

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

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DENNIS LUTZ, Personal Representative of the Estate  
of JACQUELINE MARIE PONKE, Deceased,

UNPUBLISHED  
September 3, 1996

Plaintiff-Appellant/Cross-Appellee,

v

No. 180932  
LC No. 94-469929

RAYMOND WILLIAM PONKE,

Defendant,

and

ALAN R. BREDIN, D.D.S.,

Defendant-Appellee/Cross-Appellant.

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

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in this wrongful death action. We affirm.

Plaintiff's decedent worked for defendant<sup>1</sup> as a receptionist/secretary. In 1993, she separated from her husband, Raymond Ponke, and subsequently obtained a restraining order against him. Plaintiff's decedent informed defendant that she felt threatened by Raymond Ponke. As a result, defendant took certain precautionary measures at the workplace. Defendant removed curtains from windows, took a knob off of a closet with a locking door to provide a retreat, and devised a plan of escape from the office should the need arise. On January 8, 1994, plaintiff's decedent was assisting defendant with a patient when Raymond Ponke entered the office, and struck plaintiff's decedent with a hammer, killing her.

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

Plaintiff brought suit, alleging that defendant was negligent in failing to protect plaintiff's decedent. Defendant moved for summary disposition, claiming he owed no duty to protect plaintiff's decedent from Raymond Ponke. The trial court granted summary disposition, ruling that although the employer/employee relationship created, in defendant, a duty to protect plaintiff's decedent, that duty did not extend to this type of harm beyond defendant's control. The trial court also ruled that defendant did not voluntarily assume a duty by implementing precautionary measures.

We review the trial court's grant of summary disposition de novo. *Parcher v Detroit Edison Co*, 209 Mich App 495, 497; 531 NW2d 724 (1995). Because duty is a matter of law, if defendant owed no duty to plaintiff, summary disposition is proper under MCR 2.116(C)(8). *Dykema v Gus Macker Enterprises, Inc.*, 196 Mich App 6, 9; 492 NW2d 472 (1992).

First, plaintiff's complaint alleges that defendant assumed a duty to protect plaintiff's decedent by taking certain precautionary measures and implementing a safety plan in light of plaintiff's decedent's troubles with Raymond Ponke. We disagree.

There is no allegation that defendant promised to eliminate the danger plaintiff's decedent faced as a result of her relationship with Raymond Ponke. Defendant took these actions to help reduce the risk that plaintiff's decedent faced. "A promise to take specific steps to reduce danger is a promise to do just that – not a promise to eliminate the danger." *Scott v Harper Recreation, Inc.*, 444 Mich 441, 450; 506 NW2d 857 (1993). See also *Mason v Royal Dequindre*, 209 Mich App 514, 516; 531 NW2d 79 (1995). To impose a duty in such cases would penalize those who make a good faith effort to reduce risk as opposed to those who take no action. *Scott, supra* at 452. Defendant will not be held responsible for injuries because the measures taken were less effective than they could have been. *Mason, supra* at 516 citing *Scott, supra* at 452.

Next, although not raised in the complaint, plaintiff argues that defendant had a duty, based on the employer/employee relationship to protect plaintiff's decedent from the criminal acts of third parties. A person has no duty to protect another from the acts of a third person, unless a special relationship exists. *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). The employer/employee relationship is recognized as such a relationship. *Id.* However, because plaintiff's argument is essentially that defendant, as plaintiff's decedent's employer, was negligent in failing to provide a safe workplace, the claim is barred by the exclusive remedy provision of the worker's compensation act, MCL 418.131; MSA 17.237(131). *Stalzer v Shape Corp*, 177 Mich App 572, 576-577; 442 NW2d 648 (1989).

Therefore, because plaintiff failed to state a claim on which relief can be granted, summary disposition was proper.

Because of our disposition above, we need not address the remaining cross-appeal issues.

Affirmed.

/s/ Clifford W. Taylor

/s/ William B. Murphy

/s/ Edward J. Grant

<sup>1</sup> Although both Raymond Ponke and Alan Bredin were named as defendants below, because defendant Bredin is the only appellee, he will be referred to as “defendant,” and defendant Raymond Ponke will be referred to by name.