STATE OF MICHIGAN

COURT OF APPEALS

MARGARET KAPOLKA, Personal Representative for the Estate of VERONICA THERESA TURZAK, deceased,	UNPUBLISHED May 28, 1996
Plaintiff-Appellant,	
v	No. 180036 LC No. 92-000801
RAY LAETHAM PONTIAC-BUICK-GMC TRUCK, INC.,	
Defendant-Appellee,	
and	
TINA MARIE SMITH,	
Defendant.	

Before: Taylor, P.J., and Murphy and E. J. Grant,* JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order granting summary disposition in favor of Ray Laetham Pontiac-Buick-GMC Truck, Inc. ("Laetham"), pursuant to MCR 2.116(C)(8) and (C)(10). We affirm.

On or about July 21, 1989, Laetham entered into a contract to sell a 1989 Pontiac Grand Prix to Tina Marie Smith. Laetham reported on the application for title that Smith was insured by AAA, which was not true. Two years later, on July 12, 1991, Robert Sherwood Sewell drove Smith's car to a location in Warren and stole a purse from the front seat of Veronica Theresa Turzak's vehicle. When Turzak returned to her vehicle, Sewell started Smith's car and struck and killed Turzak.

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

Plaintiff brought the instant wrongful-death suit against Smith and Laetham for negligence and negligent entrustment. Plaintiff alleged that, by virtue of the misstatements contained in Smith's application for Michigan title, Laetham remained the owner of the car that killed plaintiff's decedent and remained liable for the negligent use of the car under Michigan's owner-liability statute, MCL 257.401; MSA 9.2101. Additionally, plaintiff brought claims against Laetham for "ordinary" negligence and negligent entrustment.

On appeal, plaintiff first argues that the trial court erred in granting Laetham's motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) because she either stated a cognizable claim under the owner-liability statute or succeeded in establishing a triable issue regarding whether Laetham owned the automobile that killed her decedent. We disagree.

MCR 2.116(C)(8) permits summary disposition when the "opposing party has failed to state a claim on which relief can be granted." MCR 2.116(C)(8) determines whether the opposing party's pleadings allege a prima facie case. *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). Hence, this Court does not act as a factfinder, but accepts as true all well-pleaded facts. *Id.* Only if the allegations fail to state a legal claim will summary disposition pursuant to MCR 2.116(C)(8) be valid. *Radtke*, *supra* at 373-374. This Court reviews grants of summary disposition pursuant to MCR 2.116(C)(8) de novo. *Stehlik v Johnson (On Rehearing),* 206 Mich App 83, 85; 520 NW2d 633 (1994).

MCR 2.116(C)(10) permits summary disposition when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court considers the factual support for the claim, giving the benefit of any reasonable doubt to the nonmoving party to determine whether a record might be developed that might leave open an issue upon which reasonable minds could differ. *Jackhill Oil Co v Powell Productions, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995). When deciding a motion for summary disposition, a court considers all the pleadings, depositions, affidavits, admissions and other documentary evidence available to it. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). The grant of summary disposition pursuant to MCR 2.116(C)(10) is also reviewed de novo. *Jackhill*, *supra* at 117.

Laetham's liability hinges on whether it was the owner of the car at the time that the accident occurred. Michigan's owner-liability statute, MCL 257.401; MSA 9.2101, provides that "the owner of a motor vehicle shall be liable for any injury occasioned by the negligent operation of the motor vehicle." The term "owner" is construed broadly to include vendees who have exclusive control over a vehicle for at least thirty days and an immediate right to possession of the vehicle. MCL 257.37; MSA 9.1837; *Basgall v Kovach*, 156 Mich App 323, 327; 401 NW2d 638 (1986).

A dealership can transfer title by following the steps set out in MCL 257.217(2); MSA 9.1917(2):

> A dealer selling or exchanging vehicles required to be titled, within 15 days after delivering a vehicle to the purchaser . . . shall apply to the secretary of state for a new title, if required, and transfer or secure registration plates and secure a certificate of registration for the vehicle . . . in the name of the purchaser. . . . The purchaser of the vehicle . . . shall sign the application . . . and other necessary papers to enable the dealer . . . to secure the title, registration plates, and transfers from the secretary of state.

