

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

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CONNIE BARRUS, Personal Representative of the  
Estate of DEBRA ANN PEGG, Deceased,

UNPUBLISHED  
December 21, 1999

Plaintiff-Appellant,

v

No. 206449  
Wayne Circuit Court  
LC No. 97-719171 NI

CITY OF DETROIT, POLICE OFFICER JOSEPH  
ROCHA, and POLICE OFFICER MATTHEW  
RYAN,

Defendants-Appellees,

and

ROBERT FRIESS,

Defendant.

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Before: Smolenski, P.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

This wrongful death case involves the question of a police officer's duty to a voluntary passenger in a motor vehicle fleeing from the police, an issue that is currently pending before our Supreme Court in *Robinson v Detroit*, 225 Mich App 14; 571 NW2d 34 (1997), lv gtd 458 Mich 861 (1998), and *Cooper v Wade*, 218 Mich App 649; 554 NW2d 919 (1996), lv gtd 456 Mich 905 (1997). Plaintiff appeals as of right from a circuit court order granting summary disposition in favor of defendants Rocha, Ryan, and the City of Detroit under MCR 2.116(C)(8). We affirm.

I. Basic Facts And Procedural History

Plaintiff filed this action on June of 1997, as the personal representative of decedent Debra Pegg. The complaint alleged that decedent was a passenger in a motor vehicle operated by defendant Robert Friess on August 16, 1996, when two defendants, Detroit Police Officers Ryan and Rocha, observed Friess conduct what they allegedly believed was a narcotics transaction. Officers Ryan and

Rocha then allegedly pursued Friess at high-speed, causing Friess to lose control of his vehicle and strike another vehicle. Decedent allegedly suffered fatal injuries as a result of the collision.

In Count I of the complaint, plaintiff alleged that Officers Ryan and Rocha engaged in gross negligence and willful and wanton misconduct. Further, according to the complaint, the police officers allegedly owed a duty not to:

- (a) Precipitate a high-speed chase that would endanger the lives of the public in general and the decedent in particular;
- (b) Begin a high-speed chase when the police officers did not know or have any articulable suspicion that a crime had been committed;
- (c) Drive in an excessive and reckless manner that would endanger the lives of the public in general and the decedent in particular;
- (d) Escalate a situation that would endanger the lives of the public in general and the decedent in particular;
- (e) Continue the chase at speeds in excess of ninety miles an hour when they knew or should have known that Friess was not going to bring his vehicle to a stop;
- (f) Drive in a negligent and reckless manner and at speeds in excess of the posted speed limit.

In Count II, plaintiff sought to hold the City of Detroit liable pursuant to the motor vehicle exception to immunity, MCL 691.1405; MSA 3.996(105), for the police officers' alleged negligent operation of the police vehicle. Plaintiff also claimed that the City was liable pursuant to a statute governing the operation of emergency vehicles, MCL 257.632; MSA 9.2332. Finally, plaintiff alleged that the City was liable because it "permitted, encouraged, tolerated, and ratified a pattern of unjustified and unreasonable police chases," provided inadequate supervision and training, and was the employer of Officers Rocha and Ryan

In Count III, plaintiff claimed exemplary and punitive damages on the ground that "the acts of the Defendants as set forth herein were wilful, wanton, reckless and in total disregard for the right of the Plaintiff-Decedent."

In August of 1997, defendants filed a motion for summary disposition under MCR 2.1116(C)(8) on the ground that police officers owe no duty to a voluntary passenger in a fleeing motor vehicle, as a matter of law, under this Court's decision in *Robinson, supra*. In her brief filed in opposition to the motion, plaintiff argued that *Robinson, supra* at 20-23, was wrongly decided by this Court, that a driver of an emergency vehicle owes a duty not to endanger life under MCL 257.603; MSA 9.2303, and that "defendants" owed a duty to decedent under MCL 257.632; MSA 9.2332, and MCL 691.1405; MSA 3.996(105).

At a hearing held in early September of 1997, the trial court granted defendants' motion because the, "Motion for Summary has to be granted since I'm bound to follow the Court of Appeals."

## II. Standard Of Review

Our review of the trial court's grant of defendants' motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

## III. *Robinson* And MCR 7.215(C) and (H)

We have considered plaintiff's statutory arguments but find them unpersuasive in light of *Robinson, supra*. On the basis of *Robinson*, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(8), because the complaint does not plead a legally cognizable duty owed to decedent by the police officers. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). 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).

Affirmed.

/s/ Michael R. Smolenski

/s/ William C. Whitbeck

/s/ Brian K. Zahra