

STATE OF MICHIGAN  
COURT OF APPEALS

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JOHN A. MOTON, JR., and LINDA L. MOTON,

Plaintiffs-Appellants,

v

BETH A. ISELER and SUSANN RUTH DAVIS,

Defendants-Appellees.

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UNPUBLISHED

September 24, 1999

No. 210609

Saginaw Circuit Court

LC No. 96-013109 NI

Before: Talbot, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This action arises from an automobile accident in which plaintiff Linda Moton, a police officer, was allegedly injured while riding in the passenger seat of a marked patrol car during general patrol duty. Plaintiffs filed suit against the driver of the vehicle, who allegedly disobeyed a stop sign, and the owner of the vehicle, pursuant to the owner's liability statute, MCL 257.401 *et seq.*; MSA 9.2101 *et seq.* The trial court granted summary disposition for defendants based on the firefighter's rule.

Plaintiffs first argue that the trial court erred in granting summary disposition because the firefighter's rule does not apply to police officers who are "merely on patrol" at the time of the traffic accident. We disagree. Appellate review of a motion for summary disposition is *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion brought pursuant to MCR 2.116(C)(10), the trial court must consider the documentary evidence in the light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The firefighter's rule is a common-law doctrine that prevents public safety officers from recovering for injuries sustained in the course of duty. *Woods v City of Warren*, 439 Mich 186, 190; 482 NW2d 696 (1992). The rule encompasses two types of injury: (1) those deriving from the negligence that resulted in the officer's presence, and (2) at issue here, those stemming from the risks

inherent in fulfilling the police or fire fighting duties. *Woods, supra* at 195-196; *Kreski v Modern Wholesale Electric Supply Co*, 429 Mich 347, 372; 415 NW2d 178 (1987).

In *Woods, supra* at 193, our Supreme Court held that the second situation applies when the injury stems directly from an officer's police functions. In *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83; 520 NW2d 633 (1994), this Court construed *Woods* and held that "the starting point" of this analysis "is to consider the kind of duty involved" and to determine whether the alleged injury arose from an inherent risk associated with the specific duty the officer was assigned to fulfill. *Id.* at 87-88. The *Stehlik* Court concluded that the rule precluded the plaintiff officer assigned to traffic enforcement from recovering in tort because "the risk of a traffic accident is inherent in fulfilling the duties of a police officer . . . assigned to traffic enforcement." *Id.* at 87.

In the present case, Officer Moton testified that her duty on the night in question was to "basically" drive around her patrol area looking for illegal activity and to be seen in order to prevent trouble. She further testified that she had the authority to make arrests, investigate crimes and accidents and, although she was "basically not a traffic officer," to issue traffic tickets. In our view, traffic accidents are a normal, inherent, and foreseeable risk stemming directly from these duties, which inherently involve roadway travel. *Woods, supra* at 193, 195-196; *Stehlik, supra* at 87. Thus, regardless whether Officer Moton was specifically patrolling for traffic violations as in *Shelik*, or driving on patrol for illegal activity in general, the trial court correctly applied the firefighter's rule to bar plaintiffs' claim.<sup>1</sup>

Alternatively, plaintiffs contend that the trial court erred in failing to find that the wilful and wanton exception to the firefighter's rule precluded summary disposition for defendants because their complaint "contained allegations that Defendant/Appellees' conduct was reckless, careless, and negligent." However, plaintiffs failed to preserve this issue for appeal because it was neither raised nor addressed below. *Environair, Inc v Steelcase, Inc*, 190 Mich App 289, 295; 475 NW2d 366 (1991). Regardless, we find no merit to plaintiffs' claim. While plaintiffs mentioned the word "reckless" once in the complaint which primarily alleged negligence, they neither alleged nor presented evidence to sustain a claim that the driver's failure to obey a stop sign was wilful, wanton, or intentional. *Miller v Inglis*, 223 Mich App 159, 165-166; 567 NW2d 253 (1997); see also *Wilde v Gilland*, 189 Mich App 553, 554-556; 473 NW2d 718 (1991); *McAtee v Guthrie*, 182 Mich App 215, 220; 451 NW2d 551 (1989).

Finally, we note that the trial court properly dismissed plaintiffs' claim against the owner of the vehicle under the owner's liability statute, MCL 257.401 *et seq.*; MSA 9.2101 *et seq.* Because the firefighter's rule barred plaintiffs' claim against the driver of the vehicle, plaintiffs' derivative statutory claim against the owner of the vehicle was also precluded. See *Hoag v Paul C. Chapman & Sons, Inc*, 62 Mich App 290, 301; 233 NW2d 530 (1975).

Affirmed.

/s/ Michael J. Talbot  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey

<sup>1</sup> Plaintiffs contend that the trial court erred in making the factual determination that Officer Moton's duties at the time of the accident included "traffic enforcement" in order to bring the suit within the purview of *Stehlik*. However, contrary to plaintiffs' contention, the trial court's statement was supported by Officer Moton's uncontradicted testimony that, although she was "basically not a traffic officer," part of her duties on the night in question included traffic enforcement in the form of issuing traffic tickets. Nevertheless, even assuming that the trial court impermissibly made such a finding (which it did not), this issue is irrelevant in light of our prior conclusion that Officer Moton's injuries stemmed directly from a normal, inherent, and foreseeable risk associated with her specific police function.