

STATE OF MICHIGAN
COURT OF APPEALS

EDDIE DANIELS and FAYE DANIELS,

UNPUBLISHED

Plaintiffs-Appellants,

v

No. 173275

Ingham Circuit Court

PAUL PETERSON and DONALD RIEL,

LC No. 93-74802-NO

Defendants-Appellees.

Before: MacKenzie, P.J., and Saad and C. F. Youngblood*, JJ.

YOUNGBLOOD, J. (dissenting).

I respectfully dissent under the facts of this case. The special relationship test applies to police officers and firefighters. *White v Beasley*, 453 Mich 308; 552 NW2d 1 (1996); *Gazette v Pontiac*, 212 Mich App 162, 170; 536 NW2d 854 (1995); *Jones v Wilcox*, 190 Mich App 564, 568-570; 476 NW2d 473 (1991); *Markis v Grosse Pointe Park*, 180 Mich App 545, 558; 448 NW2d 352 (1989).

Here, defendants were employed by the Michigan Department of Transportation and assigned to the railroad safety and tariff's division. They were aware of a dangerous condition based on their personal inspection of the accident site, but failed to issue a required report. They had a duty to act within their assigned duties, and that duty ran to all citizens using that intersection. This was a known danger at a particular location, completely different than situations involving crime and fires. Plaintiffs properly alleged gross negligence and provided sufficient proofs to go to a jury. Summary disposition should have been denied.

/s/ Carole F. Youngblood

* Circuit judge, sitting on the Court of Appeals by assignment.