STATE OF MICHIGAN

COURT OF APPEALS

HANNA WINDSOR, Personal Representative of the ESTATE OF STEVEN WINDSOR, Plaintiff-Appellant/Cross-Appellee, v GARDEN CITY OSTEOPATHIC HOSPITAL, Defendant-Appellee/Cross-Appellant.	UNPUBLISHED March 30, 2001 No. 219131 Wayne Circuit Court LC No. 98-809229-NO

Before: Markey, P.J. and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). Plaintiff had filed a lawsuit against defendant alleging attractive nuisance and premises liability for negligence contributing to the death of her son. We affirm.

After her son's death that resulted when he either jumped off or fell from a chimney owned by defendant, plaintiff brought suit. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) alleging there was no genuine issue regarding whether the decedent committed suicide, and under Michigan law, defendant was not liable in that circumstance. Plaintiff argued that a genuine issue of material fact did exist regarding whether the decedent committed suicide, and that, regardless of the decedent's motivation, defendant is still liable for negligence. The trial court agreed with defendant and granted summary disposition on that basis.

I

Plaintiff asserts that the trial court erred. Upon de novo review, we disagree. See *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In a summary disposition motion, the party opposing the motion has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Furthermore, the disputed factual issue must be material to the dispositive legal claims. *State Farm Fire & Casualty Co v Johnson*, 187 Mich App 264, 267; 466 NW2d 287 (1991). Plaintiff did not sustain this burden.

Plaintiff has failed to produce admissible evidence creating a genuine issue of material fact regarding whether the decedent committed suicide. Plaintiff argued below, and argues on appeal, that the testimony of decedent's friend that the death was suicide was not truthful because the friend testified that he had been watching wrestling on television the night decedent came to talk to him shortly before his plunge from the top of the chimney. But, no wrestling was on television that night. However, that discrepancy concerns a nonmaterial, collateral matter and does not create an issue of fact regarding whether the decedent jumped or fell from the smokestack. Likewise, the friend's testimony that he found the body only five to eight feet from the smokestack when it was actually more than twenty-two feet from the base of the smokestack is a collateral matter that does not create a factual dispute on the issue of suicide. The other minor discrepancies in evidence plaintiff cites also involve collateral matters that do not contradict the conclusion that the decedent voluntarily jumped from the chimney.

Plaintiff's only other "evidence" offered in support of her argument that an issue of material fact existed for trial are rumors that the friend may have had some hand in the decedent's death. The existence of a disputed fact must be established by admissible evidence; a mere promise to offer factual support at trial is insufficient. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Likewise, speculation and conjecture are insufficient. *Detroit v Gen'l Motors Corp*, 233 Mich App 132, 139; 592 NW2d 732 (1998), quoting *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Because rumors are not admissible evidence, the existence of rumors does not create a genuine issue of material fact. We hold that because the evidence defendant produced indicated suicide and because plaintiff failed to introduce any contrary admissible evidence, the trial court's decision to grant defendant summary disposition on the ground that no genuine issue of material fact existed for trial was not an error.

II

Plaintiff next argues that the trial court erred in concluding that *Hickey v Zezulka (On Resubmission)*, 439 Mich 408; 487 NW2d 106 (1992), amended 440 Mich 1203 (1992), precludes liability. Upon de novo review, we disagree. See *Bennett v Weitz*, 220 Mich App 295, 299; 559 NW2d 354 (1996).

Existing Michigan case law precludes liability for defendant's negligence. Our Supreme Court has held that a plaintiff may not recover damages in negligence for the intentional suicide of another. *Hickey*, *supra* at 447-448. The only exception to that rule is where the defendant "assumes a duty to protect the plaintiff from that injury." *Id*. at 448. In *Hickey*, a pretrial detainee hanged himself with his belt after the Michigan State University department of public safety officer placed him in a department holding cell without removing his belt. *Id.* at 415-416. That case involved an involuntary custodial relationship that does not exist in this case.

Unlike *Hickey*, the present case is not one where defendant assumed a duty to protect the decedent from committing suicide. Defendant's duty does not extend to protecting children who happen to trespass onto hospital property, climb up a chimney, and commit suicide by jumping from it. Accordingly, the trial court did not err as a matter of law when it concluded that the application of the rule in *Hickey* precludes defendant's liability for negligence.

Because we affirm on the basis of the two issues discussed, we need not address the issue defendant raised on cross-appeal.

We affirm.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra