

STATE OF MICHIGAN  
IN THE SUPREME COURT

ESTATE OF WILLIAM T. BEALS, Deceased, by  
THERESA BEALS, Personal Representative

Plaintiff-Appellee,

v

STATE OF MICHIGAN,

Defendant,

and

WILLIAM J. HARMON,

Defendant-Appellant.

UNPUBLISHED  
July 1, 2014

No. 310231  
Barry Circuit Court  
LC No. 11-000045-NO

IO

*A McDowell*

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**DEFENDANT-APPELLANT WILLIAM J. HARMON'S  
APPLICATION FOR LEAVE TO APPEAL**

*149901*

*APL*

*9/9*

*Ag #2425*

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## STATEMENT OF QUESTION PRESENTED

1. A claim of gross negligence is barred by governmental immunity if a defendant's conduct was not the proximate cause of the injury. Beals drowned while voluntarily and recreationally swimming at an adult vocational school. Harman did nothing to create the danger or increase the risk of harm. Could a jury reasonably conclude that Harman's inattention to his lifeguard duties was the one most immediate, efficient, and direct cause of Beals' death?

Appellant's answer: No.

Appellee's answer: Yes.

Trial court's answer: Yes

Court of Appeals' answer: Yes.

## CONSTITUTIONAL PROVISIONS, STATUTES, RULES INVOLVED

MCL 691.1407(2)

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer 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 officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

**STATEMENT OF JUDGMENT /  
ORDER APPEALED FROM AND RELIEF SOUGHT**

William Harman<sup>1</sup> seeks review of the Court of Appeals' July 1, 2014 decision, which affirmed the May 11, 2012 order of the Barry County Circuit Court denying Harman's motion for summary disposition. Harman's motion for summary disposition was based on his assertion that no reasonable jury could conclude that his inattention to his lifeguard duties was *the* proximate cause of Beals' drowning, MCL 691.1407(2). Harman respectfully requests that this Court reverse the decision of the Court of Appeals, and remand this case to the Barry County Circuit Court for entry of judgment in Harman's favor.

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<sup>1</sup> Beals, and the lower courts, have misspelled Harman's name as "Harmon".

## INTRODUCTION

It is a tragedy when someone drowns in a pool. But when the death occurs, as it did here, because the swimmer silently slips under the water and fails to resurface, the most immediate cause of his death is whatever caused him to lose consciousness. The most direct cause is not the lifeguard's failure to rescue the swimmer in time when the swimmer fails to surface.

Here, William Beals, a nineteen-year old student at the Michigan Career and Technical Institute (MCTI), accidentally drowned during a recreational swim at the MCTI indoor pool. During the recreational swim, the pool was staffed by a single lifeguard, William Harman—a fellow student. It is undisputed that Harman did not cause Beals to enter the pool, or to quietly disappear below the surface of the water and drown. What caused Beals to stay underwater is unknown. But it is known that Beals swam under the divider between the shallow and deep end of the pool. He stayed in the deep end of the pool for several minutes before he simply disappeared under the surface of the water and drowned.

Beals' estate is suing Harman for failing to rescue the decedent. But the Legislature has provided governmental employees, like Harman, with immunity from tort liability unless their conduct amounts to "gross negligence that is *the* proximate cause of the injury," MCL 691.1407(2)(c) (emphasis added). Interpreting this precise language, this Court has made clear that "[t]he phrase 'the proximate cause' is best understood as meaning the one most immediate, efficient, and direct cause preceding an injury." *Robinson v City of Detroit*, 462 Mich 439, 459; 613 NW2d 307, 317 (2000).

Because Harman did not cause Beals to enter the pool at the shallow end; require him to move into the deep end of the pool, cause Beals to disappear under the surface of the water, cause Beals to lose consciousness, or notice Beals under water in time to rescue him, Harman's conduct (i.e. his failure to act) cannot be the proximate cause of the drowning. The Court of Appeals erred in holding otherwise and should be reversed.

In addition to the decision being clearly erroneous, Harman's application for leave to appeal should be granted because:

- The proper application and interpretation of MCL 691.1407 is of significant public interest that affects public employees at all levels of government, and all negligence claims brought against state employees. Public employees must be secure in knowing that they are immune from civil liability for their conduct unless it is the one most immediate, efficient, and direct cause of an injury. *See Robinson v Detroit*, 462 Mich 439, 462 (2000).
- The legal principle involved is of major significance. When public coffers are at risk, the State is entitled to the full breadth of governmental immunity conferred by the jurisprudence of this state.

Accordingly, Harman asks this Court to grant his application for leave to appeal.

### STATEMENT OF FACTS

William Beals enrolled at MCTI on May 12, 2009, so that he could learn the necessary skills to become a video game designer (Exhibit A, Complaint, ¶¶ 6 and 11; Exhibit B, Plaintiff's brief opposing summary disposition, p 2). Plaintiff claims Beals had a learning disability and autism (Exhibit C, Plaintiff's answers to Defendants' third set of discovery, response #1). But no evidence of a diagnosis of autism was ever produced in discovery, and MCTI was only notified of Beals'

learning disability (Exhibit C, Plaintiff's answers to Defendants' third set of discovery, response #4). Plaintiff describes MCTI as a vocational rehabilitation facility (Exhibit A, Complaint, ¶¶ 5 and 6). The mission of MCTI is to conduct vocational and technical training programs and provide the supportive services needed to prepare Michigan citizens with disabilities for competitive employment.<sup>2</sup>

On May 19, 2009, "[Beals] and approximately 24 other disabled students were in the swimming pool area of the MCTI facility for the purpose of engaging in the facility's offered leisure services" (Exhibit A, Complaint, ¶ 12). Beals "was an accomplished swimmer, who had been swimming independently for years" (Exhibit B, Plaintiff's brief opposing summary disposition, p 12; Exhibit C, Plaintiff's answers to Defendants' third set of discovery, responses #4 and 10). Beals was capable of swimming without a flotation device (Exhibit C, Plaintiff's answers to Defendants' third set of discovery, response #15). The only lifeguard on duty on May 19, 2009, was Harman, who Plaintiff describes as a fellow "student at MCTI whose known disability was attention deficit disorder" (Exhibit B, Plaintiff's brief opposing summary disposition, p 2). "The entire incident was captured by a video surveillance camera" (*Id.*).<sup>3</sup>

As depicted in the surveillance video, Beals voluntarily crossed the divider and entered into the deep end of the pool. (Exhibit D) He remained in the deep end of the pool for several minutes until he disappeared below the surface of the water.

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<sup>2</sup> [http://www.michigan.gov/dhs/0,4562,7-124-5453\\_25392\\_40237\\_40242-139664--,00.html](http://www.michigan.gov/dhs/0,4562,7-124-5453_25392_40237_40242-139664--,00.html).

<sup>3</sup> Video enclosed as Exhibit A to motion for summary disposition.

Another student, Matthew Brinningstaull, was the first to see the body. According to Brinningstaull, Beals was not visible from above the surface of the water (Exhibit E, Brinningstaull deposition transcript, at p 81:14-16). In addition, because the body was so close to the pool wall, the decedent would not have been visible from that side of the pool unless the observer bent over the edge to look (*Id.* at p 82:5-14).

Brinningstaull pulled the decedent up from the bottom of the pool. Student lifeguard, Harman, heard the cries for help from the other side of the pool area and raced to the other side. With the assistance of another student, Harman removed the body from the water and onto the pool deck. Harman attempted cardio-pulmonary resuscitation until other staff members arrived within a few minutes. Beals was transported to the local hospital where he was declared deceased. Beals was nineteen years old at the time of his death (Exhibit A, Complaint, ¶ 3).

There are no allegations or evidence that Harman was involved in any of Beals' decisions related to swimming on May 19, 2009, or that Harman ever saw Beals in distress or under water until he heard Brinningstaull call for help. Plaintiff acknowledges that because Harman failed to notice or observe Beals' distress "for at least 8 minutes", "Harman did not have the opportunity to assist or rescue [Beals]" (Exhibit F, Plaintiff's supplemental brief opposing summary disposition, pp 2-3).

### **PROCEEDINGS BELOW**

On January 26, 2011, Beals' personal representative filed a complaint against Harman and MCTI seeking economic and non-economic damages for the wrongful

death of her adult son, damages she alleged were caused by Harman's gross negligence and the MCTI's violation of the Persons with Disabilities Civil Rights Act, MCL 37.1101. On March 5, 2012, after discovery was concluded, Harman moved to dismiss Beals' complaint on the grounds of governmental immunity.<sup>4</sup> Harman's motion specifically focused on whether his alleged conduct could be the proximate cause of Beals' injuries.

The Barry County Circuit Court heard oral argument on the motion on March 29, 2012. The Court took the motion under advisement and then issued its ruling from the bench on May 8, 2012. Without any analysis or explanation, the Court simply concluded "that reasonable minds could differ as to the question of gross negligence and if the proximate cause of death was the gross negligence of William Harmon (sic) and/or the State of Michigan" and denied the motion (Exhibit G, May 8, 2012, Hearing Transcript, p 4). The Court's ruling denying summary disposition was reduced to a written order dated May 11, 2012 (Exhibit H).

The Court of Appeals affirmed in a 2-1 unpublished per curiam opinion (Exhibit I). Conflating the immunity concepts of "gross negligence" and "the proximate cause," the Court of Appeals ignored this Court's binding precedent in *Robinson*, and held that reasonable jurors could conclude that Harman's failure to intervene and rescue Beals was the proximate cause of Beals' death—while at the same time acknowledging that Harman played no part in Beals' submersion in the

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<sup>4</sup> MCTI also moved for summary disposition under MCR 2.116(C)(8) and (10) of Beals' claim brought pursuant to the Persons With Disabilities Civil Rights Act. The trial court also denied MCTI's motion. MCTI filed an application for leave to appeal, and the Court of Appeals reversed the trial court.

pool and was unaware of his distress. The Court of Appeals opined that it was Harman's failure to notice Beals in distress that was the proximate cause of Beals' death. But it was Beals slipping underwater that was the one most immediate, efficient, and direct cause of his death—not Harman's failure to see him. After all, 24 other swimmers in the pool did not see Beals go under water either. The Court of Appeals confused Harman's alleged breach of duty with causation. Otherwise, under the Court of Appeals' logic, the failure of every swimmer present was the proximate cause of Beals' drowning.

This appeal followed.

## ARGUMENT

### **I. Governmental immunity bars Beals' claim because Harman's conduct was not the one most immediate, efficient, and direct cause of Beals' death.**

#### **A. Issue Preservation**

Harman specifically raised the issue that he was entitled to governmental immunity because his alleged gross negligence—as that term is defined by MCL 691.1407(2)—was not the proximate cause of Beals' injuries in both his answer to the complaint and in his motion for summary disposition.

#### **B. Standard of Review**

This Court reviews *de novo* a lower court's decision to grant summary disposition. *Odom v Wayne County*, 482 Mich 459, 466; 760 NW2d 217 (2008). Whether governmental immunity applies is a question of law and is also subject to

*de novo* review. *Thurman v City of Pontiac*, 295 Mich App 381, 384; 819 NW2d 90 (2012). Under this standard, “a reviewing court gives no deference to the trial court and reviews the case with fresh eyes.” *Buchanan v City Council of Flint*, 231 Mich App 536, 542 n3; 586 NW2d 573 (1998).

Summary disposition is properly granted under MCR 2.116(C)(7) if “[t]he claim is barred because of . . . immunity granted by law.” A motion made under MCR 2.116(C)(7) need not be supported by documentary evidence. MCR 2.116(G)(2),(3); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). “The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” *Maiden*, 461 Mich at 119. “If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether the claim is barred by immunity is a question for the court to decide as a matter of law.” *Poppen v Tovey*, 256 Mich App 351, 354; 664 NW2d 269 (2003).

### C. Analysis

Under the Governmental Tort Liability Act, Michigan Compiled Law 691.1407(2), government employees are immune from suit if:

- a) The employee is acting or reasonably believes she is acting within the scope of her authority;
- b) The government agency for which she works is engaged in the exercise or discharge of a governmental function; and
- c) The employee’s conduct does not amount to gross negligence that is “the proximate cause of the injury or damage.” MCL 691.1407(2)(c).

To constitute gross negligence that avoids immunity under the statute, the conduct must be so reckless as to demonstrate a substantial lack of concern for whether an injury results. MCL 691.1407(2)(c). More importantly, for purposes of this appeal, Harman's alleged conduct must have been *the* proximate cause of Beals' death, i.e., the "one most immediate, efficient, and direct cause of the injury or damage." *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000).

*Robinson v Detroit* involved a consolidated appeal of two cases involving police pursuits of fleeing vehicles. In holding that the individual officers were immune from liability, this Court focused on the use of "the" in the statutory language: "gross negligence that is *the* proximate cause of the injury or damage." MCL 691.1407(2)(c) (emphasis added). This Court agreed with the dissent in *Hagerman v Gencorp Automotive*, 457 Mich 720, 753-754; 579 NW2d 347 (1998): "recognizing that 'the' is a definite article, and 'cause' is a singular noun, it is clear that the phrase 'the proximate cause' contemplates one cause." *Robinson*, 462 Mich at 461-462. Accordingly, "the proximate cause" in this context means "the one most immediate, efficient, and direct cause of the injury or damage." Applying this construction, this Court held that police officers were not the proximate cause of the injuries to the passengers in the fleeing vehicle. *Id.* at 462.

Since *Robinson*, the Court of Appeals has consistently applied this construction to hold that government employees are not liable where the employee's action/inaction was not the one most immediate, efficient, and direct cause of the injury or damage. See, e.g., *Kruger v White Lake*, 250 Mich App 622; 648 NW2d 660

(2002) (not liable for individual killed by a vehicle while escaping custody); *Curtis v City of Flint*, 253 Mich App 555; 655 NW2d 791 (2002) (not liable for vehicle collision caused by car attempting to allow paramedic unit cross against red traffic signal); *Miller v Lord*, 262 Mich App 640; 686 NW2d 800 (2004) (teacher not liable for sexual assault by another student); *Tarlea v Crabtree*, 263 Mich App 80; 687 NW2d 333 (2004) (coach not responsible for students injured during voluntary workout); *Harbour v Corr Med Servs*, 266 Mich App 452; 702 NW2d 671 (2005) (jailers not liable for intoxicated inmate's death); *Rakowski v Sarb*, 269 Mich App 619; 713 NW2d 787 (2006) (inspector not liable for improperly constructed handicap ramp railing); *Manuel v Gill*, 270 Mich App 355; 716 NW2d 291 (2006) (police not liable for peril of informant); *Cooper v Washtenaw County*, 270 Mich App 506; 715 NW2d 908 (2006) (jailers not liable for inmate suicide); *Love v City of Detroit*, 270 Mich App 563; 716 NW2d 604 (2006) (firefighters not liable for deaths caused by failure to properly fight fire); *Cummins v Robinson Twp*, 283 Mich App 677; 770 NW2d 421 (2009) (building officials interpretation of building code not proximate cause of plaintiff's financial losses); *Oliver v Smith*, 290 Mich App 678; 810 NW2d 57 (2010) (police officers not liable for injuries to plaintiff who resisted arrest).

Particularly instructive are the *Harbour*, *Cooper*, and *Love* cases. In *Harbour v Corr Med Servs*, 266 Mich App 452; 702 NW2d 671 (2005), the decedent was arrested for drunk driving and taken to jail. The defendant nurse examined him and placed him on "sick call." Two hours later, the decedent collapsed in his cell and died from acute alcohol withdrawal. The plaintiff claimed that the defendant

could have prevented the decedent's death had she taken appropriate medical action. The Court of Appeals disagreed and held that reasonable minds could not differ that the decedent was fifty percent or more responsible for his death. *Id.* at 463. "It is of no consequence that plaintiff argues that the decedent's death could have been prevented by nurse Froehlich, because the decedent's self-induced intoxication was fifty percent or more the cause of his death." *Id.*

In *Cooper v Washtenaw County*, 270 Mich App 506; 715 NW2d 908 (2006), the Court of Appeals held that the defendants were not the proximate cause of the suicide of an inmate – notwithstanding allegations that the inmate was known to be mentally unstable and suicidal when he was placed into the defendants' custody and they did nothing to protect him. And here—unlike in *Harbour* and *Cooper*—Beals was not in the custody of Harman or MCTI when he drowned; nor was Harman aware of any disability creating a special danger that impacted Beals' ability to swim. Indeed, Beals was an accomplished swimmer. If the defendants in *Harbour* and *Cooper* who were responsible for the care and custody of an incapacitated defendant and a mentally ill defendant, respectively, were not the proximate cause of their deaths, then Harman cannot be the proximate cause here.

