

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL CARTER, deceased, by his Next Friend,
KELLY TITUS,

UNPUBLISHED
April 6, 1999

Plaintiff-Appellant,

v

No. 204783
Wayne Circuit Court
LC No. 96-614584 NI

MICHAEL LOVEDAY,

Defendant-Appellee.

Before: Gribbs, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Plaintiff Kelly Titus, as next friend of Daniel Carter, deceased, appeals by right a circuit court order granting summary disposition in favor of defendant. This case involves the tragic fatal shooting of one child by another. Defendant is the older brother of the child who committed the accidental shooting. At issue is whether defendant owed a duty to plaintiff's decedent. Plaintiff alleges that defendant owed a duty to her decedent to properly dispose of the ammunition for the gun defendant borrowed and returned to his mother or to warn defendant's mother that the ammunition was left in a zippered pouch in the gun's carrying case. We affirm.

Duty is one of the elements a plaintiff must prove to establish a prima facie case of negligence. *Swan v Wedgwood Family Services*, 230 Mich App 190, 195; 583 NW2d 719 (1998). Duty is any obligation the defendant has to the plaintiff to avoid negligent conduct. *Id.* Whether a duty exists is ordinarily a question of law for the court. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). If there is no duty, summary disposition is proper. *Eason v Coggins Memorial Methodist Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995).

Here, defendant borrowed a rifle from his mother. Several weeks before the shooting, defendant's mother came to defendant's house to get the rifle. The rifle was unloaded—both defendant and his mother checked to be sure it was unloaded—but a few rounds of ammunition were in the side pouch of the rifle case. Defendant did not remember that the ammunition was there. The trial court was asked to consider whether defendant owed a duty to a third party who was later accidentally shot with the rifle. The trial court concluded that he did not. We agree.

Whether a duty should be imposed depends on the relationship between the parties, the foreseeability of the risk and any other considerations that may be relevant on the issue. *Terry v Detroit*, 226 Mich App 418, 424; 573 NW2d 348 (1997). Some of the factors that may be considered include the degree of certainty of injury, the closeness of connection between the conduct and the injury, the moral blame attached to the conduct, the policy of preventing future harm, the burdens and consequences of imposing a duty, and the nature of the risk presented. *Id.*, *Hakari v Ski Brule, Inc.*, 230 Mich App 352, 359; 584 NW2d 345 (1998). The mere fact that an event may be foreseeable is insufficient to impose a duty upon the defendant. *Terry, supra*.

The duty to protect others against harm from a third person is based on a relationship between the parties. *Buczkowski v McKay*, 441 Mich 96; 490 NW2d 330 (1992); *Resteiner v Strum, Ruger & Co.*, 223 Mich App 374; 566 NW2d 53 (1997). In this case, there was no special relationship between defendant and Daniel, the decedent. Defendant was not supervising or responsible for Daniel in any way; indeed, defendant was not present at the time of the incident. Nor did defendant have any special relationship to the shooter, his younger brother. A familial relationship alone is not enough to impose a special obligation. *Peterson v Heflin*, 163 Mich App 402, 407; 413 NW2d 810 (1987). Defendant was not living in the house or supervising his younger brother at the time of the shooting. There were no circumstances in the present case sufficient to give rise to a special relationship necessary to impose a duty on defendant in favor of plaintiff's decedent. *Buczkowski, supra, Resteiner, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

Judge Gribbs not participating.