STATE OF MICHIGAN

COURT OF APPEALS

ABEER ELMADARI, a minor, by her Next Friend, BARAKA ELMADARI,

Plaintiff-Appellant,

v

GARY FILIAK,

Defendant-Appellee.

UNPUBLISHED
May 25, 2001

No. 221564
Wayne Circuit Court
LC No. 98-815228-NO

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

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The minor plaintiff, who was playing at a city park, was injured when her foot fell through a hole in the bottom of a slide as she tried to climb up the slide from the bottom. She sued defendant, a city maintenance worker responsible for park equipment, alleging that he was grossly negligent in failing to barricade the slide at the bottom as well as the top. The trial court ruled that defendant did not owe plaintiff a duty under the public-duty doctrine. *White v Beasley*, 453 Mich 308, 316; 552 NW2d 1 (1996).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis,* 227 Mich App 187, 189; 575 NW2d 313 (1997). When reviewing a motion decided under MCR 2.116(C)(8), the court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and thus justify recovery. *Stott v Wayne Co,* 224 Mich App 422, 426; 569 NW2d 633 (1997), aff'd 459 Mich 999 (1999).

Plaintiff contends that the public-duty doctrine only applies to police officers, prison officials, and parole officers. Because defendant did not hold such a position and because a city employee may be held liable for gross negligence, MCL 691.1407(2); MSA 3.996(107)(2), she stated a claim for relief. We disagree. First, the public-duty doctrine has been applied in a variety of contexts besides those cited by plaintiff. See, e.g., *McGoldrick v Holiday Amusements,*

Inc, 242 Mich App 286, 299; 618 NW2d 98 (2000), and cases cited therein. Second, before a defendant may be held liable under the gross negligence exception to governmental immunity, the defendant must owe a duty of care to the plaintiff. *Otero v Warnick*, 241 Mich App 143, 152-153; 614 NW2d 177 (2000). The general rule is that there is no duty to aid or protect another absent certain legally recognized special relationships such as landowner/invitee, landlord/tenant, etc. *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 8-9; 492 NW2d 472 (1992). Because plaintiff has not cited any law or other authority in support of her contention that a park maintenance worker/park user relationship is sufficient to give rise to a legal obligation on defendant's part to act with due care for plaintiff's safety, she has failed to preserve the issue for review. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). Even assuming that defendant owed a general duty of care, it arose out of his job as a city maintenance worker and not out of any relationship between himself and plaintiff. Therefore, any duty defendant owed was to the public at large, cf. *Jones v Wilcox*, 190 Mich App 564, 568-569; 476 NW2d 473 (1991), and because he did not make a promise to plaintiff or undertake certain action for her benefit which plaintiff relied upon, *Reno v Chung*, 220 Mich App 102, 105; 559 NW2d 308 (1996), aff'd sub nom *Maiden v Rozwood*, 461 Mich 109 (1999), defendant did not owe a duty to plaintiff.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens