

STATE OF MICHIGAN
COURT OF APPEALS

THERESA WHITE, Personal Representative of
the ESTATE OF GARY LEE WHITE, Deceased,

Plaintiff-Appellant,

v

PINKERTON'S, INC. and GENERAL MOTORS
CORPORATION,

Defendants-Appellees.

UNPUBLISHED
September 28, 2001

No. 220809
Genesee Circuit Court
LC No. 97-060601-NI

Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's orders granting defendants Pinkerton's and General Motors' ("GM") motions for summary disposition. We affirm.

The trial court did not err in granting Pinkerton's motion for summary disposition on plaintiff's negligence claim.¹ Pinkerton's entered a contract with GM for limited security

¹ As our Supreme Court has stated:

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Citations omitted.]

Further, in a negligence case, "[t]he issue of duty is one of law for the court, which must assess competing policy considerations to determine whether the relationship between the parties will occasion a legal obligation to the injured party." *Krass v Tri-County Sec, Inc*, 233 Mich App 661, 666; 593 NW2d 578 (1999), quoting *Tame v A L Damman Co*, 177 Mich App 453, 455; 442 NW2d 679 (1989).

services. While there is no legal duty that obligates one person to aid or protect another, *Krass v Tri-County Security, Inc*, 233 Mich App 661, 668-669; 593 NW2d 578 (1999), every contract is accompanied by a common law duty to perform the contractual obligations with ordinary care. *Clark v Dalman*, 379 Mich 251, 261; 150 NW2d 755 (1967). This duty extends to individuals who are not parties to the contract. See *Osman v Summer Green Lawn Care, Inc*, 209 Mich App 703, 707-710; 532 NW2d 186 (1995), overruled in part on other grounds, *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456, n 2; 597 NW2d 28 (1999). Indeed, “[t]hose foreseeably injured by the negligent performance of a contractual undertaking are owed a duty of care.” *Id.* at 708; see also, *Talucci v Archambault*, 20 Mich App 153, 161; 173 NW2d 740 (1969).

Thus, Pinkerton’s had a duty to perform those security services set forth in its contract with GM with reasonable care. The duties assumed by the Pinkerton included protecting GM property and personnel from injuries caused by “theft, fire, trespass, espionage, sabotage, riot, and/or insurrection” The contract does not require Pinkerton’s to protect employees from criminal acts like the one arising in this case. Accordingly, the trial court properly granted summary disposition to Pinkerton’s.

We also agree that the trial court properly granted summary disposition to GM. The circumstances in this case do not fall within the intentional tort exception to the exclusive remedy provision of the Worker’s Disability Compensation Act. MCL 418.131(1). Although GM may have had reason to be alarmed of a potential for violence, there was no showing that GM intended an injury or that it had actual knowledge that an injury was certain to occur. *Gary v Morley (After Remand)*, 460 Mich 738; 596 NW2d 922 (1999). To the extent plaintiff argues that the decision of the worker’s compensation magistrate’s “should be taken into account,” we decline to consider this issue because it was not raised below and is inadequately briefed. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Henry William Saad