

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

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DAN CHESEBRO, Personal Representative of the  
Estate of DARRELL J. CHESEBRO, Deceased,

Plaintiff-Appellant,

v

CITY OF CARSON CITY, and GORDON  
RUMMER,

Defendants-Appellees.

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UNPUBLISHED  
August 21, 1998

No. 203050  
Gratiot County Circuit  
LC No. 96-003919 NI

TAMMY CHURCHILL, Individually and as Personal  
Representative of the Estate of RONALD J.  
CHURCHILL, Deceased; RACHEL CHURCHILL,  
and JACOB CHURCHILL, by their Next Friend,  
Tammy Churchill,

Plaintiffs-Appellants,

v

ESTATE OF DARRELL CHESEBRO, Deceased,

Defendant-Cross Defendant

and

GORDON RUMMER, and CITY OF CARSON CITY,

Defendants-Cross Plaintiffs-Appellees,

and

NICK'S BAR AND GRILL, and SHIELD'S TAVERN,

Defendants.

No. 203285  
Gratiot County Circuit  
LC No. 95-003552 NI

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Before: Kelly, P.J., and Hood and Whitbeck, JJ.

PER CURIAM.

This is a personal injury/dramshop action arising out of a police chase.<sup>1</sup> The Chesebro and Churchill plaintiffs appeal as of right from the trial court's orders granting summary disposition to defendants Carson City and Officer Rummer under MCR 2.116(C)(10) and MCR 2.116(C)(7). We affirm.

Plaintiffs argue that the trial court erred in granting defendants' motions for summary disposition because numerous questions of fact remain regarding how the chase was conducted and why the officer made no attempt to rescue plaintiffs after the crash. We disagree.

This Court has held that "[p]olice officers in pursuit of a suspect do not owe the suspect a duty to refrain from chasing the suspect at speeds dangerous to the suspect." *Jackson v Oliver*, 204 Mich App 122, 127; 514 NW2d 195 (1994). This is applicable to Chesebro. Similarly, "a voluntary passenger in a car fleeing from the police is not owed a legal duty by the police and therefore may not sue for personal injuries sustained as a result of the police chase."<sup>2</sup> *Robinson v Detroit*, 225 Mich App 14, 22; 571 NW2d 34 (1997). This is applicable to Churchill. Plaintiffs' claims of gross negligence and negligent operation of a motor vehicle depend on a showing that a duty of care existed as a matter of law. See *Rogers v Detroit*, 457 Mich 125, 137; \_\_\_ NW2d \_\_\_ (1998); *Jackson*, 204 Mich App at 124-126. Therefore, neither claim can be maintained.

Similarly, "the public-duty doctrine insulates officers from tort liability for the negligent failure to provide police protection unless an individual plaintiff satisfies the special-relationship exception." *White v Beasley*, 453 Mich 308, 316 (Brickley, C.J., joined by Riley and Weaver, JJ.), 325 (Boyle, J.); 552 NW2d 1 (1996). This is so even in the face of the gross negligence exception. See *White*, 453 Mich at 321-324 (Brickley, C.J.); MCL 691.1407(2); MSA 3.996(107)(2). A special relationship exists where the municipality has: (1) assumed an affirmative duty to act; (2) knowledge that failure to act would result in harm; (3) made some form of direct contact with the injured party; and (4) induced justifiable reliance by the injured party on its affirmative undertaking. *White*, 453 Mich at 320 (Brickley, C.J.); *Smith v Kowalski*, 223 Mich App 610, 614; 567 NW2d 463 (1997). Here, plaintiffs' complaints are clearly based on defendants' *failure* to assume an affirmative duty to rescue them. Thus, they cannot show that a special relationship existed and, therefore, their failure to rescue claims must also fail.

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ William C. Whitbeck

<sup>1</sup> Plaintiffs drowned after their pickup truck went into a drainage ditch following a high speed chase by Carson City police officer Gordon Rummer. Both plaintiffs were intoxicated. Chesebro was driving Churchill's vehicle even though Chesebro's license had been suspended. The dramshop action, including the claim against the Chesebro Estate, has been settled and is not part of this appeal.

<sup>2</sup> By contrast, police continue to owe a duty of care to innocent bystanders, and they can therefore sue if injured as a consequence of negligence occurring during a high speed chase. *Rogers v Detroit*, 457 Mich 125, 144; \_\_\_ NW2d \_\_\_ (1998); see also *Terry v Detroit*, 226 Mich App 418, 428-431; 573 NW2d 348 (1997).