

STATE OF MICHIGAN  
COURT OF APPEALS

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MARK NICHOLS,

Plaintiff-Appellant,

v

HOWELL AREA CHAMBER OF COMMERCE,

Defendant-Appellee.

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UNPUBLISHED

June 23, 2000

No. 218137

Livingston Circuit Court

LC No. 98-016870-NZ

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(8). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this negligence action alleging that his property, livestock, and animals were injured by hot air balloons launched during a festival sponsored by defendant. The trial court granted defendant's motion for summary disposition, finding that plaintiff failed to establish that defendant owed him a duty.

A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim to determine whether the opposing party's pleadings allege a prima facie case. *Halbrook v Honda Motor Co, Ltd*, 224 Mich App 437, 440; 569 NW2d 836 (1997). If the court determines as a matter of law that a defendant owes no duty to a plaintiff, summary disposition is properly granted under MCR 2.116(C)(8). *Id.*, 441.

Duty is a question of whether the defendant is under any obligation for the benefit of the particular plaintiff and concerns the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of another. *Buczowski v McKay*, 441 Mich 96, 100-101; 490 NW2d 330 (1992). In determining whether a duty exists, courts look to variables such as (1) the foreseeability of harm, (2) the degree of certainty of injury, (3) the existence of a relationship between the parties involved, (4) closeness of the connection between the conduct and the injury, (5) blame attached to the conduct, (6) the possibility of any future harm, and (7) the burdens and consequences of

imposing a duty and the resulting liability for breach. *Terry v Detroit*, 226 Mich App 418; 573 NW2d 348 (1997).

While it is foreseeable that hot air balloons set off during a festival could land on private property, there is no showing that an injury would be certain to occur. Balloons are subject to piloting adjustments, which would minimize the connection between the sponsorship of the event, and any specific harm caused. There is no special relationship between the parties, and there was no basis alleged for defendant to know that a balloon would land on plaintiff's particular piece of property. The parties indicated that the festival was subject to a number of permits and approvals. While imposing a duty could prevent future harm, restrictions on approvals and special permits would achieve the same result. There is no basis to impose a duty resulting in litigation where there are better ways to reach the same end.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra