

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

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AMY S. McKERNIN and THOMAS McKERNIN,

Plaintiffs-Appellants,

v

ERWIN C. HASSE d/b/a HASSE'S STANDARD  
SERVICE,

Defendant-Appellee,

and

ALAN JOHN FOREST as Personal Representative of  
the Estate of LAURIE CLEMENS; JACK  
SPENCER; FREDERICK FLEET, INC., a foreign  
corporation; DOUGLAS CLOSSON, DALE  
CLOSSON AND REX CLOSSON, d/b/a DON  
CLOSSON AND SON, a co-partnership; and TTS, a  
foreign corporation,

Defendants.

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ALAN JOHN FOREST, as Personal Representative  
of the Estate of LAURIE CLEMENS,

Plaintiff-Appellant,

v

ERWIN C. HASSE, d/b/a HASSE'S STANDARD  
SERVICE,

Defendant-Appellee,

UNPUBLISHED  
October 22, 1999

No. 213384  
Berrien Circuit Court  
LC No. 96-001301 NI

No. 213674  
Berrien Circuit Court  
LC No. 96-001313 NI

and

BILL THOMPSON TRANSPORT, INC., a  
Michigan corporation; FREDERICK FLEET, INC., a  
foreign corporation, and JACK S. SPENCER,

Defendants.

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Before: Hood, P.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant Erwin C. Hasse, d/b/a Hasse's Standard Service (hereinafter defendant), pursuant to MCR 2.116(C)(10). We affirm.

This consolidated case arises out of two separate suits that derive from the same accident. On February 2, 1996, Laurie Clemens and Amy McKernin were traveling along I-94 in a van driven by Clemens. Apparently due to inclement weather, the road conditions were icy and treacherous. Clemens lost control of the vehicle and crashed into a semi-tractor trailer that had been left on the side of the highway due to a mechanical problem. Clemens died immediately and McKernin was severely injured. Prior to the accident, defendant had been contacted by the service that had undertaken the task of repairing the semi-tractor to see if it could tow both the semi-tractor and semi-trailer to its service facility. Defendant agreed to tow the semi-tractor, but indicated that it did not have the manpower or the equipment to tow the semi-trailer. The trial court granted defendant's motion for summary disposition as to both plaintiffs, holding that defendant did not have a duty to remove the semi-trailer.

The sole issue we are presented with is whether the trial court erred when it granted defendant's motion for summary disposition. "This Court reviews decisions on motions for summary disposition de novo." *Auto Club Ins Ass'n v Sarate*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 204893, issued 06/25/99), slip op at 1.

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

“The requisite elements of a negligence cause of action are that the defendant owed a legal duty to the plaintiff, that the defendant breached or violated the legal duty, that the plaintiff suffered damages, and that the breach was a proximate cause of the damages.” *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 1750 (1993). “‘Duty’ is any obligation the defendant has to the plaintiff to avoid negligent conduct.” *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). Ordinarily, whether a duty exists is a question of law for the court. *Id.*

Plaintiffs correctly point out that because defendant decided to render assistance to the truck driver, it had a duty to perform that undertaking in a reasonable manner. We disagree, however, with plaintiffs’ assertion that a question of fact exists concerning whether defendant breached its duty of care by failing to properly take care of the semi-trailer. The record establishes that defendant undertook the task of towing the semi-tractor, which it did with reasonable care and success. However, the record also shows that defendant never undertook—and expressly disavowed—the responsibility of towing the semi-trailer. Therefore, because defendant did not undertake to render any service with respect to the semi-trailer, we conclude that the trial court correctly granted defendant’s motion for summary disposition.

Affirmed.

/s/ Harold Hood

/s/ Donald E. Holbrook, Jr.

/s/ E. Thomas Fitzgerald