In *Love v City of Detroit*, 270 Mich App 563; 716 NW2d 604 (2006), the decedents died in a home fire, and the plaintiff alleged that the firefighters failed to respond in a timely manner and failed to take effective steps to rescue the trapped individuals. Plaintiff argued that, had the firefighters not acted in a grossly negligent manner, the persons trapped in the house would have been rescued. *Id.*

at 565. The Court of Appeals determined that the decedents died from the fire that engulfed their home. As a result, the firefighters were not *the* proximate cause. *Id.*

*Love* is particularly instructive because it addressed this Court's reversal of a prior Court of Appeals decision that had denied some firefighters immunity on the theory that their gross negligence was the proximate cause of the deaths of the people trapped in a house. In *Dean v Childs*, 262 Mich App 48; 684 NW2d 894 (2004), rev'd in part, 474 Mich 914; 705 NW2d 344 (2005), the majority relied on the affidavit of an expert firefighter who opined that the firefighters could have rescued the occupants had they properly performed their job—not unlike Beals' expert's affidavit in this case.

But this Court rejected that logic, reversed, and adopted the dissent of Court of Appeals Judge Griffin. Judge Griffin recognized that in *Robinson*, this Court “held that the phrase ‘the proximate cause’ contained in the governmental immunity act, MCL 691.1407(2), means *the* proximate cause, not *a* proximate cause.” 262 Mich App at 60. He also noted that “the *Robinson* Court defined ‘the proximate cause’ as ‘the most immediate, efficient, and direct cause preceding an injury, not ‘a proximate cause.’” *Id.* While Judge Griffin acknowledged testimony showing the firefighters might have taken certain steps to fight the fire more effectively, he concluded that under *Robinson*, “‘the most immediate, efficient, and direct cause’ of the tragic deaths of plaintiff’s children was the fire itself, not defendant’s alleged gross negligence in fighting it.” *Id.* at 61, quoting *Robinson*, 462 Mich at 459. The causation issue here is directly parallel: the most immediate,

direct cause of Beals' death was the water itself, not Harman's alleged gross negligence in rescuing Beals from the water.

In this case, we simply do not know what caused Beals to sink to the bottom of the pool. But consider this hypothetical: if an identical swimmer had drowned because of an aneurism, it would be easy to acknowledge that the aneurism would be the most immediate cause of his drowning, and not the lifeguard's response. True, a lifeguard might have intervened and prevented the aneurism from causing the drowning, but the aneurism would still be the most direct cause. The fact that we do not know what caused Beals to slip to the bottom does not make that unknown factor any less the cause.

Against all this, Beals relies on two unpublished decisions of the Court of Appeals—issued prior to the published decisions in *Harbour*, *Cooper*, and *Love*—for the proposition that a failure to rescue could constitute the proximate cause of an injury. See *Avery v Roberts*, unpublished opinion of the Court of Appeals, issued on March 22, 2005, 2005 Mich App LEXIS 785 (Docket No. 253068);<sup>5</sup> *Perry v McCahill*, unpublished opinion of the Court of Appeals, issued April 30, 2002, 2002 Mich App LEXIS 663 (Docket No. 224556).<sup>6</sup> But those cases are both factually distinguishable from the case here. Unlike the facts in this case, the decedent in *Avery* was presumably a young child who drowned in the shallow end of the pool, where non-swimmers could be in the water. The decedent in *Perry*, who was severely disabled and had a history of seizures, drowned when she had a seizure. More importantly,

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<sup>5</sup> Attached as Exhibit J.

<sup>6</sup> Attached as Exhibit K.

in *Perry*, this Court, in lieu of granting leave to appeal, reversed the Court of Appeals and reinstated the judgment of the Wayne Circuit Court for the reasons stated by the dissenting judge in the Court of Appeals. *Perry v McCahill*, 467 Mich 945; 656 NW2d 525 (2003). The dissenting judge in *Perry*—Judge O’Connell, who also dissented here—opined that no reasonable jury could find the *Perry* defendants “grossly negligent.”

