STATE OF MICHIGAN

COURT OF APPEALS

GARRY M. BLUHM,

Plaintiff-Appellant,

v

PATRICK J. WALSTON and LAURA L. WALSTON,

Defendants-Appellees.

UNPUBLISHED

No. 202135
Oakland Circuit Court
LC No. 96-521685 NO

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

YOUNG, JR., J. (concurring).

I concur in the result reached by the majority, but write separately to express my opinion that the analysis of the volunteer doctrine found in the concurring opinion issued by Chief Judge CORRIGAN in *Hawkins v Ryder Truck Rental, Inc*, ___ Mich App ___; ___ NW2d ___ (Docket No. 199136, issued 3/6/98), represents the better view of the status of this admittedly muddled area of law. In sum, I disagree with the limitation of the doctrine created by the majority in *Hawkins*, but believe, for the reasons stated below, that the volunteer doctrine is inapplicable to the facts of this case under any analysis of the controlling Supreme Court authority.

Based upon my review of the Supreme Court authority, I conclude that *Diefenbach v Great Atlantic & Pacific Tea Co*, 280 Mich 507; 273 NW 783 (1937), has not been overruled and does not limit the volunteer doctrine only to those instances in which respondeat superior liability is at issue. However, defendants admit in their appellate brief that defendant Patrick Walston "solicited the assistance of Plaintiff and others to raise a wall." Because Walston admittedly *invited* plaintiff to participate, I do not believe that the volunteer doctrine can apply at all under these circumstances. See *Hawkins*, *supra*, slip op p 4 n 2 (CORRIGAN, C.J., concurring). As I construct the controlling Supreme Court authority, it appears that only truly gratuitous undertakings (e.g., activities approaching "officious intermeddling") are covered by the volunteer doctrine.

Thus, apart from my obligation to follow what I believe to be the flawed analysis of the *Hawkins* majority opinion, I would reverse the trial court's decision and remand for trial on this alternative ground.

/s/ Robert P. Young, Jr.