

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

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KATHY MOORE, a Minor and Decedent, by her  
Personal Representative, KATHERINE MOORE, and  
KATHERINE MOORE, Individually,

UNPUBLISHED  
December 4, 1998

Plaintiffs-Appellants,

v

No. 203299  
Wayne Circuit Court  
LC No. 95-525834 NO

SPECTRUM HUMAN SERVICES and  
JACQUELYN HERMAN,

Defendants-Appellees.

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Before: Griffin, P.J., and Gage and R. J. Danhof\*, JJ.

PER CURIAM.

The instant case arose out of the accidental shooting of sixteen-year-old Kathy Moore by a Detroit Police Officer on September 1, 1992. In this negligence action, plaintiffs appeal as of right from an order granting defendants summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). We affirm.

Due to home truancy, Kathy became a ward of the state and was committed to the Department of Social Services (DSS) in November 1989. Subsequently, Kathy was placed in a program at Vista Maria, a private, nonprofit residential treatment program for teenage girls. Kathy progressed in the program, but truanted from the program in March 1991. Eventually, the DSS sought another placement for Kathy. Lawrence Jackson, Kathy's DSS caseworker, contacted defendant Spectrum Human Services (Spectrum), which operated a semi-independent living program. Spectrum accepted Kathy into its supervised semi-independent living program, and pursuant to a contract with the DSS, agreed to provide Kathy the following services: counseling, written progress reports, health and medical referrals, educational and recreational referrals, and replacement clothing as needed. As part of the program, Kathy lived in a supervised group home in the City of Detroit. Several months later, Jacquelyn Herman, the director of Spectrum's supervised semi-independent living program, informed the DSS that it intended to terminate its services in thirty days due to Kathy's unwillingness to comply with the

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

program's basic requirements. However, because the DSS could not find another suitable placement for Kathy, it entered into a second contract with Spectrum in which Spectrum agreed to provide Kathy with counseling, educational, medical, psychological, psychiatric, employment and recreational referrals, room and board, and maintenance clothing. The contract provided that Spectrum would accommodate Kathy with a motel room, rather than placement in a group home, and that Spectrum would not provide twenty-four hour supervision.

On September 1, 1992, Spectrum employee Trenita Womack picked up Kathy and drove her to a therapy session. While sitting in the waiting room with Kathy, Womack was called to the telephone. When Womack returned to her seat, both Kathy and Womack's car keys were missing. Witnesses later observed Kathy, who was driving Womack's car, strike another car and continue driving. Kathy then passed a police car at a high rate of speed, and was pursued by the police. She came to a stop after striking a second car. Kathy failed to comply after a police officer twice ordered her to exit the car. The officer, who was holding his gun in one hand, opened the car's driver's side door and attempted to pull Kathy out of the vehicle. Kathy struggled with the officer, and the officer's gun discharged in the struggle. Kathy died from a gunshot wound to the chest.

Plaintiffs first contend that the trial court erred in granting defendants summary disposition after incorrectly finding that defendants owed Kathy no duty to protect her from her own actions. We review de novo an order granting summary disposition. *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone to determine if the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). All factual allegations supporting the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Eason, supra*. However, mere conclusions, unsupported by allegations of fact, will not suffice to state a cause of action. *Id.* In a negligence action, summary disposition pursuant to MCR 2.116(C)(8) is properly granted if it is determined as a matter of law that the defendant owed no duty to the plaintiff. *Terrell v LBJ Electronics*, 188 Mich App 717, 719; 470 NW2d 98 (1991).

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests whether there is factual support for a claim. *Michigan Mutual, supra* at 85. The motion may be granted when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence presented by the parties. *Id.* Giving the benefit of the doubt to the nonmoving party, the court must determine whether a record might be developed that would leave open an issue on which reasonable minds could differ. *Id.*

A duty is an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another. *Terrell, supra*, 188 Mich App 719. Whether the law will impose such an obligation depends on the relationship between the actor and the injured person. *Id.* Generally, there is no duty to protect an individual endangered by the conduct of a third person. *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). However, a duty of

reasonable care may arise when one person stands in a special relationship with either the victim or the person causing the injury. *Terrell, supra* at 720. When a person entrusts himself to the control and protection of another and, consequently, loses control to protect himself, the duty to protect is imposed on the person in control because he is best able to provide a place of safety. *Id.*

To determine whether a special relationship exists, a court must balance the societal interests involved, the severity of the risk, the burden on the defendant, the likelihood of the occurrence, and the relationship between the parties. *Dykema v Gus Macker Enterprises, Inc*, 196 Mich App 6, 9; 492 NW2d 472 (1992). Other factors that 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 cost of providing protection, and whether the plaintiff had bestowed some economic benefit on the defendant. *Id.* Examples of special relationships that have been recognized by Michigan courts include landlord-tenant, proprietor-patron, employer-employee, residential invitor-invitee, psychiatrist-patient, and doctor-patient. *Marcelletti, supra.*

Plaintiffs argue that defendants knew of Kathy's dangerous propensities and therefore owed a duty to protect her from herself. While plaintiffs alleged that defendants entered into a contract to provide Kathy counseling, placement, educational, recreational, health and medical assistance, plaintiffs failed to allege that defendants agreed to provide 24-hour supervision of Kathy, or to take complete responsibility for her safety. Months before Kathy's death, defendants indicated their intent to terminate the original contract with the DSS under which defendants were providing a supervised living arrangement. Defendants subsequently agreed to provide Kathy's basic necessities until the DSS successfully located appropriate living arrangements, and specifically disavowed a twenty-four hour a day supervision obligation. Nor have plaintiffs alleged facts supporting their assertion that defendants had reason to anticipate that Kathy would steal a car and engage police in a high speed chase. Defendants could not be expected to foresee every wrongful behavior in which Kathy might have engaged. Furthermore, this was not a situation in which Kathy was entrusted to defendants' control and protection, and no longer had any control over herself. Sixteen-year-old Kathy had the ability to prevent her own wrongful conduct. She exhibited this ability during her stay in the Vista Maria residential treatment program from March 1990 through March 1991, and by subsequently living on her own and with relatives for approximately one year prior to her placement with defendants. Because plaintiffs have not alleged any facts establishing that Spectrum had assumed control over Kathy and her protection, *Terrell, supra*, we conclude that the trial court properly granted defendants summary disposition pursuant to MCR 2.116(C)(8) and (C)(10).

Next, plaintiffs suggest that defendants had a statutory duty to protect Kathy from her own actions pursuant to the Child Protection Law, MCL 722.621 *et seq.*; MSA 25.248(1) *et seq.* The Child Protection Law requires the reporting of child abuse and neglect by certain persons, such as physicians, nurses, licensed professional counselors and social workers, establishes a central registry system, and provides immunity for persons reporting child abuse and neglect. *People v Pitts*, 216 Mich App 229, 233-234; 548 NW2d 688 (1996). Plaintiffs have not shown that defendants abused or neglected Kathy, or that defendants failed to report that Kathy suffered abuse or neglect. While the

Child Protection Law creates a duty to report child abuse or neglect, it does not create a duty on the part of defendants to protect Kathy from her own actions.

Because we conclude that summary disposition was appropriate on the basis that defendants owed no duty to protect Kathy from her own actions, we need not address plaintiffs' further contentions that the trial court erred in finding that their claims were barred by the wrongful conduct rule and in finding that defendants' actions were not the proximate cause of Kathy's death.

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Robert J. Danhof