STATE OF MICHIGAN

COURT OF APPEALS

BARBARANNE BRANCA,

Plaintiff-Appellant,

v

BARRY P. WALDMAN,

Defendant-Appellee.

UNPUBLISHED
September 8, 1998

No. 203778
Oakland Circuit Court
LC No. 96-514735 NI

Before: Donald E. Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of her negligence action pursuant to MCR 2.116(C)(8). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

In order to assert negligence, a plaintiff must establish the existence of a duty owed by the defendant to the plaintiff. *Hammack v Lutheran Social Services of Mich*, 211 Mich App 1, 4; 535 NW2d 215 (1995). There can be no negligence absent such duty. *Flones v Dalman*, 199 Mich App 396, 402; 502 NW2d 725 (1993). The existence of a duty is a question of law for the trial court's resolution. *Hammack*, *supra*. As a general rule, there is no duty to aid or protect another. *Hammack, supra*. Where the plaintiff is placed in peril, however, and the defendant voluntarily takes control and charge of the situation and attempts to render aid to the imperiled plaintiff, the defendant must exercise reasonable care for the protection of the plaintiff. *Farwell v Keaton*, 396 Mich 281, 287; 240 NW2d 217 (1976); *Madley v The Evening News Ass'n*, 167 Mich App 338, 342; 421 NW2d 682 (1988). Additionally, a companion in a social venture owes a duty to render assistance to the other companion when the other companion is in peril if the companion can do so without endangering himself. *Farwell, supra* at 290-291; *Dumka v Quaderer*, 151 Mich App 68, 72-73; 390 NW2d 200 (1986).

Plaintiff failed to allege facts from which it can be inferred that she was in peril, and, hence, that a victim-rescuer relationship existed between plaintiff and defendant that gives rise to any duty of reasonable care on the part of defendant. *Farwell, supra* at 287, 290-291; *Madley, supra at* 342.

Plaintiff alleges that she fell behind the pace of the other bicyclists because she lacked their expertise, that she was unfamiliar with the geographic area in which the cycling excursion occurred and that defendant provided her with "directions for a shorter, safe, alternate route that would take her to the group's final destination." These factual allegations, which must be accepted as true, as must all reasonable inferences arising from these allegations, *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995), are insufficient to create an inference that plaintiff was in peril when defendant discovered that plaintiff was unable to keep the pace of the other bicyclists. See, e.g., *Petersen v Heflin*, 163 Mich App 402, 406; 413 NW2d 810 (1987). Moreover, although plaintiff alleges that defendant knew that the excursion was dangerous to individuals lacking the expertise of the regular cyclists, that defendant knew that the geographic area in which the excursion took place included streets with vehicular traffic dangerous for biking, and that she fell "dangerously behind" the other excursionists, these allegations constitute only statements of the pleader's conclusions, unsupported by allegations of fact from which it could be inferred that it was dangerous for plaintiff to participate in the excursion, that plaintiff was placed in peril by falling behind the pace of the other cyclists and that defendant possessed, or should have possessed, knowledge that plaintiff was in peril. *Dacon v Transue*, 441 Mich 315, 330; 490 NW2d 369 (1992); *York v 50th District Court*, 212 Mich App 345, 347; 536 NW2d 891 (1995); *Smith v Mirror Lite Co*, 196 Mich App 190, 193; 492 NW2d 744 (1992). Accordingly, having failed to allege facts sufficient to support an inference that plaintiff was imperiled by falling off the pace of the other bicyclists, and, hence, that a victim-rescuer relationship existed between plaintiff and defendant, plaintiff has failed to alleged facts from which it can be inferred that defendant owed any duty to plaintiff. Plaintiff's claims are so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

Our resolution of plaintiff's first issue being dispositive, we decline to address plaintiff's remaining issue.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Myron H. Wahls
/s/ Mark J. Cavanagh