighter owed no duty to the plaintiff or the plaintiff's decedent under statute or common law. In so holding, the appellate court noted that the defendant did not know the plaintiff or the plaintiff's decedent prior to the fire, nor did he know for certain that someone was in the home at the time of the fire.

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The appellate court reasoned it was “too heavy a burden to impose an affirmative duty on firefighters to ensure the survival of individuals that are unobservable at the scene of a fire.” Such a burden, the appellate court noted, would impose broad personal liability on firefighters and likely have a chilling effect on recruitment. It would also have the dangerous effect of requiring firefighters to stay in a fire-compromised building longer than necessary, putting firefighters at a much greater risk than necessary. However, the absence of a duty owed to the plaintiff or the plaintiff’s decedent was not the appellate court’s only grounds for reversing the trial court’s decision.

The appellate court also held that the defendant was not grossly negligent, defined by the Michigan Governmental Tort Liability Act as “conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.” MCL 691.1407(8)(a). The appellate court reasoned that the fact other firefighters did not find the plaintiff’s decedent’s body despite multiple searches indicates his body was not readily observable while the firefighters were at the house, regardless of how readily observable it was five days later.

The evidence suggested several searches were conducted and no one uncovered the body on the day of the fire and although a more thorough search may have uncovered the body, this contention that the defendant could have done more is insufficient to defeat governmental immunity. The appellate court further reasoned that while the defendant’s failure to find the plaintiff’s decedent’s body “may circumstantially suggest that he could have conducted a more thorough search, no evidence suggest [ed] that a more thorough search would have prevented [his] unfortunate death.” This segued into the appellate court’s final ground for reversing the trial court’s decision –the plaintiff’s inability to prove any act of gross negligence was *the* proximate cause of the plaintiff’s decedent’s death.

In concluding there was no evidence that the defendant was the proximate cause of the plaintiff’s decedent’s death, the appellate court noted that there was no evidence the plaintiff’s decedent was alive when firefighters arrived on scene, searched the home, when they left the scene, or that he could have been rescued from the fire. The appellate court concluded that the defendant could not be considered the “most immediate, efficient, and direct cause” of the plaintiff’s decedent’s death because he did not cause him to be in the house during the fire or initiate the fire. The record contained no evidence indicating why the plaintiff’s decedent remained in the house at the time of the fire, but the appellate court noted “[w]hatever may have been that ‘unidentified reason,’ [] was a much more immediate and direct cause of his death than defendant’s failure to locate him after the fire was extinguished.”

As a practical matter, the appellate court’s decision is not only sound law but also sound public policy. It is important to take into consideration, as the appellate court did, the profoundly difficult job with which first responders are tasked. Based on this appellate court’s sound reasoning and well-established governmental immunity jurisprudence, firefighters will be afforded protection when searching homes for occupants.