

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

GARY L. GARLOCK,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 197781

Clinton Circuit Court

DOUGLAS A. WARNER,

LC No. 95-007684 NI

Defendant-Appellee.

---

Before: Holbrook, Jr., P.J. and Gribbs and R.J. Danhof\*, JJ.

GRIBBS, J. (concurring)

I reluctantly concur with the majority only because we are required by MCR 7.215(H) to follow this Court's previously published opinion, *Harris-Fields*, \_\_\_ Mich App \_\_\_; \_\_\_NW2d \_\_\_ (1998) (Docket No. 199039, issued 4/7/98).

I frankly do not understand why a judicially created restriction should prevent a firefighter from recovering for damages caused by the negligent driving of a third party uninvolved and unconnected to the situation that brought that firefighter to that location. In this case, the firefighter was directing traffic *one and one half miles* from an automobile accident. The defendant's negligence here was entirely unrelated to the reason plaintiff was directing traffic at the time defendant struck him.

In my view the fireman's rule should not apply to this case, or at the very least, these facts should establish an exception to the rule. The rule should not be used in cases involving a third party's intervening acts—whether these acts amount to gross or ordinary negligence.

---

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

I urge the Supreme Court to re-visit the negligence issues and to further consider and adopt the opinion of Justice Weaver in *Gibbons v Caraway*, 455 Mich 314; 565 NW2d 663 (1997).

/s/ Roman S. Gibbs