

STATE OF MICHIGAN
COURT OF APPEALS

ELOISE HALL, Personal Representative of the Estate
of Sid Hall, Deceased,

UNPUBLISHED
January 18, 2000

Plaintiff-Appellant,

v

No. 209010
Wayne Circuit Court
LC No. 97-709625 NF

CADILLAC NURSING HOME, DEL WHEELER,
ROBBIE ROBINSON, CLAUDINE PAULING,
and BETTY RUTHERFORD,

Defendants-Appellees.

Before: White, P.J., and Hood and Jansen, JJ.

HOOD, J. (Dissenting).

I must respectfully dissent. Unlike the majority, I would find neither duty nor proximate cause in this situation.

Whether analyzed in terms of scope of duty or proximate cause, defendants are not liable in negligence for the criminal assault on plaintiff's decedent because the criminal assault was not foreseeable. *Babula v Robertson*, 212 Mich App 45, 51-52; 536 NW2d 834 (1995). While defendants had a duty to use reasonable care in ensuring that plaintiff's decedent was not endangered, this duty did not extend to protecting him from an unforeseeable criminal assault by a third party. *Id.* The record fails to disclose any facts indicating that defendants were on notice of a foreseeable criminal assault. In my opinion, the fact that the assault on plaintiff's decedent occurred in a high crime area is insufficient to raise a question of fact regarding foreseeability, and there is no evidence that defendants created a condition conducive to criminal assaults. See *Stanley v Town Square Cooperative*, 203 Mich App 143; 512 NW2d 51 (1993); *Roberts v Pinkins*, 171 Mich App 648; 430 NW2d 808 (1988). The fact that defendants allowed plaintiff's decedent to leave the premises of the nursing home and enter the surrounding area does not raise a material question of fact regarding the foreseeability of a criminal assault on plaintiff's decedent. See *Papadimas v Mykonos Lounge*, 176 Mich App 40; 439 NW2d 280 (1989).

Plaintiff's reliance on the trial court's misstatement of the law is without merit because there was no question of fact regarding foreseeability of a criminal assault upon plaintiff's decedent. *Babula, supra* at 53. Finally, plaintiff's argument, that defendants were on notice of the aggressive tendencies of plaintiff's decedent, was not preserved for appellate review because it was not raised, argued, and addressed before the trial court. *Summers v City of Detroit*, 206 Mich App 46, 51-52; 520 NW2d 356 (1994). In any event, this argument lacks merit because in my reading of the record, the factual assertion rests upon a doctor's report of hallucinatory experiences, not established facts.

Affirmed.

/s/Harold Hood