

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHRISTINE SAVAGE, Personal  
Representative of the Estate of CLAYTON  
RONALD SAVAGE, JR., Deceased,

Plaintiff-Appellant,

v

TODD-PHILLIPS CHILDREN'S HOME OF THE  
WOLVERINE STATE MISSIONARY BAPTIST  
CONVENTION, INC., ZELDA WILLIAMS and  
CALVIN DISHMON,

Defendants-Appellees,

and

ROY ALLEN, ELIZABETH HOBSON and  
LARRY HUDGINS,

Defendants.

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Before: Cavanagh, P.J., and Reilly and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition pursuant to MCR 2.116(C)(10) to defendants Todd-Phillips Children's Home, Zelda Williams, and Calvin Dishman. We affirm.

On appeal, plaintiff requests that this Court adopt 2 Restatement Torts 2d, § 319, pp 129-130, which imposes a duty of reasonable care on those in charge of persons with dangerous propensities, and imposes a duty on defendants to exercise reasonable care when they voluntarily, for profit, take

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charge of a dangerous person whom they know or should know will cause harm to others if uncontrolled. Furthermore, plaintiff requests that this Court follow the reasonings espoused in *Doe v United Social & Mental Service, Inc.*, 670 F Supp 1121 (D Conn, 1987), and *Dudley v Offender Aid & Restoration, Inc.*, 241 Va 270; 401 SE2d 878 (1991), which impose liability on halfway houses for foreseeable harm by residents to unidentified victims pursuant to the Restatement, § 319. We conclude that neither argument supports reversal.

A trial court's determination of a motion for summary disposition is reviewed de novo on appeal. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). MCR 2.116(C)(10) permits summary disposition when, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A court reviewing such a motion, therefore, must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion. *Id.* The court must give the benefit of reasonable doubt to the nonmovant and determine whether a record might be developed that would leave open an issue upon which reasonable minds may differ. *Osman v Summer Green Lawn Care, Inc.*, 209 Mich App 703, 706; 532 NW2d 186 (1995). Before judgment may be granted, the court must be satisfied that it is impossible for the claim to be supported by evidence at trial. This Court liberally finds a genuine issue of material fact. *Id.*

In a negligence action, the question whether a duty exists is one of law to be decided by the trial court. *Murdock v Higgins*, 208 Mich App 210, 214; 527 NW2d 1 (1994), *aff'd* 454 Mich 46 (1997). Generally, an individual has no duty to protect another who is endangered by a third person's conduct. *Id.*, citing *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). However, Restatement, § 319 provides, "One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm."

The duty to protect others against harm from third persons is based on a relationship between the parties. A duty of reasonable care may arise where one stands in a special relationship with either the victim or the person causing the injury. The requisite special relationship must exist between the defendant and the victim or the defendant and the third party. *Id.* Michigan courts have defined protected third parties as only "those persons readily identifiable as foreseeably endangered." *Id.* at 665.

The determination whether a special relationship exists in a particular case involves ascertaining whether the plaintiff entrusted himself to the control and protection of the defendant, with a consequent loss of control to protect himself. *Murdock, supra* at 215; *Dykema v Gus Macker Enterprises, Inc.*, 196 Mich App 6, 9; 492 NW2d 472 (1992). This Court has held that it is necessary to balance the societal interests involved, the severity of the risk, the burden upon the defendant, the likelihood of occurrence, and the relationship between the parties. Other factors which may give rise to a duty include the foreseeability of the harm, the defendant's ability to comply with the proposed duty, the

victim's inability to protect himself from the harm, the costs of providing protection, and whether the plaintiff had bestowed some economic benefit on the defendant. *Murdock, supra; Dykema, supra.*

After carefully reviewing the record, we conclude that defendants did not have a special relationship with either Savage or Hudgins. Therefore, we hold that the trial court properly found that defendants had no duty to protect Savage from the harm inflicted by Hudgins. Plaintiff admitted that Todd-Phillips had no particular relationship with Savage on or before February 20, 1994, and that Todd-Phillips had never directly promised Savage anything, including the care and control of Hudgins. The record reflected that defendants had not met, encountered, or even heard of Savage prior to the February 20, 1994, attack. Savage did not entrust himself to the control and protection of defendants, with a consequent loss of control to protect himself. See *Murdock, supra; Dykema, supra.* When balancing the societal interests involved, the severity of the risk, the burden upon the defendants, the likelihood of occurrence, and the relationship between the parties, we hold that the trial court properly concluded that no special relationship existed between defendants and Savage.

Furthermore, we conclude that no special relationship existed between defendants and Hudgins at the time of the attack since he had been formally and completely discharged from Todd-Phillips one month prior. Defendants followed the regulatory procedure for Hudgins' discharge on January 19, 1994, over a month before the assault on plaintiff's decedent. Defendants were not obligated to follow up on his whereabouts afterwards. In addition, Hudgins' security ranking was evaluated at moderate/community based, and he was assigned to low security placement. Hudgins did not have a history of homicide. We hold that it was unforeseeable to defendants that, after his truancy and eventual discharge, Hudgins would attack and murder a random victim.

This Court has previously interpreted and applied Restatement, § 319, in such cases as *Knight v Michigan*, 99 Mich App 226, 236; 297 NW2d 889 (1980), and *Hinkelman v Borgess Medical Center*, 157 Mich App 314, 321; 403 NW2d 547 (1987). In each of these cases, a duty to exercise reasonable care was imposed on the defendants regarding a third person whose dangerous propensities were known to them. However, in these cases, the third person was in the care or custody of the defendants at the time of the complained about incidents. We conclude that these cases are factually distinguishable from the case at bar, where Hudgins had been formally and completely discharged from Todd-Phillips one month prior to his attack on Savage.

We also conclude that both *Doe* and *Dudley*, which interpret and apply Restatement, § 319, are distinguishable from the case at bar and are inapplicable in the instant case. Both cases involved convicted felons who were on parole and placed in halfway houses. Both felons escaped and committed crimes while they were in the care and custody of the homes. These situations are markedly different from the case at bar, where Hudgins was not a convicted felon, was evaluated as a low security risk, and was placed in a halfway house with an "open setting," where residents were involved in community schools and activities and the doors were not locked.

Therefore, we hold that because no special relationship existed between defendants and either Savage or Hudgins, and because the cases relied upon by plaintiff are inapplicable to the case at bar,

the trial court did not err in granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed. Defendants being the prevailing parties, they may tax costs pursuant to MCR 7.219.

/s/ Mark J. Cavanagh

/s/ Maureen Pulte Reilly

/s/ Helene N. White