STATE OF MICHIGAN

COURT OF APPEALS

ROBERT JAMES,

Plaintiff-Appellant,

v

KRISTIN SMITH,

Defendant-Appellee.

UNPUBLISHED
August 12, 1997

No. 195553
Wayne Circuit Court
LC No. 95-524607-NO

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right from trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this negligence action. We affirm.

Defendant, a single parent, resided alone with her twenty-two month old son, Devon, at a Detroit residence. At the time of the acts forming the basis of this lawsuit, they had lived at this residence for two days. At approximately 8:00 a.m., defendant went outside on her front porch to take her puppy outside. She did not have her keys. Devon shut the door behind defendant, locking her out of the house. Defendant was concerned that Devon might injure himself by climbing on the packing boxes from the recent move. Defendant phoned plaintiff, Devon's father, seeking assistance. Plaintiff and defendant decided that they would break a bathroom window to get in the house. Plaintiff hurled a rock through the bathroom window. Devon then entered the bathroom and fell when he attempted to stand up on the toilet, cutting his forehead and leg on glass shards. Seeing this, plaintiff quickly pulled himself through the broken window, badly cutting his arm in the process.

Plaintiff filed the instant suit against defendant, alleging that she was negligent in locking herself out of her house and that his injuries were the natural, foreseeable result of plaintiff's negligence. On defendant's motion for summary disposition, the trial court found as a matter of law that defendant had not been negligent in momentarily stepping outside her front door while the latch was in the locked position. Thus, the trial court summarily disposed of plaintiff's negligence claim pursuant to MCR 2.116(C)(10).

On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition, because he submitted evidence to establish the existence of issues of material fact regarding defendant's negligence and liability for his injuries pursuant to the rescue doctrine. We disagree.

We review a grant of summary disposition de novo. *IBM v Treasury Dep't*, 220 Mich App 83, 86; 558 NW2d 456 (1996). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual basis underlying a claim. The trial court may grant the moving party's motion for summary disposition pursuant to this subrule where, "[e]xcept for the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10); *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993).

The trial court held that, based on the facts, defendant was not negligent as a matter of law when she momentarily stepped out on her front porch without her key to let the puppy out and left the front door latch in locked position. Ordinarily, questions of negligence are for the trier of fact to decide. However, the preliminary question of whether there is sufficient evidence from which jurors may reasonably infer negligence is for the court. *Erdei v Beverage Distribution Co*, 42 Mich App 377, 383; 202 NW2d 434 (1972). We agree with the trial court that defendant cannot reasonably be held liable for plaintiff's injuries under the facts of this case. Defendant merely stepped out of her front door to let her dog outside in the morning. To require plaintiff always to equip herself with her keys while going about her daily household activities would be to require her to exercise extraordinary care, as opposed to reasonable care.

Plaintiff argues that the trial court erred in failing to apply the rescue doctrine to the facts of the instant case. Under the rescue doctrine, a person who, due to her negligence, places another in peril owes the victim's rescuer a duty of reasonable care independent of that owed to the victim, because rescuers are foreseeable. *Solomon v Schuell*, 435 Mich 104, 135; 457 NW2d 669 (1990). Assuming, arguendo, that plaintiff is correct in his underlying premise that the rescue doctrine operates to impose automatic liability on defendant simply because plaintiff was acting as Devon's rescuer when he was injured, we still do not find that the trial court erred in granting defendant's motion for summary disposition. We believe plaintiff fails to recognize that the rescue doctrine is invoked only where the defendant's negligence endangers the victim. In the instant case, the trial court found that defendant was not negligent in becoming locked out of her house. Therefore, the rescue doctrine was not applicable.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Roman S. Gribbs