

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

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CAROL GRAGG, Personal Representative of the  
Estate of JEFFREY GRAGG, Deceased,

Plaintiff-Appellant,

v

AUBURN COUNSELING ASSOCIATES, INC.,  
DALE PETERSON, DR. Y.K. LEE, and DR.  
CHARLES WILLIAMS,

Defendants-Appellees,

and

ELENORE MARIE YOUNG,

Defendant-Not Participating.

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FRANCIS A. KRCMARIK, Conservator of the  
Estate of ELEANORE YOUNG,

Plaintiff-Appellant,

v

AUBURN COUNSELING ASSOCIATES, INC.,  
and DALE PETERSON a/k/a DALE  
PETTERSON,

Defendants-Appellees,

and

DR. Y.K. LEE,

Defendant,

and

UNPUBLISHED  
June 25, 2002

No. 222882  
Genesee Circuit Court  
LC No. 97-059717-NI

No. 228860  
Genesee Circuit Court  
LC No. 97-059156-NH

DR. CHARLES WILLIAMS,

Not Participating.

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Before: Cavanagh, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right final orders of dismissal entered following the granting of defendants' motions for summary disposition in these consolidated negligence actions. We affirm with regard to the Gragg claims, but reverse and remand with regard to the Krcmarik action.

On appeal, plaintiff Gragg argues that defendants were not entitled to summary disposition because they had a common law duty to protect plaintiff's decedent, a member of the driving public, from their psychiatric patient. We disagree. This Court reviews the grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Because the trial court looked beyond the pleadings in reaching its decision, we will consider the motion granted under MCR 2.116(C)(10). See *Swan v Wedgwood Christian Youth & Family Services, Inc.*, 230 Mich App 190, 194; 583 NW2d 719 (1998); *Ottaco, Inc v Gauze*, 226 Mich App 646, 650; 574 NW2d 393 (1997).

To establish a prima facie case of negligence, the plaintiff must first prove a critical element—that the defendant owed the plaintiff a duty to avoid negligent conduct. See *Baker v Arbor Drugs, Inc.*, 215 Mich App 198, 203; 544 NW2d 727 (1996). Generally, a person has no duty to protect another who is endangered by a third person's conduct. *Murdock v Higgins*, 454 Mich 46, 54; 559 NW2d 639 (1997); *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). However, such duty may arise where one stands in a special relationship with either the victim or the person causing the injury. See *Jenks v Brown*, 219 Mich App 415, 421; 557 NW2d 114 (1996). The psychiatrist-patient relationship is a special relationship recognized under Michigan law and results in a psychiatrist having a duty to use reasonable care to protect third parties from a patient under certain circumstances. See *Marcelletti, supra*. However, as this Court held in *Swan, supra* at 198-199, MCL 330.1946 limits that duty to reasonably identifiable third parties who are the object of a patient's threat.

Plaintiff argues that neither *Swan* nor MCL 330.1946 are applicable because the case does not involve a threat of violence against her decedent; however, that distinction is dispositive—defendants were not aware that their patient posed a danger to plaintiff's decedent, an unknown third party. See *Swan, supra* at 200-201. Consistent with longstanding principles of negligence law, both *Swan* and MCL 330.1946 mandate that the plaintiff and the risk of harm be reasonably foreseeable before an actionable duty arises. See, e.g., *MacDonald v PKT, Inc.*, 464 Mich 322, 338; 628 NW2d 33 (2001); *Buczkowski v McKay*, 441 Mich 96, 101; 490 NW2d 330 (1992); *Moning v Alfano*, 400 Mich 425, 439; 254 NW2d 759 (1977); *Marcelletti, supra* at 665.

