

STATE OF MICHIGAN
COURT OF APPEALS

ALBERT NORWOOD, Personal Representative of
the Estate of JUSTIN ALAN NORWOOD,
ALBERT NORWOOD, individually, PATRICIA
NORWOOD, and ADRIAN NORWOOD,

Plaintiffs-Appellants,

v

MARK THEMICAL HOWELL, THADDIUS
STEVENSON HILL, ANTOINE LAMAR
WALLACE, JOSEPH PARKER, JAMES EARL
HARRIS,

Defendants,

and

SAED SAM SABOURY, jointly and severally,

Defendant-Appellee.

Before: Smolenski, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

In this negligence action, plaintiffs appeal as of right from a judgment granting of summary disposition in favor of defendant Saed Sam Saboury. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

On April 19, 1993, Justin Norwood was alone in his brother Adrian Norwood's apartment, which was leased from defendant. Five men broke into the apartment, gaining access by kicking in the front door. Upon finding Justin Norwood, the men tied him up with a phone cord and ransacked the apartment. As the men were leaving, Thaddius Hill shot Justin Norwood in the head, killing him. Plaintiffs, family members of Justin Norwood, filed this action against defendant alleging that defendant was negligent by failing to make certain repairs, particularly to the apartment's front door. Plaintiffs alleged that defendant's negligence was a proximate cause of Justin Norwood's death. Defendant moved for summary disposition, which the trial court granted. Plaintiffs appeal.

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September 13, 2002

No. 231663
Ingham Circuit Court
LC No. 96-083285-NO

Plaintiffs argue that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(8) and (10). We disagree. On appeal, a trial court's grant or denial of summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions which can be drawn from the facts, and construed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

To support a negligence claim, there must be a duty owed by the defendant to the plaintiff. *Otero v Warnick*, 241 Mich App 143, 147; 614 NW2d 177 (2000). If there is no duty, summary disposition may be granted for failure to state a claim. *Id.* Questions regarding duty are for the court to decide as a matter of law. *Harts v Farmers Ins Exchange*, 461 Mich 1, 6; 597 NW2d 47 (1999).

Plaintiffs alleged in their complaint that defendant had a duty to repair and perform maintenance at the apartment complex. Plaintiffs asserted that defendant's failure to do so was a proximate cause of plaintiffs' decedent's death; that had the criminals had a more difficult time in breaking into the apartment, plaintiffs' decedent would have had time to take life-saving measures such as fleeing the apartment.

In granting summary disposition, the trial court found that defendant owed plaintiffs' decedent no duty. A landlord owes a duty to his tenants and their guests to protect them from foreseeable criminal activities occurring within the common area of the landlord's premises. *Stanley v Town Square Cooperative*, 203 Mich App 143, 148-149; 512 NW2d 51 (1993). The criminal act which caused plaintiffs' decedent's death in this case was the shooting. There is no dispute that the shooting occurred inside Adrian Norwood's apartment, not in a common area. We hold that because there was no duty owed by defendant, summary disposition was proper pursuant to MCR 2.116(C)(8).

Plaintiffs assert that the fact that the shooting did not occur in a common area is irrelevant because as *Holland v Liedel*, 197 Mich App 60; 494 NW2d 772 (1992), demonstrates, a landlord can be held liable for injury occurring in a non-common area. However, plaintiffs are mistaken as to import of *Holland*. In that case, the plaintiff who was a tenant of the building was abducted from the building's underground parking ramp, raped and assaulted, and returned to the parking ramp. *Id.* at 61. This Court upheld the trial court's denial of defendant's motion for summary disposition and directed verdict. The plaintiff had argued that the defendant had a duty to protect her from foreseeable criminal activity *in the parking ramp*, a common area, and the security

measures were insufficient. *Id.* at 63-64. In this case, plaintiffs' decedent was not initially assaulted or even approached in a common area.

A landlord has a duty with regard to common areas because he possesses exclusive control over these areas. *Stanley, supra* at 149. Also, a landlord's duty with regard to criminal acts of third parties "only exists when the landlord created a dangerous condition that enhances the likelihood of exposure to criminal assaults." *Id.* at 150. Plaintiffs attempt to construct an analogy by arguing that the door to the apartment was under defendant's exclusive control because according to the apartment's lease only defendant could repair the door, the tenants were prohibited from making such repairs, and defendant's failure to do so created a dangerous condition that led proximately to plaintiffs' decedent's death. However, plaintiffs' argument fails because we cannot say that the condition of the apartment door presented "an unusual risk of criminal attack." *Id.* at 151. The evidence does not indicate that the ease with which the door could be broken into was apparent from an outside inspection. The light weight of the door was only apparent when opened. While the door's features may not have been of the best quality, it did have a lock and was attached, albeit loosely, to the doorframe.

Additionally, even if we accept plaintiffs' contention that defendant had a duty, the criminal activity still needs to be foreseeable. *Id.* at 148. Generally the question of foreseeability is one of fact for the jury. *Holland, supra* at 63. However, summary disposition is still appropriate where reasonable minds could not differ as to the existence of a genuine issue of material fact. Viewed in the light most favorable to plaintiffs, the record establishes that defendant was aware of one other break-in many months before. However, the apartment was also in a low-crime area and there had not been any other assaults. Thus, at most, vandalism and burglary were foreseeable criminal activities, but not murder. Therefore, summary disposition was still proper pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Richard A. Bandstra