

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD CARTER, Personal Representative of
the Estate of GERALD CARTER, Deceased,

UNPUBLISHED
July 13, 2001

Plaintiff-Appellant,

v

No. 219199
Wayne Circuit Court
LC No. 97-729964-NO

SPIRIT OF CAPRICORN, INC., d/b/a/ ROSE
TERRACE AFC, STALLWORTH AFC #1
CORPORATION, d/b/a STALLWORTH AFC,
and COMMUNITY CASE MANAGEMENT
SERVICES, INC.,

Defendants-Appellees.

Before: Neff, P.J., and Holbrook, Jr., and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from a grant of summary disposition to all defendants in plaintiff's suit alleging the wrongful death of his brother and ward. We reverse and remand.

Plaintiff was the legal guardian for the decedent, a paranoid schizophrenic and chronic alcoholic. Because plaintiff had trouble monitoring the decedent while he was living at plaintiff's home, the decedent was placed in a succession of adult foster care homes. In October 1996, the decedent was involuntarily committed to Detroit Riverview Hospital. Prior to his commitment, the decedent had been living in a facility run by defendant Rose Terrace AFC.

When the decedent was released by Riverview approximately two weeks later, defendant Community Case Management Services, Inc. (CCMS), was entrusted with the job of finding him a suitable foster care placement. CCMS placed the decedent at a facility run by defendant Stallworth AFC on an "emergency bed" basis. Stallworth was located close to Rose Terrace. The decedent was transported to Stallworth on October 17, 1996. However, he refused to enter the facility. Instead, he left and did not return that night. Apparently, the decedent had gone to Rose Terrace and spent the night. The next day, Rose Terrace staff took the decedent back to Stallworth. There is a dispute on what happened next, but for some reason the decedent did not enter Stallworth after being transported there. Instead, he returned to Rose Terrace. The decedent's medications were locked in a cabinet at the Stallworth facility.

Later that afternoon, Gail Stallworth, the manager of the Stallworth facility, went to Rose Terrace. There is a dispute between CCMS and Gail Stallworth and what directions she was given by CCMS regarding what to do with the decedent. Eventually, Gail Stallworth called the police due to the decedent's lack of cooperation. When the police did not immediately respond, Gail Stallworth left to take her assistant back to the Stallworth facility and to pick up prescription medications from a pharmacy.

During this time, the decedent apparently got quite drunk. The police were called again by Rose Terrace. The decedent left Rose Terrace, returning some time later carrying a brown paper bag. There are allegations that the bag contained raw liver. Eventually, the decedent was found slumped over Rose Terrace's kitchen sink, choking on what was later determined to be a piece of raw liver. Emergency medical personnel were summoned, but were unable to revive the decedent. He was transported to Riverview, where he was pronounced dead.

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Where, as in this case, the parties moved for summary disposition under both MCR 2.116(C)(8) and MCR 2.116(C)(10), and the trial court did not state specifically under which rule it granted the motion, this Court reviews under the correct rule. *Id.* at 338 n 9. In their motions for summary disposition, each defendant argued that it did not owe the decedent a duty. Existence of duty is a question of law to be decided by the court, and summary disposition is appropriate under MCR 2.116(C)(8) if as a matter of law defendant owed no duty to decedent under the alleged facts. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). The nature of any duty owed by defendants to decedent is a question of the general standard of care it was required to observe which, like the existence of a duty, is a question of law to be decided by the court and reviewed de novo by this Court. *Moning v Alfono*, 400 Mich 425, 438; 254 NW2d 759 (1977). This Court reviews the trial court's determinations de novo and decides "if the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Id.*; *Duran v Detroit News, Inc.*, 200 Mich App 622, 628; 504 NW2d 715 (1993).

Further, because the trial court examined evidence outside the pleadings when rendering its decision, MCR 2.116(C)(10) is the appropriate rule for determining the proximate cause questions. See *Kubisz v Cadillac Gage Textron, Inc.*, 236 Mich App 629, 633, n 4; 601 NW2d 160 (1999).

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).]

