

STATE OF MICHIGAN
COURT OF APPEALS

SHARON BROOKS, Personal Representative of
the Estate of DOMINIQUE WADE, Deceased,

Plaintiff-Appellant,

v

STARR COMMONWEALTH,

Defendant/Cross-Defendant-
Appellee,

and

BRIDGEWAY SERVICES, L.L.C.,

Defendant/Cross-Plaintiff-Appellee.

SHARON BROOKS, Personal Representative of
the Estate of DOMINIQUE WADE, Deceased,

Plaintiff,

v

STARR COMMONWEALTH,

Defendant/Cross-Defendant-
Appellee,

and

BRIDGEWAY SERVICES, L.L.C.,

Defendant/Cross-Plaintiff-Appellant.

UNPUBLISHED
May 28, 2009

No. 277469
Oakland Circuit Court
LC No. 2005-065114-NO

No. 277539
Oakland Circuit Court
LC No. 2005-065114-NO

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

MURRAY, J. (*concurring in part, dissenting in part*).

I concur in the majority's resolution of the appeal in docket no. 277539, and with its resolution of the "common law negligence" claim in docket no. 277469. However, with all due respect to my colleagues, I would affirm the trial court's order granting Starr Commonwealth's motion for summary disposition as to the "negligence per se" claim.

Plaintiff argues in docket no. 277469 that the trial court erred in granting Starr's motion for summary disposition on her claim for negligence per se based on the violation of a statute. The trial court dismissed this claim on the grounds that Starr had no duty to protect plaintiff, and that there was no proximate cause between plaintiff's decedents death, and Starr's violation of the statute. On appeal, however, plaintiff merely argues that the trial court erred in finding that Starr's alleged negligence was not a proximate cause of the decedent's death because Kirksey's criminal act was not foreseeable. Plaintiff has not challenged the duty based ruling of the trial court's decision. This is a necessary issue because, even if the trial court erred in its analysis of the proximate cause issue, there can be no liability if there is no duty in the first instance. Plaintiff's failure to address this necessary issue precludes appellate relief. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Additionally, although the majority does a fine job explaining why a duty exists in this case, the cases relied upon by the majority can be found nowhere in plaintiff's brief. Indeed, plaintiff cites no case law on how a duty is established, and therefore fails to make anything other than a conclusory argument that touches on only one of the relevant legal factors, and provides no substantive analysis of the evidence in light of the relevant factors. In other words, plaintiff has not come close to "priming the pump" so that the appellate well can properly flow. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *Blazer Foods, Inc v Restaurant Properties*, 259 Mich App 241, 253; 673 NW2d 805 (2003). We simply cannot make the arguments for plaintiff.

For these reasons, I would affirm the trial court in all respects.

/s/ Christopher M. Murray