

STATE OF MICHIGAN
COURT OF APPEALS

NINA CANTRELL, Personal Representative of the
Estate of ANDRE DILLARD,

UNPUBLISHED
October 25, 1996

Plaintiff-Appellant,

v

No. 179873
LC No. 93-313061-NI

CITY OF DETROIT and DETROIT POLICE
DEPARTMENT,

Defendants-Appellees,

DANON JERIMY OLDHAM, LYNDELL
PHILLIPS, JIMMIE L. WHEELER, and
SHARON COWLING,

Defendants.

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,* JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court's grant of defendants' motion for summary disposition in this wrongful death action. We reverse.

This case concerns a vehicular accident arising out of a police chase in the City of Detroit at approximately 11:30 p.m. on Thanksgiving night, November 26, 1992, in which plaintiff's decedent, Andre Dillard, was killed. At the time of the accident, Dillard was a front-seat passenger in a stolen car that was driven by Jerimy Danon Oldham.

In *Fiser v City of Ann Arbor*, 417 Mich 461; 339 NW2d 413 (1983), the Court held that police officers owe a duty to innocent bystanders not to operate their police cars negligently. In *Jackson v Oliver*, 204 Mich App 122; 514 NW2d 195 (1994), this Court, declining to extend *Fiser*

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

to the facts presented, held that a police officer chasing a fleeing suspect does not owe the suspect a duty to refrain from a high-speed chase that endangers the safety of the suspect.

Recently, in *Cooper v Wade*, ___ Mich App ___ ; ___ NW2d ___ (Docket No. 175952, issued 9/10/96 at 9:05 a.m.), this Court, in ruling that the trial court erred in granting defendants' motion for summary disposition on the basis that they owed no duty to plaintiffs, declined to extend the holding in *Jackson* to passengers within the pursued vehicle. In *Cooper*, slip op, p 3, this Court held:

To the extent that passengers within a fleeing vehicle are at fault for bringing about or continuing the police pursuit, such factors should be considered by the factfinder when considering causation and apportioning fault.

Following release of *Cooper*, another panel issued an opinion *In the Matter of the Estate of Courtney Henderson*, ___ Mich App ___ ; ___ NW2d ___ (Docket No. 176421, issued 9/10/96 at 9:20 a.m.), which held that a passenger voluntarily in a fleeing car is not an innocent bystander and does not fall under the rule in *Fiser*. Finding that the defendant City of Detroit did not owe a duty to the decedent, the *Henderson* Court affirmed the trial court's order granting summary disposition in favor of the defendants pursuant to MCR 2.116(C)(7) and (10).

Where there are two conflicting opinions published after November 1, 1990, we are obligated under Administrative Order 1996-4, 451 Mich xxxii (1996) to follow the first opinion on the issue. *People v Young*, 212 Mich App 630, 639; 538 NW2d 456 (1995). Because *Cooper* was issued before *Henderson*, we follow *Cooper* in holding that the trial court erred in granting defendants' motion for summary disposition on the basis that they owed no duty to plaintiff.

Reversed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Charles W. Simon, Jr.