Such transfers become effective on the date of the execution of either the application for title or the certificate of title. MCL 257.233(5); MSA 9.1933(5). Once the transfer is made, the dealership is absolved of any liability stemming from the negligent operation of the vehicle by another. MCL 257.240; MSA 9.1940.

Laetham was not the owner of the vehicle that killed plaintiff's decedent, regardless of whether it provided false information on Smith's application for title. In *Goins v Greenfield Jeep Eagle, Inc*, 449 Mich 1, 7; 534 NW2d 467 (1995), the Supreme Court, when presented with facts similar to those in the instant case, stated that nothing in Michigan law requires a dealership to verify the insurance coverage of a buyer or submit to the Secretary of State a copy of the buyer's insurance policy:

> The Motor Vehicle Code simply requires a dealer to fill out the proper application for a certificate of title and to submit it to the Secretary of State within fifteen days. In the present case, defendant performed all these acts within the requisite amount of time, and the Secretary of State issued a certificate of title, registration, and license plate to the purchaser. Although defendant did not verify [the purchaser's] insurance coverage by acquiring and sending a copy of his insurance certificate, this act was simply not required under the Vehicle Code. [*Id.* at 14.]

Hence, Laetham's failure to verify Smith's insurance coverage was not violative of Michigan law governing title transfer. Plaintiff alleges no further defects that might invalidate Laetham's transfer of title to defendant Smith, such as a failure to forward the title application to the Secretary of State within the requisite fifteen-day period. In light of this, plaintiff failed to state a cognizable negligence claim based on the owner-liability statute. Further, reviewing the evidence presented in the trial court and granting plaintiff the benefit of any reasonable doubt, we find that plaintiff failed to establish a triable issue of fact as to Laetham's continued ownership of the vehicle.

Next, we disagree with plaintiff's argument that the trial court erred in granting Laetham's motion for summary disposition pursuant to MCR 2.116(C)(8) as to her "ordinary" negligence claim against the dealership. The elements of a negligence claim are (1) the existence of a legal duty owed by the defendant toward the plaintiff; (2) the breach of such duty; (3) the proximate causal relation between the breach of such duty and an injury to the plaintiff; and (4) the plaintiff must have suffered damages. *Gross v General Motors Corp*, 448 Mich 147, 162; 528 NW2d 707 (1995). In negligence actions, the threshold issue of the existence of a legal duty of care must be decided by the trial court. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 95; 485 NW2d 676 (1992). Summary disposition

pursuant to MCR 2.116(C)(8) is proper if, as a matter of law, it is determined that the defendant owed no duty toward the plaintiff. *Terrell v LBJ Electronics*, 188 Mich App 717, 719; 470 NW2d 98 (1991).

Plaintiff argues that defendant violated its duty of care toward decedent by including inaccurate information on Smith's title information in violation of MCL 257.219(2)(a); MSA 9.1919(2)(a), which provides:

> (2) The secretary of state shall refuse issuance of a certificate of title . . . upon any of the following grounds:
>
> (a) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the secretary of state . . . .

The violation of a statute creates a prima facie case from which a jury may draw an inference of negligence. *Young v Flood*, 182 Mich App 538, 541; 452 NW2d 869 (1990). However, whether a statutory violation is relevant in determining negligence is a question to be answered as a matter of law by the trial court, and not the jury. *Klanseck v Anderson Sales & Service, Inc*, 426 Mich 78, 87; 393 NW2d 356 (1986). The trial court must determine, among other things, that the statute in question is intended to protect against the result of the violation and that the plaintiff is within the class intended to be protected by the statute. *Id.* Here, the statute upon which plaintiff sought to base her negligence claim merely lists the reasons for which the Secretary of State may properly refuse issuance of a registration or a transfer of registration. The statute does not purport to establish a standard of behavior for car dealerships. It was clearly not intended to protect parties against the harm that befell plaintiff's decedent. Therefore, the trial court was correct in determining that plaintiff could not base her negligence claim on Laetham's violation of MCL 257.219(2)(a); MSA 9.1919(2)(a).

