

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

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NICHOLE M. BEAUDRIE,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 202304

Wayne Circuit Court

PAULINE HENDERSON,

LC No. 96-614930 NZ

Defendant-Appellant,

and

CITY OF DEARBORN and DEARBORN  
POLICE DEPARTMENT,

Defendants.

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Before: Gage, P.J., and Kelly and Hoekstra, JJ.

KELLY, J. (dissent).

I respectfully dissent.

I believe that this Court improvidently granted leave to appeal from the trial court's order of March 14, 1997 denying defendant's motion for summary disposition. We have been forced to review an incomplete record. Accepting the allegations in plaintiff's amended complaint as true, plaintiff has alleged not only malfeasance and gross negligence but acts of intentional misconduct which she should have been given the opportunity to support. I believe plaintiff properly alleged willful misconduct on the part of the defendant, Pauline Henderson, acting wholly outside the scope of any police dispatcher's ambit of authority. Thus, a trier of fact could have found her actions to have proximately caused the plaintiff nine hours more of brutal savagery for which a remedy should be fashioned.

Furthermore, the public duty doctrine described in *Gassette v Pontiac* (On Remand), 221 Mich App 579, 582; 561 NW2d 879 (1997),

[a]ppplied to police officers, the public duty doctrine insulates officers from tort liability for the negligent failure to provide police protection unless an individual satisfies the special-relationship exception to the doctrine.

Defendant Henderson may or may not be a police officer within the appropriate definition, but the allegations characterize her as acting beyond the scope of her employment with intentional disregard for the safety of plaintiff while occupying a position of public trust, i.e., police dispatcher. The facts alleged portray defendant Henderson as being grossly negligent to the extent of acting as a criminal co-conspirator, aiding and abetting to an extent which might have established a special relationship. If the special relationship exception is found to be applicable to defendant Henderson at trial the allegations in plaintiff's amended complaint could reasonably be found to establish a de facto or surrogate relationship between the perpetrator's mother, defendant Henderson and the perpetrator's attorney sufficient to show the existence of a special relationship.

I would affirm the lower court's order denying defendant/appellant's motion for summary disposition.

/s/ Michael J. Kelly