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STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF MASON BOLOS, by JAMAL BOLOS, Personal Representative,

Plaintiff-Appellant,

v

MARATHON AUTO GLASS and ASTER YOUSIF, INC., doing business as REVANA GAS STATION,

Defendants-Appellees.

UNPUBLISHED
April 16, 2019

No. 342445
Macomb Circuit Court
LC No. 2016-002567-NI

Before: LETICA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

In this wrongful death action, plaintiff, the Estate of Mason Bolos, appeals as of right an order granting summary disposition in favor of defendants, Marathon Auto Glass (Marathon) and Aster Yousif, Inc., doing business as Revana Gas Station (Revana). We affirm.

This action arises out of a fatal car accident on US-23 in Hartland Township. In the course of his employment with Marathon, Mason Bolos (decedent) was driving a van with Revin Yousif (Revin) in the passenger's seat. According to an eyewitness, decedent drifted onto the left shoulder of the highway and then overcorrected to the right, causing the van to slide, with the front of the van facing the right lane and the back of the van sliding to the left. Decedent then overcorrected to the left, which threw the van into a slide in the opposite direction. The front wheels of the van went onto the grass of the median, causing the van to roll approximately three times. The van also flipped once, with the back end coming over the front end. Sometime during the rolls and flip, decedent was thrown from the van and died.

Decedent's passenger, Revin, owned and worked for Marathon. Marathon operated within the Revana Gas Station. Revana was owned by Manoli Yousif (Manoli), Munir Yousif (Munir), and Asmaa Yousif. Munir is Revin's father and Manoli is Revin's uncle. Despite the familial ties between the owners of Marathon and Revana, as well as working out of the same location, Marathon and Revana are separate businesses. Sometime prior to April 2012, Manoli

bought the van that was involved in the accident for his personal use, although he sometimes used the van for work at the gas station. Manoli also let Revin use the van for Marathon's business. In fact, the van bore large advertisements for Marathon on its exterior. At some point before the accident, Manoli changed the ball bearings on the front right wheel, but he did not notice any issues with the tread of the tires or any cracking in the rubber of the tires. The serpentine belt of the van was also replaced.

In granting defendants' motions for summary disposition, the trial court cited evidence that decedent was speeding at the time of the accident and the opinion of defendants' expert that decedent "lost control of the van due to excessive speed and not because of any mechanical problems with the van." The court determined that plaintiff did not demonstrate an issue of fact regarding the cause of the accident because plaintiff's expert did not contradict, and in fact acknowledged, that decedent was speeding.[1] The trial court also determined that Revana owed no duty to decedent because it did not employ decedent, and there was no evidence that Revana was responsible for maintaining the vehicle or that negligent maintenance caused the accident.

I. STANDARD OF REVIEW

This Court reviews a grant or denial of summary disposition de novo. *Detroit Edison Co v Stenman*, 311 Mich App 367, 377; 875 NW2d 767 (2015). Defendants moved for summary disposition under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id*. "Summary disposition is only appropriate under MCR 2.116(C)(10) when there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law." *Shelton v Auto-Owners Ins Co*, 318 Mich App 648, 657; 899 NW2d 744 (2017). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "Whether a defendant owes a particular plaintiff a duty is a question of law that this Court reviews de novo." *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013).

II. DUTY

Plaintiff argues that Revana owed a duty to decedent based on a special relationship between decedent and Revana, because Revana assumed an obligation it was not required to undertake, and because Manoli was an agent of Revana. We disagree.

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[1] A deputy from the Livingston County Sheriff's Department investigated the accident and opined that decedent was driving "at an excessive speed of 97 mph in a posted 70 mph speed zone." Plaintiff's expert estimated that decedent was driving between 77 and 85 miles per hour.

"To establish a prima facie case of negligence, plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Finazzo v Fire Equip Co*, 323 Mich App 620, 635; 918 NW2d 200 (2018). "[A] negligence action may be maintained only if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm." *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). A special relationship between the parties may impose a duty of care. *Bailey*, 494 Mich at 604.

