

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD SOULLIER, Personal Representative  
of the Estate of CHRISTINA SOULLIER,  
Deceased,

UNPUBLISHED  
October 15, 1996

Plaintiff–Appellant,

v

No. 180684  
LC No. 93-333937-NO

CITY OF DETROIT, DETROIT POLICE  
DEPARTMENT, and SERGEANT IVE EDWARDS,

Defendants–Appellees.

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Before: Gribbs, P.J., and Young and W. E. Caprahe,\* JJ.

PER CURIAM.

Plaintiff appeals by right the trial court order granting summary disposition in favor of defendants, in this wrongful death and governmental immunity case. We affirm.

We review the trial court’s grant of summary disposition de novo to determine whether the moving party was entitled to judgment as a matter of law. *Allen v Keating*, 205 Mich App 560, 562; 517 NW2d 830 (1994). When reviewing a grant of summary disposition based on a finding that the claim is barred by governmental immunity, we consider all documentary evidence submitted by the parties and all well-pleaded allegations are accepted as true and construed most favorably to plaintiff. To survive a motion for summary disposition, plaintiff must allege facts that justify the application of an exception to governmental immunity. *Summers v City of Detroit*, 206 Mich App 46, 48; 520 NW2d 356 (1994).

Plaintiff first contends that the lower court used the wrong standard of review when it granted defendants’ motion for summary disposition. We disagree. On more than one occasion, the lower court noted that it was “viewing the facts in a light most favorable to plaintiff.” And, the facts, when viewed in a light most favorable to plaintiff, support the conclusions made by the lower court.

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

Plaintiff next asserts that a special relationship existed between defendant Police Sergeant Edwards and the deceased. We disagree. Under the public duty doctrine, a police officer has a duty to the public in general and not to a specific individual unless a special relationship exists between the officer and the individual such that the performance by the public officer would affect the individual in a manner different in kind from the way performance would affect the public. *Gazette v Pontiac*, 212 Mich App 162, 170; 536 NW2d 854 (1995). At a minimum, the existence of a special relationship requires some contact between the government agency or official involved and the victim, and reliance by the victim upon the promises or actions of the government agency or official. *White v Beasley*, 453 Mich 308, 320; \_\_\_ NW2d \_\_\_ (1996); *Gazette, supra*, at 170-171.

Here, the evidence failed to show that the deceased relied upon any promises or actions made by Sergeant Edwards. The deceased claimed under oath, twice, that she had not been threatened. Additionally, the deceased rejected any offers of protective custody measures from Sergeant Edwards and insisted on being dropped off at the home of Kim Moore, the sister of deceased's assailant, despite Sergeant Edwards reluctance to do so. The deceased also indicated that the individuals involved in the case were her friends. Because Sergeant Edwards made no promises to the deceased, and because Sergeant Edwards did not act in a way that would result in the deceased relying upon him, the element of justifiable reliance is lacking and hence, no special relationship existed in this instance. *White, supra*, at 320; *Gazette, supra*, at 170-171.

Plaintiff further argues that the City of Detroit was deliberately indifferent by failing to initiate a policy or initiate training of its officers in the area of witness protection and intimidation. We disagree. 42 USC 1983 provides a remedy against any person who, under color of state law or custom having the force of law, deprives another of rights protected by the constitution or laws of the United States. *Payton v Detroit*, 211 Mich App 375, 398; 536 NW2d 233 (1995); *Davis v Wayne County Sheriff*, 201 Mich App 572, 576; 507 NW2d 751 (1993). The statute creates no substantive rights, but instead merely supplies a remedy for deprivation of rights created by other laws. *Davis, Id.*

In order to establish such a claim against a municipality, plaintiff must show that a policy or custom tantamount to a deliberate indifference for the constitutional rights of others actually caused the violation. *Davis, supra*, at 577. Deliberate indifference requires something more than mere negligence. Deliberate indifference involves actual or constructive knowledge, and a conscious disregard of a known danger. *Payton, supra*, at 399; *Davis, supra*, at 577, 581. A municipality may be liable under §1983 if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation. The inadequate training of police officers could be characterized as an alleged constitutional tort if and only if the failure to train amounted to deliberate indifference to the rights of persons with whom the police come in contact with. *Payton, supra*, at 400; *Davis, supra*, at 580.

Here, plaintiff failed to show that the City had a policy or procedure dealing with witness intimidation or protection in which the City failed to provide proper training in accordance therewith. To the contrary, the evidence indicates that Sergeant Edwards attempted to implement certain policy procedures by asking the deceased to submit to protective custody, and that the deceased refused. Because plaintiff failed to show that a certain policy or procedure was in effect or that Sergeant

Edwards was inadequately trained, plaintiff failed to prove that the lack of a policy or training caused the alleged constitutional torts. *Payton, supra*, at 400; *Davis, supra*, at 580.

Plaintiff finally asserts that Sergeant Edwards was not entitled to qualified immunity. We disagree. A governmental official performing discretionary functions is entitled to qualified immunity from damages under a §1983 action insofar as the conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Guider v Smith*, 431 Mich 559, 565; 431 NW2d 810 (1988); *Spruytte v Owens*, 190 Mich App 127, 132; 475 NW2d 382 (1991). First, the deceased's due process rights were not violated. The danger to the deceased was created by Toronto Moore, not Sergeant Edwards. A state's failure to protect an individual from private violence does not constitute a violation of the Due Process Clause. *Gazette, supra*, at 173. And, there was no special relationship between the deceased and Sergeant Edwards as Sergeant Edwards did not take the deceased into custody or otherwise deprive her of liberty. *Id.* Moreover, Sergeant Edwards did not place the deceased in a position of greater danger through an affirmative act of his own. The deceased adamantly refused protective custody measures and insisted on being dropped off at home of Kim Moore.

Likewise, the deceased's right to equal protection was not violated. Plaintiff has not alleged that the deceased was denied equal protection because of any state-created classification. *Gazette, supra*, at 174. The trial court properly granted summary disposition in this matter.

Affirmed.

/s/ Roman S. Gribbs  
/s/ Robert P. Young, Jr.  
/s/ William J. Caprathe