In *Moning*, *supra* at 437-438, our Supreme Court observed that the existence of a duty from a plaintiff to a defendant is a separate legal question from what that duty is, and whether it has been violated, holding:

“Duty” comprehends whether the defendant is under *any* obligation to the plaintiff to avoid negligent conduct; it does not include – where there is *an* obligation – the nature of the obligation: the general standard of care and the specific standard of care.

Dean Prosser observed:

“ . . . *It is better to reserve ‘duty’ for the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other,* and to deal with particular conduct in terms of a legal standard of what is required to meet the obligation. In other words, ‘duty’ is a question of whether the defendant is under *any* obligation for the benefit of the particular plaintiff; and in negligence cases, the duty is always the same, to conform to the legal standard of reasonable conduct in the light of the apparent risk. *What the defendant must do, or must not do, is a question of the standard of conduct required to satisfy the duty.*” [Emphasis in original.]

We believe that under the circumstances of this case, each defendant owed the decedent a duty of care. CCMS owed him a duty to find him an appropriate placement in an adult foster care home that would meet his needs. CCMS entered into a contract with the decedent, signed by plaintiff on his behalf as his guardian, making CCMS “responsible” for “home finding” and “for assessing, linking, monitoring, planning and advocating where necessary to ensure that [his] recommended services and needs [were] being met.” Also, as the CCMS contract for services observes, CCMS is governed by the responsibilities imposed by Michigan’s Public Health Code, which includes, among other more specific requirements, the broad proviso that a recipient of mental health services “shall receive mental health services suited to his or her condition.” MCL 330.1708(1)

As for Stallworth, the record shows that although he never lived in the Stallworth facility, the decedent had been admitted and transferred to the facility. There is also no dispute that Stallworth both set aside space for the decedent and took possession of the decedent’s medication.

Rose Terrace gave decedent a place to stay for the night, and tried to transfer him back to Stallworth the next day. Later, Rose Terrace asked him to leave, and when he would not do so, the police were called. Initially, therefore, decedent was an invitee; later, he became a trespasser. *Cloverleaf Car Co v Wykstra Oil Co*, 213 Mich App 186, 195; 540 NW2d 297 (1995); *Eason*, *supra* at 263. Rose Terrace acknowledges as much. In both instances, because aware of his presence, Rose Terrace was under an obligation to exercise ordinary care to prevent injury to decedent resulting from its active negligence. *Draper v Switows*, 370 Mich 468, 471; 122 NW2d 698 (1963); *Eason*, *supra* at 263.

We further conclude that a jury question exists as to whether any of defendants violated their duty of care. The record before us shows that CCMS determined that the decedent required “[e]xtra supervision to prevent wandering [and] drinking.” Here, the decedent wandered away from Stallworth. When he was located the following day, the record shows a significant disagreement between those involved on what steps were taken to supervise and monitor the decedent as he moved back and forth between Stallworth and Rose Terrace. There is also a genuine question of fact on whether Stallworth could or even was authorized to provide the level of supervision needed for an individual whose problems included “wandering and drinking.”

There are also genuine issues of material fact regarding the adequacy of Stallworth’s and Rose Terrace’s responses to the situation. For example, a question exists as to whether the decedent was turned away from Stallworth when he returned following his night at Rose Terrace. Further, when Stallworth did go after the decedent at Rose Terrace, there is no evidence in the record before us that any steps were taken to assure that he was given or took his medication.

As for Rose Terrace, the record shows that the decedent had stayed at the facility just prior to his hospitalization at Riverview. The record also shows that as a result of this stay, Rose Terrace had knowledge of the decedent’s mental state, his alcoholism, his threatening behavior, and even the fact that the decedent would eat raw liver when intoxicated. Certainly Rose Terrace knew that the decedent had recently been involuntarily committed because of his condition. Given this knowledge, we believe a genuine issue of fact exists on whether Rose Terrace breached its duty of care.

Additionally, we believe there is a genuine issue of material fact as to whether any of these possible breaches of duty proximately caused the decedent’s death. A factual question exists on whether but for the actions taken by these defendants, the decedent would not have died. Additionally, we believe a genuine issue of material fact exist on whether this injury was foreseeable and thus defendants should be held legally responsible. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994).

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Donald E. Holbrook, Jr.

/s/ Kathleen Jansen