Plaintiff argues that there was a special relationship between Revana and decedent because Revana's gas station business included a repair shop and therefore was in a position to ensure the van was safe. According to plaintiff, decedent was unable to protect himself from the unsafe van because he was required to drive the van as part of his job. "Examples of the requisite 'special relationship' recognized under Michigan law include a common carrier that may be obligated to protect its passengers, an innkeeper [and] his guests, an employer [and] his employees, owners and occupiers of land [and] their invitees, a doctor [and] his patient, and business invitors or merchants [and] their business invitees." *Graves*, 253 Mich App at 494 (citations omitted). Plaintiff argues that this Court should find a special relationship existed between Revana and decedent by balancing

> the societal interests involved, the severity of the risk, the burden upon the defendant, the likelihood of occurrence, and the relationship between the parties . . . . Other factors which may give rise to a duty include the foreseeability of the [harm], the defendant's ability to comply with the proposed duty, the victim's inability to protect himself from the [harm], the costs of providing protection, and whether the plaintiff had bestowed some economic benefit on the defendant. [*Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 9; 492 NW2d 472 (1992) (citation omitted; alterations in original).]

The record does not indicate that there was a special relationship between decedent and Revana. Revana did not own the van. Instead, Manoli owned the van personally. Revana's only connection to the van was when Manoli, purportedly acting as an employee of Revana, repaired the van's serpentine belt and the front right ball bearings. Assuming Manoli was indeed acting in the scope of his employment with Revana when he made the repairs, any duty arising from those repairs would be limited to the work that was performed. Neither Manoli nor Revana had any further duty to ensure the tires or other mechanical components of the van were in a good condition. See *Hill v Sears, Roebuck & Co*, 492 Mich 651, 665; 822 NW2d 190 (2012) ("[H]aving not undertaken by contract or otherwise to act on the gas line, [the defendants] had no duty to plaintiffs with respect to it."). Further, decedent was employed by Marathon, not Revana. Therefore, Revana did not owe decedent a duty based on a special relationship.

Plaintiff also argues that Revana owed decedent a duty because Revana voluntarily assumed an obligation that it was not required to undertake when Revana loaned Marathon the van. However, plaintiff's argument presupposes that Revana owned the van, which it did not. Manoli individually owned the van, and it was Manoli who allowed Revin to use the van for Marathon's business. Thus, Revana did not loan Marathon the van and, therefore, did not owe decedent a duty based on a voluntarily assumed obligation.

Plaintiff's reliance on agency principles to establish a duty is similarly unavailing. Plaintiff asserts that Manoli was a shareholder, and therefore an agent, of Revana. Manoli allowed the van to be used in Marathon's business. Therefore, plaintiff alleges, Manoli's actions can be imputed to Revana. But a corporation and its shareholders are separate and distinct legal entities. *Potter v McLeary*, 484 Mich 397, 439; 774 NW2d 1 (2009). Manoli, as an individual, let Marathon use his personal van. This action was separate and distinct from Manoli's involvement with Revana, and the act of lending the van to Marathon cannot be imputed to Revana.

Plaintiff further argues that decedent's death was a foreseeable result of unsafe tires. While it may be foreseeable that an accident could occur because of mismatched tires in poor condition, foreseeability alone is insufficient to impose a duty on a defendant. *Terry v Detroit*, 226 Mich App 418, 424; 573 NW2d 348 (1997). Thus, the trial court did not err by concluding that Revana owed no duty of care to decedent. Furthermore, because the trial court correctly determined that plaintiffs' claims against Revana failed for that reason, we need not address plaintiff's remaining claim of error regarding causation.[2]

Affirmed.

/s/ Anica Letica
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra

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[2] Although Marathon filed an appellate brief in this matter urging this Court to affirm the dismissal of plaintiff's claims against it, we find it unnecessary to so because we do not construe plaintiff's appeal as challenging the trial court's dismissal of claims against Marathon. Throughout its appellate brief, plaintiff refers to a singular defendant. While plaintiff never identifies Revana as the defendant to which it refers, we infer as much from the context of plaintiff's arguments.