Here, plaintiff's decedent, a member of the driving public, was not a foreseeable plaintiff and a motor vehicle accident was not a reasonably foreseeable harm resulting from defendants'

rendering negligent psychiatric treatment to Young. Plaintiff's reliance on *Duvall v Goldin*, 139 Mich App 342; 362 NW2d 275 (1984) is misplaced because that case is distinguishable and was decided years before MCL 330.1946 was enacted. See, also, MCR 7.215(I)(1). Accordingly, the trial court properly granted defendants' motions for summary disposition with regard to the Gragg claims.

Plaintiff Krcmarik argues on appeal that the trial court erred when it granted defendants' motions for summary disposition on the ground that the wrongful-conduct rule barred the action. We agree.

The wrongful-conduct rule provides that a plaintiff cannot maintain an action if the cause of action is based, in whole or in part, on his own illegal conduct. *Orzel v Scott Drug Co*, 449 Mich 550, 558; 537 NW2d 208 (1995). However, that a plaintiff was engaged in illegal conduct at the time of his injury does not automatically bar his claim; rather, to implicate the rule, the conduct must be prohibited or almost entirely prohibited under a penal or criminal statute. *Id.* at 561. Further, the wrongful-conduct rule only applies if there exists a sufficient causal nexus between the plaintiff's illegal conduct and the asserted damages. *Id.* at 564.

Plaintiff argues that the wrongful-conduct rule does not bar this medical malpractice action because he would not have to prove that Young was driving on a suspended license at the time of the car accident or that she was charged with negligent homicide to prevail on his claim. We agree. To prevail on this claim, plaintiff must establish (1) the applicable standard of care, (2) breach of that standard, (3) injury, and (4) proximate causation between the alleged breach and the injury. See MCL 600.2912a; *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997); *Theisen v Knake*, 236 Mich App 249, 257; 599 NW2d 777 (1999).

Plaintiff alleged that defendants, mental health care professionals who treated Young, breached their duties in providing psychiatric services to Young by failing to render the proper and necessary care, management, and treatment of Young's psychiatric condition. Plaintiff also alleged that defendants' negligence caused Young to remain in a seriously psychotic mental state, rendering her a danger to herself and others, and culminated in her involvement in a fatal motor vehicle accident. Plaintiff further alleged that Young suffered damages arising both from defendants' failure to render proper treatment to alleviate her psychotic decompensation, including pain and suffering, medical and replacement service expenses, and loss of earning capacity, and from her involvement in a fatal motor vehicle accident, including liability on a civil judgment, criminal liability, and attorney fees and costs.

In this case, the wrongful-conduct rule maxim "a person cannot maintain an action if, in order to establish his cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party," *Orzel, supra* at 558, quoting 1A CJS, Actions, § 29, p 386, is not violated. Plaintiff's claim is not dependent on proving that Young was involved in a fatal automobile accident. Plaintiff could attempt to establish his cause of action by proving that defendants failed to properly manage or treat Young's condition, as evidenced by her behavior, causing Young to suffer damages, including those that were unrelated to her involvement in the automobile accident. As discussed below, plaintiff is not entitled to recover damages allegedly resulting from her involvement in the motor vehicle accident, including those related to Young's civil and criminal liability, nevertheless, she has pleaded a viable medical malpractice cause of action.

This case is distinguishable from the cases relied on by defendants to support their argument that the wrongful-conduct rule barred plaintiff's claims. Particularly, in *Orzel, supra*, the plaintiffs' negligence claim against a pharmacy was barred because it was based, at least in part, on the drug user plaintiff's illegal conduct which included a long history of illegally obtaining, possessing, and using the drug at issue. *Id.* at 562-563. In other words, the drug user plaintiff who presented illegal prescriptions to the defendant pharmacy could not then sue the pharmacy for its negligence in filling the prescriptions. Similarly, in *Glazier v Lee*, 171 Mich App 216, 220-221; 429 NW2d 857 (1988) we disagreed with plaintiff that the defendant, his psychologist, owed him a duty to protect him from his own criminal acts, i.e., to prevent him from killing his girlfriend. *Id.* at 218. Likewise, in *Lingle v Berrien Co*, 206 Mich App 528, 529; 522 NW2d 641 (1994) this Court held that the plaintiff, who fatally shot someone allegedly as a consequence of negligent mental health treatment, "cannot benefit from a cause of action founded upon an immoral or illegal act."

