STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY PADILLA, JR., a Minor, by his Conservator, ANTHONY PADILLA, SR.,

Plaintiff-Appellee,

v

CBA MANAGEMENT, INC.,

Defendant-Appellant,

and

JAMES D. SKINNER and DONNA MARIE SKINNER,

Defendants.

UNPUBLISHED
November 26, 1996

No. 183039
LC No. 94-000006-NI

Before: Neff, P.J., and Hoekstra and G.D. Lostracco,* JJ.

PER CURIAM.

In this personal injury action, defendant CBA Management, Inc. (CBA) moved for summary disposition on the grounds that it did not owe a legal duty to plaintiff or, alternatively, that any breach of a duty owed by CBA was not a proximate cause of plaintiff's injuries. The trial court denied CBA's motion in an order entered on January 9, 1995. CBA filed an application for leave to appeal, which this Court granted. We reverse and remand for entry of summary disposition in favor of CBA.

Plaintiff sued CBA and the Skinners for personal injuries suffered by Anthony Padilla, Jr. (Anthony), when a mixture of water and antifreeze burned Anthony after the liquid spewed from a motor vehicle owned and operated by James Skinner. The vehicle was a 1924 Ford Roadster that Skinner had rebuilt into a "hot rod." At the time that Anthony was burned, Skinner had brought his vehicle to a McDonald's Restaurant owned and operated by CBA in Birch Run. CBA had organized a

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

"cruise" night so that owners of classic or special vehicles could congregate at this McDonald's on the evening that this incident occurred.

Through discovery, the parties learned that this accident occurred because Skinner did not install a water pipe pump on his car that had a lip or rim on it so that the radiator hose was securely attached. The water and antifreeze burned Anthony when the radiator hose came off of the water pump pipe as Skinner was parking his car in CBA's lot with the assistance of a volunteer for the event.

Plaintiff sued both the Skinners and CBA for the personal injuries Anthony suffered. CBA moved for summary disposition, claiming it did not owe a duty to Anthony on the facts of this case. We agree that CBA did not owe a duty on these facts.

As part of its negligence claim, plaintiff was required to show that CBA owed a legal duty to Anthony to avoid negligent conduct. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 203; 544 NW2d 727 (1996). It is generally a question of law for the court to decide after considering the competing policy considerations involved both for and against recognizing the claimed duty. *Babula v Robertson*, 212 Mich App 45, 49; 536 NW2d 834 (1995).

To decide if a legal duty exists in a given case, courts will look to certain factors, such as: (1) the foreseeability of the harm; (2) the existence of a relationship between the parties; (3) the degree of certainty of injury; (4) the closeness of connection between the conduct and the injury; (5) the moral blame attached to the conduct; (6) the policy of preventing future harm; and (7) any burdens or consequences of imposing a duty. *Baker, supra*.

The parties agreed, for purposes of the motion, that Anthony was an invitee. In general, CBA, as an invitor, had a legal duty to "exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land" that a defendant knows or should know that an invitee will not discover, realize or protect himself against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995), quoting *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). In this case, the issue focused on whether CBA knew or, by the exercise of reasonable care, should have discovered that Skinner's car posed an unreasonable risk of harm to CBA's invitees. We do not believe that CBA owed a duty to Anthony. The problem with the radiator hose was not a defect that CBA knew of or could have discovered by the exercise of reasonable care. This case, tragic as it was, involved a risk of harm that simply could not have been anticipated by CBA. Therefore, liability cannot be imposed against CBA. *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1, 6; 535 NW2d 215 (1995).

We also do not believe that CBA had a duty to have emergency medical personnel on hand for the event. There was nothing inherently dangerous about the event, either by the activities or its size, that would have required CBA to plan for emergency medical care.

The trial court's reliance on this Court's decision in *Kendzorek v Guardian Angel Catholic Parish*, 178 Mich App 562; 444 NW2d 213 (1989), was misplaced because the facts in that case are distinguishable. In *Kendzorek*, there was an agreement allowing the independent contractor to operate

carnival rides on the defendant's property during a fair. In contrast here, there was no agreement between the car owners, including Skinner, and CBA. The owners were simply allowed to park their cars in a certain part of the lot, not unlike other McDonald's patrons.

The trial court erred in not granting CBA's motion for summary disposition. As a matter of law, CBA did not owe a legal duty to Anthony on the facts of this case. Because summary disposition was appropriate on the lack of a legal duty owed to Anthony, we need not reach CBA's second issue on appeal regarding proximate cause.

Reversed and remanded for entry of summary disposition in favor of CBA. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco