

STATE OF MICHIGAN  
COURT OF APPEALS

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CATHY PARKER and KIMBERLY HICKS, Co-  
Personal Representatives of the Estate of MARK  
LAVELL PARKER, Deceased,

UNPUBLISHED  
November 30, 1999

Plaintiffs-Appellants,

v

CITY OF DETROIT,

No. 207055  
Wayne Circuit Court  
LC No. 96-646305 NI

Defendant-Appellee.

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Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Mark Lavell Parker, the passenger in a vehicle whose driver attempted to elude police pursuit, died in a crash resulting from the pursuit. Plaintiffs initiated this action seeking recovery on the ground that defendant's police officers acted negligently in engaging in the fatal pursuit. Plaintiffs now appeal as of right from a circuit court order granting summary disposition in favor of defendant. We affirm.

Our review of the trial court's grant of defendant's motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although the trial court did not specify the subrule under which it granted summary disposition, we have reviewed its decision under MCR 2.116(C)(8), because we find no indication that the trial court considered matters outside the pleadings in holding that *Robinson v Detroit*, 225 Mich App 14; 571 NW2d 34 (1997), lv gtd 458 Mich 861 (1998), was controlling with regard to the question of duty in this case. *Spiek, supra* at 338. Summary disposition is proper under MCR 2.116(C)(8) if the court determines as a matter of law that no duty was owed under the facts alleged. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995).

We first note that there are generally two considerations in a tort action against a governmental agency:

- [T]ort actions against governmental agencies generally raise two separate issues:  
1) whether the plaintiff has pleaded a cause of action in avoidance of governmental

immunity, and 2) whether the plaintiff can establish the elements of a negligence action. [*Glancy v Roseville*, 457 Mich 580, 588; 577 NW2d 897 (1998).]

Although the question before us falls within the second category, we note that plaintiffs look to an exception to governmental immunity, MCL 691.1405; MSA 3.996(105), to aid their claim that they pleaded a legally cognizable duty. However, MCL 691.1405; MSA 3.996(105) provides for vicarious liability when a governmental agency's officers, employees and agents negligently operate government-owned motor vehicles. See *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 591, 622; 363 NW2d 641 (1984). Because duty is an essential element of a negligence action, we must look to whether the police officer owed a duty to plaintiff's decedent to determine if plaintiffs pleaded a legally cognizable cause of action against defendant. On the basis of *Robinson, supra*, we hold that plaintiffs' complaint failed to plead a legally cognizable duty owed to decedent by the police officers and, hence, plaintiff's claim of vicarious liability cannot succeed. Although our Supreme Court has granted leave to appeal in *Robinson*, the decision of the special panel of this Court in *Robinson* is binding until reversed or modified by our Supreme Court. MCR 7.215(C) and (H).

Finally, while the trial court did not specifically address plaintiffs' alternative theory that defendant voluntarily assumed a duty to protect decedent, we will consider this claim because it was properly presented to the trial court. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). Considering the allegations in the complaint, we hold that summary disposition was proper under MCR 2.116(C)(8) on this theory because the complaint does not plead a cause of action based on a voluntarily assumed duty. See generally *Schanz v New Hampshire Ins Co*, 165 Mich App 395, 402-403; 418 NW2d 478 (1988). The documentation regarding defendant's internal procedures for police chases, which was filed by plaintiffs in opposition to defendant's motion, is not a proper consideration because only the pleadings may be considered when deciding a motion under MCR 2.116(C)(8). In any event, plaintiffs' argument is unpersuasive because the internal procedures are directed at the general public and address the same "chase" statutes, MCL 257.603; MSA 9.2303 and MCL 257.632; MSA 9.2332, that mandate consideration of public safety. See *Robinson, supra* at 20. We find no basis for plaintiffs' argument that the internal procedures establish a voluntary undertaking by defendant to act for decedent's benefit through its police officers.

Affirmed.

/s/ Roman S. Gribbs  
/s/ William B. Murphy  
/s/ Richard Allen Griffin