

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM HILL, Personal Representative of the
Estate of DONNA LYNN TEKELY, Deceased,

UNPUBLISHED
February 3, 1998

Plaintiff-Appellant,

v

CITY OF ROYAL OAK and ROYAL OAK
POLICE OFFICERS,

No. 198640
Oakland Circuit Court
LC No. 95-504972 NO

Defendants-Appellees.

Before: Markman, P.J., and McDonald and Cavanagh, JJ.

PER CURIAM.

Plaintiff William Hill, as personal representative of the estate of Donna Tekely, appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10).¹ We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997).

Plaintiff argues that the trial court improperly dismissed his claims under the public duty doctrine. Specifically, plaintiff claims that the trial court erred in finding that there was no special relationship between the decedent and defendants.

The public duty doctrine insulates police officers from tort liability for the negligent failure to provide police protection unless an individual plaintiff satisfies the special-relationship exception. *White v Beasley*, 453 Mich 308, 313; 552 NW2d 1 (1996). A special relationship exists between police officers and a plaintiff when the following factors are present:

- (1) an assumption by the police officer, through promises or actions, of an affirmative duty to act on behalf of the party who was injured;
- (2) knowledge on the part of the police officer that inaction could lead to harm;
- (3) some form of direct contact between the police officer and the injured party;
- (4) the plaintiff's justifiable reliance on the police officer's affirmative undertaking. [*Gazette v Pontiac (On Remand)*, 221 Mich App 579, 582-583; 561 NW2d 879 (1997).]

Plaintiff alleges that defendants failed to provide police protection to the decedent. However, police officers do not owe a duty in tort to any individual unless the facts of a case fit the special-relationship doctrine. *White, supra* at 324. We find that the facts of this case do not establish that a special relationship existed between defendants and the decedent. While there was direct contact between the decedent and defendants, plaintiff has not established the existence of the three remaining requirements for a special relationship.

First, plaintiff has not shown that defendants assumed an affirmative duty to act on behalf of the decedent. Defendants' response to a call to a particular location is insufficient to constitute a promise or assurance to undertake an affirmative duty to act on behalf of the party who was injured. See *id.* at 314, 324-325.

Plaintiff asserts that defendants "failed to follow through" with their attempts to get the decedent and/or her husband to leave the residence. However, even if defendants' offer to take the decedent somewhere were to be considered an affirmative duty to act, because the evidence is undisputed that the decedent refused the offer, plaintiff cannot show that she relied on any such affirmative undertaking by defendants.

In addition, plaintiff has not established that defendants had knowledge that inaction could lead to harm. The officers were responding to a call that the decedent's husband was threatening to commit suicide. When defendants arrived, both decedent and her husband denied that the husband had threatened her. Defendants had responded to calls from the residence in the past when the decedent's husband had been intoxicated and had never taken either the decedent or her husband into custody. On those occasions the decedent and her husband had also refused to be taken to a different location, and, to defendants' knowledge, no harm to either of them had resulted.

Plaintiff maintains that the bullet holes in the door jam of the bedroom should have put defendants on notice that their inaction could lead to harm to the decedent. However, the mere presence of the bullet holes did not indicate any danger to the decedent, particularly as the decedent told defendants that her husband had not threatened her. Moreover, the decedent's husband testified that the bullet holes were old and had been made before his marriage to the decedent.

Plaintiff also contends that defendants knew that inaction could lead to harm because there were firearms on the premises. However, the decedent, her husband, and her sister all informed defendants that there were only two guns in the house. Thus, after defendants confiscated two guns, there was no reason for them to believe that the decedent was in jeopardy.

Finally, plaintiff did not show that the decedent relied on an affirmative undertaking by defendants. Plaintiff states, without citing support from the record, that the decedent “relied on the police when they promised to get help and when the [sic] promised to help her.” However, plaintiff does not identify any specific promise on which the decedent allegedly relied. Defendants, on the other hand, presented evidence that the decedent told them that her husband had not threatened her and she was not afraid of him. She also refused to follow defendants’ suggestion that she and her husband separate for a few hours. Under these facts, we conclude that plaintiff has not established that the decedent relied on an affirmative undertaking by defendants.

In sum, plaintiff has failed to establish a genuine issue of material fact regarding whether defendants and plaintiff’s decedent had a special relationship. Therefore, the trial court did not err in granting defendants’ motion for summary disposition.

Plaintiff also asserts that his claim was not barred by the doctrine of governmental immunity. However, both because the trial court did not address this question and because plaintiff has given it only cursory treatment in his brief, we decline to address this issue. See *McCready v Hoffius*, 222 Mich App 210, 218; 564 NW2d 493 (1997); *Community Nat’l Bank of Pontiac v Michigan Basic Property Ins Ass’n*, 159 Mich App 510, 520-521, 407 NW2d 31 (1987).

Affirmed.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ Mark J. Cavanagh

¹ Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). The trial court did not indicate under which subrule it granted defendants’ motion. However, because the trial court appears to have considered documentary evidence in addition to the pleadings, we presume that the grant of summary disposition was pursuant to MCR 2.116(C)(10). See MCR 2.116(G)(5); *Shirilla v Detroit*, 208 Mich App 434, 436-437; 528 NW2d 763 (1995).