

STATE OF MICHIGAN
COURT OF APPEALS

JACQUELINE J. JOHNSON and MACK H.
JOHNSON, Individually and as Personal
Representatives of the Estate of CHANDRA
RENEE JOHNSON, Deceased,

UNPUBLISHED
May 25, 2001

Plaintiffs-Appellees,

v

LIEUTENANT ROBERT JONES,

No. 221314
Oakland Circuit Court
LC No. 97-536247-NO

Defendant-Appellant,

and

CITY OF LATHRUP VILLAGE and DAVID
FORD,

Defendants.

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

PER CURIAM.

Defendant-Appellant Lt. Robert Jones (defendant) appeals by leave granted the order denying his renewed motion for summary disposition in this wrongful death action. We reverse.

Plaintiffs' decedent, their daughter, was killed by her former boyfriend, Ronald Dancy, while in her dorm room at Wilberforce College in Ohio. The murder occurred after numerous allegations of harassment and abuse were made against Dancy, including two instances of kidnapping and one instance of forcible rape. Plaintiffs filed suit against defendant alleging that he was grossly negligent in his performance as a police officer for the City of Lathrup Village and liable for plaintiffs' decedent's death.¹ The trial court denied defendant's motion for

¹ Plaintiffs also filed suit against the City of Lathrup Village and Police Chief David Ford. The claims against these defendants were dismissed with prejudice based on governmental immunity.

summary disposition, finding that defendant had a duty to protect plaintiffs' decedent because there was a special relationship between them.

Defendant contends that, in his capacity as a police officer for the City of Lathrup Village, he did not owe plaintiffs' decedent a legal duty under the special relationship exception to the public-duty doctrine and, therefore, he was entitled to summary disposition under MCR 2.116(C)(7). A trial court's ruling on a summary disposition motion is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). To survive a motion for summary disposition under MCR 2.116(C)(7), the plaintiff must allege facts warranting application of an exception to governmental immunity. *Dampier v Wayne Co*, 233 Mich App 714, 720; 592 NW2d 809 (1999). Summary disposition is properly granted when a claim is barred by immunity. *Id.*

Whether a duty exists is a question of law for the court to decide. *Harts v Farmers Ins Exchange*, 461 Mich 1, 6; 597 NW2d 47 (1999); *Schneider v Nectarine Ballroom, Inc (On Remand)*, 204 Mich App 1, 4; 514 NW2d 486 (1994). The public duty doctrine recognizes that a public employee's duty is to the public at large, and not generally to individuals. Applied to police officers, it insulates officers from tort liability for the failure to provide police protection unless an individual plaintiff satisfies the special-relationship exception. The rationale for the doctrine is that police officers should not be liable for failing to protect a member of the general public from a criminal act of which they were not aware but should have anticipated and prevented. *White v Beasley*, 453 Mich 308, 316; 552 NW2d 1 (1996).

The special-relationship exception in Michigan requires a plaintiff to show: (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agent that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking. *White, supra* at 320. Noting the unfairness of judging police officers' conduct with "20/20 hindsight" the court stated:

[The special-relationship test] responds to these concerns by insulating police officers from liability arising from their tortious on the job conduct in almost all instances where a plaintiff alleges a failure to provide police protection. Yet, the test also provides plaintiffs some relief in the particularly egregious case of an officer promising police protection, but negligently carrying out that promise. Although this test may deny recovery to some deserving plaintiffs, we prefer to be cautious when exposing police officers to on the job liability. Police officers must work in unusual circumstances. They deserve unusual protection. [*Id.* at 321.]

With regard to the first part of the test, plaintiffs must demonstrate an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured. *White, supra* at 320. There is nothing in the record to suggest that defendant explicitly or implicitly promised to protect plaintiffs' decedent. Indeed, plaintiffs complain that defendant and others in the city police force failed to take her and their concerns seriously, at times questioning plaintiffs' decedent's veracity. Moreover, plaintiffs have in effect admitted

that they never relied, justifiably or otherwise, on any promise by defendant to protect them or their daughter because they had concerns regarding the seriousness with which defendant treated their allegations against Dancy. Even if plaintiffs did rely on any assurance of protection, their reliance would not have been justified given the fact that the murder occurred in another state where defendant was powerless to act. This is not the sort of “egregious case of an officer promising police protection, but negligently carrying out that promise” for which the Supreme Court adopted the special-relationship exception.

Reversed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey