STATE OF MICHIGAN

COURT OF APPEALS

JACLYN S. ALLEN,

Plaintiff-Appellee,

V

AMERICAN GENERAL FINANCIAL SERVICES, INC.,

Defendant-Appellant,

and

CRYSTAL GALE BLACK and JAMES ROBERT BLACK,[1]

Defendants.

UNPUBLISHED
July 26, 2011

No. 297392
Washtenaw Circuit Court
LC No. 09-000054-NI

Before: BECKERING, P.J., and FORT HOOD and STEPHENS, JJ.

PER CURIAM.

Defendant American General Financial Services Inc. appeals by leave granted the March 23, 2010 trial court order, which denied in part its motion for summary disposition regarding plaintiff's negligence count. We reverse and remand for entry of an order granting summary disposition to defendant on the negligence count, which is the last remaining claim in the case.

On appeal, defendant argues that the trial court erred in denying summary disposition as to the negligence count because defendant did not owe a legal duty to plaintiff. We agree. We review the grant or denial of summary disposition novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id*. at 120. A trial court considers the evidence in the light most favorable to the non-moving party. *Id*. Summary disposition is properly granted if there is no genuine issue of

[1] Crystal Gale Black and James Robert Black are not parties to this appeal. They were dismissed as defendants by stipulation below on or about January 8, 2010 pursuant to a settlement agreement.

material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). In a negligence action, whether a defendant owed a duty to plaintiff is a question of law reviewed de novo. *In re Certified Question from the 14th Dist Court of Appeals of Texas*, 479 Mich 498, 504; 740 NW2d 206 (2007).

"To establish a prima facie case of negligence, the plaintiff must prove: (1) that the defendant owed a duty to plaintiff; (2) that the defendant breached that duty; (3) that the defendant's breach of duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages." *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 203; 544 NW2d 727 (1996). At issue in the present case is whether plaintiff has established that defendant owed her a duty. The question of whether a duty exists is a question of law solely for the court to decide. *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997) (quotation and citation omitted). "Duty is essentially a question of whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person." *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007), quoting *Moning v Alfono*, 400 Mich 425, 438-439; 254 NW2d 759 (1977). "A duty of care may arise from a statute, contractual relationship or by operation of the common law, which imposes an obligation to use due care or to act so as not to unreasonable endanger other persons or their property." *Cummins v Robinson Twp*, 283 Mich App 677, 692; 770 NW2d 421 (2009). "Most importantly, for a duty to arise there must exist a sufficient relationship between the plaintiff and the defendant." *Schultz v Consumers Power Co*, 443 Mich 445, 450; 506 NW2d 175 (1993). "In determining whether the relationship between the parties is sufficient to establish a duty, the proper inquiry is whether the defendant is under any obligation for the benefit of the particular plaintiff." *Maiden*, 461 Mich at 132 (quotation and citations omitted). "[W]hen there is no relationship between the parties, no duty can be imposed[,]" and "it is unnecessary to consider any other factors." *In re Certified Question*, 479 Mich at 507.

Defendant did not owe plaintiff a duty under a common law theory of negligence because there was no relationship between defendant and plaintiff. By plaintiff's own admission in the first amended complaint, she had no relationship with defendant. Plaintiff had never done business with defendant and had never been to one of defendant's offices. Because there was no relationship between the parties, we find that no duty to plaintiff could be imposed on defendant. *Id*. at 507. Accordingly, we need not consider other factors such as "foreseeability of the harm, degree of certainty of injury, closeness of connection between the conduct and injury, moral blame attached to the conduct, policy of preventing future harm, and . . .the burdens and consequences of imposing a duty and the resulting liability for breach." *Buczkowski v McKay*, 441 Mich 96, 101 n 4; 490 NW2d 330 (1992) (citation omitted).

Plaintiff's argument that a duty to plaintiff arose because defendant voluntarily assumed the duty of "preparing a legal document of title" and was required to perform the duty carefully is also without merit. In *Smith v Allendale Mut Ins Co*, 410 Mich 685, 705; 303 NW2d 702 (1981), our Supreme Court opined that "[s]ection 324A of the Restatement of Torts, 2d, provides that, in certain circumstances, one who undertakes to render services to another which he should recognize as necessary for the protection of a third person is subject to liability if his 'failure to exercise reasonable care to perform his undertaking' results in physical harm to the third person." Under this rule, "[i]t is not enough that the [defendant] acted"; "[defendant] must have undertaken to render services to another." *Id*. at 716. A defendant's actions do not amount to an

"undertaking" or a voluntarily assumed duty unless the defendant "agreed or intended to benefit" the plaintiff by its actions. *Id*. Plaintiff failed to prove the threshold requirement that defendant assumed an undertaking to render services for the benefit of plaintiff. See *Id*. at 705. Any undertaking that defendant agreed to assume as far as the title paperwork was purely for the purpose of serving its own interest in perfecting its security interest in the Mercury Mystique for or for the benefit of plaintiff's brother and father, to whom defendant lent money. There is no evidence that defendant took any actions to benefit plaintiff. On this record, defendant owed no duty to plaintiff regardless if it voluntarily assumed the responsibility of completing certain paperwork.

Additionally, a statutory duty of care did not exist under MCL 257.238 of the Motor Vehicle Code. "[W]hether a plaintiff can use a statute to impose a duty of care on a defendant depends on (1) whether the purpose of the statute was to prevent the type of injury and harm actually suffered and (2) whether the plaintiff was within the class of persons which the statute was designed to protect. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 16; 596 NW2d 620 (1999). MCL 257.238 governs the creation of a security interest in a motor vehicle. MCL 257.238 did not impose a duty of care on defendant because the purpose of the statute was not to prevent the type of the injury and harm actually suffered by plaintiff, which was the denial of underinsured benefits, and plaintiff was not within the class of persons which the statute was designed to protect.

Finally, we note that a duty of care did not arise under plaintiff's contractual obligations to plaintiff's brother and father. Plaintiff failed to prove that defendant created a "new hazard" that imposed a duty on defendant to plaintiff under the contract between defendant and her brother and father." See *Fultz v Union-Commerce Assoc*, 470 Mich 460, 469; 683 NW2d 587 (2004). There was no evidence in the record that defendant negligently placed plaintiff's name on documents that were filed with the Secretary of State. Thus, plaintiff was unable to establish that defendant owed her a separate and distinct duty outside of the contract with her brother and father. See *id*. at 467.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Karen M. Fort Hood
/s/ Cynthia Diane Stephens