This case is more similar to *Poch v Anderson*, 229 Mich App 40, 49; 580 NW2d 456 (1998). In that case, the plaintiff was a passenger in an automobile being driven by the defendant, a minor who had been driving while under the influence of alcohol that the plaintiff purchased for him in violation of the law. *Id.* at 42. They were in an automobile accident and the plaintiff sustained severe injuries for which he sued the defendant. *Id.* at 42-43. This Court held that the plaintiff's claim was not precluded by the wrongful-conduct rule because the plaintiff was not required to prove his violation of the law to fully plead his cause of action. *Id.* at 49. Further, this Court noted that the plaintiff's conduct was not the type to which the rule typically applied, i.e., it did not involve murder, arson, illegal gambling, embezzlement, perjury, an illegal contract, or statutory rape. *Id.* at 49-50.

In sum, plaintiff's medical malpractice action is not barred by the wrongful-conduct rule because it is not based on or "founded upon" Young's illegal conduct, i.e., the causal nexus between Young's illegal conduct and the asserted damages is not sufficient to invoke the wrongful-conduct rule. Plaintiff is not required to prove that Young violated the law to plead or prevail on his cause of action. Moreover, the application of the wrongful-conduct rule here would not further the public policy underlying the rule. Permitting this case to proceed does not effectively condone and encourage illegal conduct, allow Young to profit from her illegal acts, or shift the responsibility for Young's illegal acts to defendants. See *Orzel, supra* at 559-560. Therefore, the trial court improperly dismissed this case after finding that the wrongful-conduct rule applied; accordingly, we reverse and remand.

Finally, plaintiff Krcmarik argues that the trial court erred in holding that he is not entitled to recover damages related to Young's civil and criminal liability arising from the fatal motor vehicle accident. We disagree.

To prevail in a negligence case, the plaintiff must prove a causal nexus between the defendant's conduct and the injurious event. See *Theisen, supra*. The extent of liability, however, is determined by examining the causal nexus between the injurious event and the plaintiff's asserted damages. See 22 Am Jur 2d, Damages, §§ 451, 473, pp 532, 552. Generally, "the tort-feasor is liable for all injuries resulting directly from his wrongful act, whether foreseeable or not, provided the damages are the legal and natural consequences of the wrongful act, and are such as, according to common experience and the usual course of events, might reasonably have been anticipated." *Sutter v Biggs*, 377 Mich 80, 86; 139 NW2d 684 (1966); see,

also, *Law Offices of Lawrence J Stocker, P C v Rose*, 174 Mich App 14, 33-34; 436 NW2d 70 (1989). Remote, contingent, or speculative damages are not recoverable. *Sutter, supra*; see, also, *Theisen, supra* at 258; *Wolverine Upholstery Co v Ammerman*, 1 Mich App 235, 244-245; 135 NW2d 572 (1965).

Here, plaintiff's purported damages arising from Young's involvement in a fatal car accident, including her civil and criminal liability, were not the proximate consequences of defendants' alleged negligent medical treatment. See *Law Offices of Lawrence J Stockler, P C, supra* at 33-34. These alleged damages did not result directly from defendants' wrongful acts, are not the legal and natural consequence of defendants' wrongful acts, and would not reasonably have been anticipated by defendants. See *Sutter, supra*. Even assuming arguendo that negligent medical treatment resulted in Young being a danger to herself and others, the cause and effect relationship between defendants' negligent treatment and damages related to Young's involvement in, and liability for, a fatal motor vehicle accident with a third party is too contingent and remote to be considered a proximate consequence of such negligence. Therefore, the trial court properly held that plaintiff was not entitled to recover such damages.

Affirmed in part, reversed in part, and remanded to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage