

STATE OF MICHIGAN
COURT OF APPEALS

KATIE ROBERTSON,

Plaintiff-Appellant,

v

MIKE'S USED CARS,

Defendant-Appellee.

UNPUBLISHED

November 13, 2008

No. 279587

Genesee Circuit Court

LC No. 06-083545-NO

Before: O'Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review de novo the trial court's ruling on a motion for summary disposition. *Benefiel v Auto-Owners Ins Co*, 277 Mich App 412, 414; 745 NW2d 174 (2007), lv gtd 748 NW2d 886 (2008). Determination of the existence of duty as a question of law is subject to de novo review on appeal. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004).

"Generally, negligence is conduct involving an unreasonable risk of harm." *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). To prove negligence, a plaintiff must establish a breach of duty owed by the defendant that is a proximate cause of the plaintiff's injuries. *Skinner v Square D Co*, 445 Mich 153-154, 162; 516 NW2d 475 (1994). "[A] negligence action may be maintained only if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm." *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). A duty arises from a special relationship between the plaintiff and the defendant such that the plaintiff entrusts himself to the control and protection of the defendant, who thereby assumes a legal obligation to act with due care for the benefit of the plaintiff. *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 8-9; 492 NW2d 472 (1992). Despite the absence of a special relationship, "the law does impose an obligation upon everyone who attempts to do anything, even gratuitously, for another, to exercise some degree of care and skill in the performance of what he has undertaken, for nonperformance of which duty an action lies." *Lindsley v Burke*, 189 Mich App 700, 704; 474 NW2d 158 (1991) (citations and internal quotations omitted).

Ordinarily, whether a duty exists is a question of law for the court. *Burnett v Bruner*, 247 Mich App 365, 368; 636 NW2d 773 (2001). If there is no duty, summary disposition is proper. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). However, if factual questions exist regarding what characteristics giving rise to a duty are present, the issue must be submitted to the factfinder. *Howe v Detroit Free Press, Inc.*, 219 Mich App 150, 156; 555 NW2d 738 (1996), *aff'd* 457 Mich 871 (1998).

The basic rule is that “[a] party may be under a legal duty when it voluntarily assumes a function that it is not legally required to perform. Once a duty is voluntarily assumed, it must be performed with some degree of skill and care.” *Zychowski v A J Marshall Co, Inc.*, 233 Mich App 229, 231; 590 NW2d 301 (1998) (internal citations omitted). “It is not enough that an individual simply acts. The act must have been one to render service to another.” *Schenk v Mercury Marine Div, Lowe Industries*, 155 Mich App 20, 25; 399 NW2d 428 (1986). “[T]he evidence must show that the actor assumed an obligation or intended to render services for the benefit of another. Evidence demonstrating merely that a benefit was conferred upon another is not sufficient to establish an undertaking which betokens duty.” *Smith v Allendale Mut Ins Co*, 410 Mich 685, 717; 303 NW2d 702 (1981).

In this case, summary disposition was appropriate under MCR 2.116(C)(10). The submitted evidence, viewed in a light most favorable to plaintiff, showed only that plaintiff asked defendant’s employee if she could look at a van parked on the car lot and he said that she could. The mere act of granting plaintiff permission to examine defendant’s merchandise does not demonstrate that the employee actually rendered a service to plaintiff or that he assumed an obligation to protect her from the hazards posed by any unsafe condition on the premises. Therefore, the trial court did not err in finding that defendant did not owe plaintiff a duty.¹

Affirmed.

/s/ Peter D. O’Connell
/s/ Michael R. Smolenski

¹ Our decision in this case is limited to plaintiff’s claim for ordinary negligence. The trial court dismissed an earlier claim for premises liability, and the dismissal of that claim is not at issue on appeal.