Beals also relies on the Michigan Court of Appeals’ more recent unpublished opinion in *Anderson v Thompson*, Court of Appeals, Docket No. 295317 (decided April 19, 2012).<sup>7</sup> And again the facts are distinguishable. The decedent in *Anderson* could not swim. Here, Beals was an accomplished swimmer, who had been swimming independently for years. The *Anderson* Court held that the decedent’s weak swimming ability and decision to enter the deep end of the pool was not the proximate cause because he was found “near the point where the shallow end drops off into the deep end” and this “point was not marked on the pool such that a swimmer would be able to tell that he or she had reached the deep end.” *Anderson*, at p. 5. As evidenced by the video in this case, Beals was found well into the deep end and actually had to swim underneath the dividing marker to enter the deep end. As a result, the reasoning in *Anderson* is inapposite.

After *Harbour*, *Cooper*, and *Love*, the Court of Appeals decided *Watts v Nevils*, unpublished opinion the Court of Appeals issued on September 18, 2007,

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<sup>7</sup> Attached as Exhibit L.

2007 Mich App LEXIS 2167 (Docket No. 267503).<sup>8</sup> In *Watts*, the decedent was on a school-sponsored overnight field trip and drowned in a hotel pool. One of the defendant chaperones was in the pool area when the decedent either was pushed by fellow students or voluntarily entered the deep end of the pool. Based upon the fact that the defendant neither pushed the decedent into the pool nor forced him to enter the deep end, the Court of Appeals held that the defendant could not have been the proximate cause of the drowning. *Id.* (“Defendants’ arguably negligent actions might have been a cause of Watts’ death, but they were not *the proximate cause* of his death—either Watts’ actions or those of his classmates were.”).

And since *Robinson* was decided, this Court has reversed *all* three Court of Appeals’ published opinions holding that a failure to rescue or prevent injury could constitute the proximate cause. *Dean v Childs*, 474 Mich 914 (2005) *rev’g* 262 Mich App 48 (2004); *LaMeau v City of Royal Oak*, 490 Mich 949 (2011) *rev’g* 289 Mich App 153 (2010); *Beebe v Hartman*, 489 Mich 956 (2011) *rev’g* 290 Mich App 512 (2010). The clear message to be construed from the case law is that there is no liability for failure to prevent injury to oneself or by third parties, nor is there liability for failure to rescue someone placed in jeopardy by their own actions or by those of third parties.

In the complaint, Plaintiff tacitly admits that Harman was not the “one most immediate, efficient, and direct cause of the injury or damage.”

With Defendant HARMAN sitting at the poolside’s edge just a few feet away, Decedent disappears under water between lane stripe four and

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<sup>8</sup> Attached as Exhibit M.

lane stripe number five. Defendant sits in this same position for six minutes, thirty seconds, just several feet away from Decedent whose body remained ten feet under water on or near the bottom of the pool's deep end. [Exhibit A, Complaint, ¶16.]

The video surveillance confirms that Harman did not cause the decedent to disappear under the surface of the water. As explained in *Harbour*, *Cooper*, and *Love*, the mere possibility that Beals could have been rescued or his death could have been prevented does not satisfy the proximate cause requirement. Harman did nothing to create any danger or increase any risk to Beals. No alleged gross negligence on the part of Harman could have been the one most immediate, efficient, and direct cause of Beals' drowning death. Indeed, had Harman not been present at all, the outcome would have been the same.

### **CONCLUSION AND RELIEF REQUESTED**

William Beals was an accomplished adult swimmer voluntarily participating in a recreational swim at his vocational school when he inexplicably and silently slipped under water and drowned. His fellow student, William Harman, who was working as the lifeguard, never saw Beals in distress and was therefore unable to save him. Because Harman was not the one most immediate, efficient, and direct cause of Beals' drowning death, governmental immunity bars Plaintiff's claims against Harman.

Harman respectfully requests that this Court reverse the July 1, 2014 decision of the Court of Appeals, and remand this case to the Barry County Circuit Court for entry of judgment in Harman's favor.

Respectfully submitted,

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