

STATE OF MICHIGAN  
COURT OF APPEALS

---

BARBARA KROH, Personal Representative of the  
Estate of VIRGINIA LOUISE KROH, Deceased,

UNPUBLISHED  
February 8, 2002

Plaintiff-Appellant,

v

MEIDEMA AUCTIONEERING, INC.,

No. 225914  
Monroe Circuit Court  
LC No. 97-006642-NI

Defendant-Appellee,

and

CHARLES MATHIAS BATES, d/b/a OK MOTOR  
SALES, ROBERT MEYER and RAYMOND  
MEYER, d/b/a MEYER BROTHERS  
LANDSCAPING, DANIEL L. BATES and MARY  
J. BATES,

Defendants.

---

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie\*, JJ.

MEMORANDUM.

In this wrongful death action, plaintiff appeals as of right from the trial court's order granting summary disposition to defendant Miedema Auctioneering, Inc. We affirm.

This Court reviews the trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although the trial court did not identify the applicable subrule, we will treat this motion as having been granted under MCR 2.116(C)(10) because the court considered documentary evidence. MCR 2.116(G)(5).

A cause of action for negligence requires a showing of duty. *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). Whether defendant owes a duty to protect a person from a reasonably foreseeable harm is a question of law for the court. *Maiden v Rozwood*, 461 Mich 109, 131; 597 NW2d 817 (1999). There appear to be few cases that consider whether an

---

\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

auctioneer has a duty to a third party regarding the goods that are sold at auction. The trial court here relied primarily on *Meyers v Robb*, 82 Mich App 549; 267 NW2d 450 (1978). Although *Meyers* involved a farm auction, we find that the reasoning in that case is applicable to the facts of this case. Consideration of the relevant factors leads to the conclusion that Miedema lacked the requisite relationship with plaintiff, *Buczowski v McKay*, 441 Mich 96, 100-101; 490 NW2d 330 (1992), and we agree with the trial court that Miedema had no duty to a third party in this case. Summary disposition was properly granted.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Janet T. Neff

/s/ Barbara B. MacKenzie