

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

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CHRISTINE MYERS, as Next Friend of JASON  
MYERS, a Minor,

UNPUBLISHED  
August 10, 1999

Plaintiff-Appellant,

v

No. 204370  
Wayne Circuit Court  
LC No. 96-618894 NI

IVORY L. HERRON,

Defendant,

and

U-HAUL COMPANY OF OHIO,

Defendant-Appellee.

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Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant U-Haul Company's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Jason Myers, then aged ten, was performing his duties as a member of his school safety patrol when he witnessed a multi-vehicle traffic accident. At the onset of the accident, a truck driven by defendant Ivory Herron and owned by U-Haul Company collided head-on with another vehicle. The driver of that vehicle was killed. Plaintiff filed suit alleging that Jason suffered injuries including depression, post-traumatic stress disorder, and emotional stress as a result of witnessing the accident. U-Haul moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that it was entitled to summary disposition both because Michigan did not recognize a bystander claim for negligent infliction of emotional distress, and because the truck had been stolen and misused. The trial court granted the motion pursuant to MCR 2.116(C)(8).<sup>1</sup>

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff argues that the trial court erred by granting U-Haul's motion for summary disposition. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). "MCR 2.116(C)(8) permits summary disposition when the opposing party has failed to state a claim upon which relief can be granted. . . . The court must accept as true all well-pleaded facts. Only if the allegations fail to state a legal claim is summary disposition . . . valid." *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).

In *Nugent v Bauermeister*, 195 Mich App 158, 162; 489 NW2d 148 (1992), this Court held "that a plaintiff may recover damages for emotional distress caused by observing the negligently inflicted injury of a third person only if the plaintiff is an immediate member of the victim's family." Because Jason was not a family member of any of the accident victims, recovery for any emotional distress resulting from Jason's status as a bystander cannot be sustained. *Id.*

We also concluded that plaintiff's reliance on *Maldonado v National Acme Co*, 73 F3d 642 (CA 6, 1996) is misplaced. In that case, Maldonado worked as an inspector of parts produced by a machine manufactured by Acme. Maldonado and a co-worker, Gordon Hurley, were working near the machine when a metal rod spun out of the machine and came flailing toward them. While Maldonado managed to avoid the rod, Hurley was struck in the head and killed. Maldonado filed suit, alleging both psychological and physical injuries resulting from the accident. *Id.* at 644. The *Maldonado* Court concluded that although Michigan's bystander recovery rule precludes recovery for negligent infliction of emotional distress unless the plaintiff is an immediate family member, the bystander rule would not bar recovery when the plaintiff is claiming physical injury based upon "his fear for his own safety." *Id.* at 645. However, *Maldonado* does not support a conclusion that a claimant can be a direct victim merely by witnessing an accident. Therefore, because plaintiff did not assert the claim that Jason feared for his personal safety as a result of witnessing the accident, summary disposition was properly granted. MCR 2.116(C)(8).

Affirmed.

/s/ David H. Sawyer  
/s/ Donald E. Holbrook, Jr.  
/s/ William E. Collette

<sup>1</sup> The trial court did not address the claim made under MCR 2.116(C)(10).