STATE OF MICHIGAN

COURT OF APPEALS

RANDOLPH ZIEGLER,

Plaintiff-Appellant,

v

ENGINEERED PLASTICS, INC.,

Defendant,

and

JONES/AUCH COMPANY and GEORGE AUCH COMPANY,

Defendants-Appellees.

UNPUBLISHED
February 22, 2000

No. 207239
Wayne Circuit Court
LC No. 96-612915-NP

Before: Cavanagh, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant George Auch Company's[1] motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

Plaintiff alleges that defendant negligently installed, or negligently supervised the installation of, specially designed bedroom furniture in a maximum security detention center. Plaintiff, a teacher at the detention center, was injured when an inmate broke one of the beds and used a piece of the frame to attack him.

To establish a prima facie case of negligence, a plaintiff must prove the following elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). Plaintiff argues that the trial court erred in granting summary disposition because there was a genuine issue of material fact regarding whether defendant deviated from the specifications when installing the prison beds. However, plaintiff does not address the preliminary question of whether defendant had a duty to protect plaintiff.[2] Only after finding that a duty exists may the factfinder determine whether, in light of the particular facts of the case, there was a breach of the duty. *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997).

Generally, duty is any obligation that the defendant has to the plaintiff to avoid negligent conduct. *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). In determining whether a duty exists, courts look to different variables, including foreseeability of the harm, existence of a relationship between the parties involved, degree of certainty of injury, closeness of connection between the conduct and the injury, moral blame attached to the conduct, policy of preventing future harm, and the burdens and consequences of imposing a duty and the resulting liability for breach. *Krass v Tri-County Security, Inc*, 233 Mich App 661, 668-669; 593 NW2d 578 (1999).

As a general rule, there is no duty to protect another person from the criminal acts of a third party in the absence of special circumstances. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 498-499; 418 NW2d 381 (1988); *Krass*, *supra* at 668. Where there is a duty to protect an individual from a harm by a third person, that duty to exercise reasonable care arises from a "special relationship" either between the defendant and the victim, or the defendant and the third party who caused the injury. Such a special relationship must be sufficiently strong to require a defendant to take action to benefit the injured party. *Murdock*, *supra* at 54.

Under the facts of this case, we hold that defendant owed no duty to plaintiff. Defendant contracted with the State, a third party, for a renovation project. Plaintiff was not a party to the contract, and there is nothing to indicate that he was an intended third-party beneficiary of the contract.[3] Two-and-one-half to three years elapsed between the time that defendant performed the work and the time that plaintiff was injured. In the interim, defendant had no control over either the detention center or the beds themselves.[4] Moreover, plaintiff was not injured while he or another person was using a bed for its intended purpose. Rather, an inmate kicked a bed until it cracked, pulled the bed apart, dismantled the support frame, and used one of the pieces of the frame in his attack on plaintiff. Under the circumstances, the connection between defendant's alleged negligence and plaintiff's injuries is simply too tenuous to support the imposition of a duty.

Because plaintiff has not presented facts establishing that defendant owed a duty to him, his negligence claim fails as a matter of law. See *Reeves v Kmart Corp*, 229 Mich App 466, 477-

478; 582 NW2d 841 (1998). Therefore, the trial court did not err in granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

[1] Jones/Auch Company served as the general contractor for the project at issue in the case; however, Jones/Auch Company no longer exists. Defendant George Auch Company was a forty-nine percent shareholder of the now defunct Jones/Auch Company.

[2] Plaintiff merely makes the assertion that defendant retained a duty of due care, citing *Vannoy v City of Warren*, 15 Mich App 158; 166 NW2d 486 (1968), remanded 382 Mich 771; 387 NW2d 913 (1969). However, *Vannoy* provides no support for the proposition that defendant had a duty to plaintiff. *Vannoy* involved an activity that could be considered inherently dangerous, namely, working in an atmosphere with deadly gases. See *id*. at 164. The inherently dangerous activity doctrine is an exception to the general rule that an employer of an independent contractor is not liable for the contractor's negligence or the negligence of his employees. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 633; 601 NW2d 160 (1999). Under the doctrine, liability may be imposed when the work contracted for is likely to create a peculiar risk of physical harm or if the work involves a special danger inherent in or normal to the work. *Id*. Here, plaintiff provides no reason to conclude that the installation of the beds was inherently dangerous and no support for the proposition that liability for an inherently dangerous activity continues after completion of the activity.

[3] MCL 600.1405; MSA 27A.1405 governs the ability of third-party beneficiaries to enforce contracts. *Koenig v South Haven*, 460 Mich 667, 676; 597 NW2d 99 (1999) (Taylor, J.). Section 1405 does not empower just any person who benefits from a contract to enforce it. Rather, it states that a person is a third-party beneficiary of a contract only when the promisor undertakes an obligation "directly" to or for the person. *Koenig, supra* at 676-677.

[4] Because of the gap in time between the alleged negligence and the injury, plaintiff's argument that defendant is liable because it retained control of the installation fails. See generally *Funk v General Motors Corp*, 392 Mich 91, 108; 220 NW2d 641 (1974), overruled in part on other grounds in *Hardy v Monsanto Enviro-Chem Systems, Inc*, 414 Mich 29; 323 NW2d 270 (1982).