Next, plaintiff argues that Laetham voluntarily assumed a duty of care toward her decedent by establishing a company policy of verifying the insurance coverage of prospective car buyers. We disagree. It is true that the law imposes an obligation to exercise some degree of care and skill on one who attempts to do anything, even gratuitously, for another. *Lindsley v Burke*, 189 Mich App 700, 704; 474 NW2d 158 (1991). Furthermore, when a party undertakes to render to another services that it should recognize as necessary for the protection of a third person, it is liable for any harm the third party experiences from the failure to exercise reasonable care. *Id.* However, in order for such a duty to arise, the party who volunteers service must have agreed to either benefit the third party or the immediate recipient of the gratuitous service. *Nalepa v Plymouth-Canton Community School Dist*, 207 Mich App 580, 592; 525 NW2d 897 (1994). Voluntary assumption of duty toward a third party is not established where a defendant merely undertakes to advance its own interests and, in doing so, indirectly confers a benefit upon others. *Id.*

Plaintiff has not shown, and nothing in the record demonstrates, that Laetham intended to benefit Smith or plaintiff's decedent by undertaking to verify the insurance coverage of its customers. Laetham is in the business of selling cars and has an interest in effectively transferring title to its customers. Verifying a buyer's insured status is merely an aspect of advancing Laetham's interest in transferring automobile title to purchasers.[1] Plaintiff has not demonstrated that defendant undertook this service to benefit others. Hence, plaintiff failed to establish the existence of a duty toward decedent, making summary disposition pursuant to MCR 2.116(C)(8) appropriate.

Lastly, plaintiff argues that the trial court erred in granting Laetham's motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10) as to her claim of negligent entrustment. We do not agree. Michigan courts adhere to the following theory of negligent entrustment:

> One who supplies directly or indirectly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them. [*CNA Ins Co v Cooley*, 164 Mich App 1, 5; 416 NW2d 355 (1987).]

In order to prove negligent entrustment, a plaintiff must establish that the defendant knew the entrustee was not to be entrusted or that the defendant had special knowledge of the entrustee which would put it on notice. *Id.*

The negligent-entrustment doctrine does not apply to the facts of this case. Laetham sold the car to Smith in a commercial transaction. Laetham did not retain legal title to or control over the vehicle. In *Barksdale v National Bank of Detroit*, 186 Mich App 286; 463 NW2d 258 (1990), we held that an automobile lessor had no duty to investigate a potential lessee's driving record before accepting the lease, even though the lessor retained legal title to the vehicle during the lease period. *Id.* at 291. We stated that to allow the maintenance of a suit for negligent entrustment under those circumstances would impose an intolerable burden on dealerships and would subject them to unwarranted liability where they retain no control over the lessee's use of the vehicle. *Id.* A fortiori, Laetham cannot be held liable on a negligent-entrustment theory where it sold Smith the car, did not retain title, and ceased to exercise control over Smith's vehicle after the transaction. Moreover, plaintiff has failed to establish that Smith posed some special threat of which the dealership was, or should have been, aware. Therefore, the trial court correctly granted Laetham's motion for summary disposition as to plaintiff's claim for negligent entrustment, either because plaintiff failed to set forth proper allegations in her pleadings to establish such a claim or failed to submit evidence to raise a genuine issue of material fact concerning Laetham's knowledge of the risk posed by selling the car to Smith.

Affirmed.

/s/ Clifford W. Taylor
/s/ William B. Murphy
/s/ Edward J. Grant

[1] At the time of this transaction in 1989, it was likely that defendant established the practice of verifying insurance in order to comply with the dictates of a manual issued by the Secretary of State to all car dealerships in Michigan. The manual provided that the dealer must supply a copy of a purchaser's proof of insurance within fifteen days after the delivery of the car to the buyer. *Goins*, *supra* at 8. However, this manual did not have the force of law, since the Secretary of State did not follow proper procedure for rules promulgation when it published the guide. *Id.* at 10.