STATE OF MICHIGAN

COURT OF APPEALS

JOSE ORTIZ and MELISSA MOORE, Co-Personal Representatives of the Estates of JOSE ORTIZ-MOORE and SAVANAH M. MOORE,

Plaintiffs-Appellants,

v

CHARLES WILLIAM PORTER and CITY OF GRAND RAPIDS,

Defendants-Appellees.

UNPUBLISHED
November 30, 2001

No. 226466
Kent Circuit Court
LC No. 98-012463-NO

Before: Griffin, P.J., and Gage and Meter, JJ.

GRIFFIN, P.J. (*dissenting*).

I respectfully dissent. As noted by the lead opinion, defendants have not raised, preserved, or argued the issue of proximate cause. At the lower court hearing, counsel for defendant specified that his motion for summary disposition was limited to the issue of duty and did not address proximate cause:

> The brief that we have filed with the Court is limited to the issue of whether or not a duty exists to impose liability on Mr. Porter. Issues of proximate cause or of gross negligence, which would be required by the state's statute, are left to another time. The issue is whether or not there is a duty.

Under these circumstances, I would not sua sponte raise and decide the case on the issue of proximate cause. I would reverse and remand for further proceedings.

It is well established a trial court's decision that reaches the correct result, albeit for the wrong reason, may be upheld on appeal. *In re People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993); *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411, n 10; 443 NW2d 340 (1989); *Norris v State Farm Fire & Casualty Co*, 229 Mich App 231, 240; 581 NW2d 746 (1998). However, issues not raised in the trial court are not preserved and generally will not be considered on appeal. *People v Grant*, 445 Mich 535 546; 520 NW2d 123 (1994); *Booth Newspapers, Inc v Univ of MI Bd of Regents*, 444 Mich 211, 234, n 23; 507 NW2d 422 (1993); *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1992). This appellate court should be extremely reluctant to decide cases on the basis of issues that have not been raised, briefed, or argued. *Goodridge v Ypsilanti Twp Bd*, 209 Mich App 344, 354-355;

529 NW2d 665 (1995) (Griffin, J., dissenting), rev'd 451 Mich 446 (1996). See also *Fawley v Doehler-Jarvis Div of Nat'l Lead Co*, 342 Mich 100, 102; 68 NW2d 768 (1955).

While Judge Gage may be correct in her conclusion that the resolution of the issue of proximate cause will be dispositive, the parties deserve "at a minimum an opportunity to be heard." *Abbott v Howard*, 182 Mich App 243, 250-251; 451 NW2d 597 (1990). See also *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 313; 70 S Ct 652; 94 L Ed 865 (1950), and *Grannis v Ordean*, 234 US 385, 394; 34 S Ct 779; 58 L Ed 1363 (1914).

I agree with my colleagues that the lower court erred in granting summary disposition on the basis of the public duty doctrine. *Beaudrie v Henderson*, 465 Mich 124; 631 NW2d 308 (2001). In regard to the alternative ground for the trial court's order, I would reverse and remand. See *Schanz v New Hampshire Ins Co*, 165 Mich App 395, 400-405; 418 NW2d 478 (1988). In my view, genuine issues of material fact exist regarding whether defendant Porter voluntarily assumed a duty to obtain a smoke detector[1] for Ms. Moore and whether Ms. Moore's reliance[2] on Porter's alleged promise was reasonable. I disagree with the trial court's ruling that "as a matter of law that reliance cannot be deemed reasonable or justifiable." In light of all the circumstances that include Mr. Porter's direction that the smoke detector be placed on the ceiling of a stairway and the fact that as a tenant Ms. Moore did not possess a ladder tall enough to install the smoke detector, I would hold that the question whether Ms. Moore's reliance was reasonable should be resolved by the trier of fact. See, generally, *Bullock v Automobile Club of Michigan*, 432 Mich 472, 474-475; 444 NW2d 114 (1989), quoting with approval 7 Callaghan's Michigan Pleading & Practice (2d ed), § 43.12, p 30; *Arbelius v Poletti*, 188 Mich App 14, 18-19; 469 NW2d 436 (1997).

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[1] In her deposition, Melissa K. Moore testified:

> *Q* -- you generally describe for him [Mr. Porter] that you have asked Mr. Buckner [the landlord] for a smoke detector before and he's always said he would but never has; correct?
>
> *A.* Yes.
>
> *Q.* And that Mr. Porter responded that you would get one this time?
>
> *A.* Yes.

[2] In her January 17, 2000, affidavit, Ms. Moore further testified:

> 2. . . . Mr. Porter told us he would get a smoke detector for us.
>
> 3. Because of that promise, we were relying on him (Porter) to get us the smoke detector.

I would reverse and remand for further proceedings.[3]

/s/ Richard Allen Griffin

[3] On remand, the proceedings should be limited to defendant Porter because appellants concede "Plaintiffs do not challenge on this appeal the dismissal of the claim against the City of Grand Rapids."