

STATE OF MICHIGAN
COURT OF APPEALS

JOYCE WILTSHIRE, Personal Representative of the
ESTATE OF CARL LEE FEZATTE,

UNPUBLISHED
September 17, 1996

Plaintiff-Appellant,

v

No. 178183
LC No. 93-460635

FIRST LIEUTENANT MOULIK, SERGEANT
SANDERSON, SERGEANT BROADBENT,
INSPECTOR JOHNSON, TROOPER WIEGAND,
TROOPER SIPES, TROOPER WILLING, and
TROOPER KOSKI,

Defendants-Appellees.

Before: Hoekstra, P.J., and Michael J. Kelly and J.M. Graves, Jr.,* JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

At 4:40 a.m. on March 17, 1991, two Michigan State Police troopers found the decedent, Carl Fezatte, sleeping at the wheel of his vehicle at a rest area. The troopers, noticing that the decedent had a gun inside the vehicle, knocked on the window to awaken him. The decedent lowered his window slightly and said he wanted to say good-bye. The troopers asked him to exit the vehicle, but he refused and asked them to leave him alone. The decedent handed one of the officers a note and asked him to notify the individuals listed. He then told the troopers that he would consider exiting the vehicle if they left him alone for a few minutes. The troopers moved to the rear of the vehicle for several minutes. When they reapproached the vehicle, the decedent became agitated, rolled up his window and told them to leave him alone. The troopers returned to their patrol car and radioed for assistance. When backup arrived, another trooper approached the vehicle to identify the license plate. At that time, the trooper noticed the decedent had the gun pointed at his chest with his hand near the trigger. The rest area was cleared and barricaded, and the decedent's mother (plaintiff) was contacted. She explained

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

that the decedent had been depressed in the past, and that he had attempted suicide several years earlier. An Emergency Services Team comprised of persons with specialized training in suicide prevention was called in. The sergeant on duty tried to make contact with the decedent several times with the use of a bullhorn. The decedent did not respond, though he was seen moving until 8:23 a.m. The team approached the car and found him dead at 9:06 a.m. with a bullet wound to the chest. No one at the scene heard the shot.

Plaintiff first argues that summary disposition pursuant to MCR 2.116(C)(8) was improperly granted because defendants owed a duty to the decedent to prevent the suicide. The public duty doctrine insulates police officers from tort liability for failure to provide police protection unless a special relationship existed between the officers and the individual plaintiff. *White v Beasley*, 453 Mich 308; ___ NW2d ___ (1996). In determining whether a special relationship between an officer and a plaintiff exists, a court should consider: (1) assumptions made by the municipality of an affirmative duty to act on behalf of the plaintiff, (2) knowledge on the part of the officer that inaction could lead to harm, (3) direct contact between the officer and the plaintiff, and (4) the plaintiff's justifiable reliance on the municipality's affirmative undertaking. *Id.* Here, plaintiff has failed to show the existence of a special relationship between defendants and the decedent. In particular, plaintiff has not alleged justifiable reliance on the part of the decedent on an affirmative undertaking by defendants or the municipality. Simply arguing that protecting the public was the officer's duty runs contrary to the rationale for adopting the public duty doctrine and was rejected by the Supreme Court in *White* as a basis for establishing justifiable reliance. Because plaintiff has failed to allege facts sufficient to satisfy the justifiable reliance prong of the special relationship test, the trial court's grant of summary disposition pursuant to MCR 2.116(C)(8) was proper.

Plaintiff also challenges the trial court's grant of summary disposition pursuant to MCR 2.116(C)(7) and 2.116(C)(10). Given our previous conclusion that summary disposition was properly granted pursuant to 2.116(C)(8), we need not address these issues.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.