

(1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff, a student at defendant's School of Architecture, alleges that in the days prior to May 12, 1998, he and fellow student Walter Wyder, Jr. spent long hours studying and working in the school studio so that they could graduate and that these activities deprived Wyder of sleep and rendered him unable to drive safely. It is further alleged that on May 12, 1998, Wyder drove plaintiff and two other students from Cincinnati, Ohio to Indianapolis, Indiana to attend a seminar conducted by defendant's employee David Niland, and that on the way home, Wyder fell asleep while driving, causing his vehicle to collide with another vehicle, which resulted in injury to plaintiff.

{¶ 5} In order for plaintiff to prevail upon his claims of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Under Ohio law the existence of a duty depends on the foreseeability of the injury. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 6} Plaintiff alleges that the accident was the result of Niland's failure to prevent Wyder from driving when he knew that Wyder was physically exhausted and unable to drive safely. Defendant argues that it owed no duty to plaintiff to stop Wyder from driving home from the seminar or to prevent plaintiff from accepting a ride, and that it did not have any right to control the use of a private vehicle.

{¶ 7} Generally, there is no duty to control the conduct of a third person in order to prevent that person from causing physical harm to another. *Wallace v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 96 Ohio St.3d 266, 2002-Ohio-4210. See, also,

Littleton v. Good Samaritan Hospital & Health Ctr. (1988), 39 Ohio St.3d 86, 92. However, an exception to this general rule arises when a special relationship exists between the actor and the other that gives to the other a right to protection. *Id.* "Such a 'special relation' exists when one takes charge of a person whom he knows or should know is likely to cause bodily harm to others if not controlled." *Littleton, supra*, at 92, citing 2 Restatement of the Law 2d, Torts (1965) 129, Section 319, and Restatement at 123, Section 315, Comment c.

{¶ 8} In *Wallace, supra*, the Supreme Court of Ohio relied extensively upon the Restatement of the Law of Torts in deciding the question of whether a special relationship existed. The essential elements of a "special relationship" are set forth in Sections 314 and 315 of that text. Section 314 states: "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action." Section 315 goes on to state as matter of "General Principle" that:

{¶ 9} "There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless

{¶ 10} "(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or

{¶ 11} "(b) a special relation exists between the actor and the other which gives to the other a right to protection."

{¶ 12} Simply stated, defendant did not have control over Wyder's conduct, nor did it have a duty to control his conduct. In short, the court cannot conceive how a special relationship existed. Defendant merely required plaintiff's attendance at the seminar; defendant did not prescribe the mode of travel.

{¶ 13} The Tenth District Court of Appeals has stated:

{¶ 14} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims." (Internal citations omitted.)

Nu-Trend Homes, Inc., et al. v. Law Offices of DeLibera, Lyons & Bibbo, et al., Franklin App. No. 01AP-1137, 2003-Ohio-1663.

{¶ 15} As stated above, plaintiff did not produce any evidence in response to the motion for summary judgment to support the conclusory allegations of his complaint. In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant was not negligent. Consequently, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law. Defendant's motion for summary judgment shall be granted.

IN THE COURT OF CLAIMS OF OHIO
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WILLIAM SLONE

:

Plaintiff

:

CASE NO. 2000-02780
Judge J. Craig Wright

v. :
UNIVERSITY OF CINCINNATI : JUDGMENT ENTRY
Defendant :
: : : : : : : : : : : : : : : :

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

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