

STATE OF MICHIGAN
COURT OF APPEALS

EDNA ANDERSON, Personal Representative of the
ESTATE OF SAMUEL TERYL WHITE, Deceased,

UNPUBLISHED
December 27, 1996

Plaintiff-Appellant/
Cross-Appellee,

v

No. 171660
LC No. 91-124017-NI

CITY OF DETROIT and DETROIT POLICE
DEPARTMENT,

Defendants,

and

POLICE OFFICER DARLENE HADDON,
POLICE OFFICER RODNEY JACKSON, and
POLICE OFFICER EARNEST WILSON,

Defendants-Appellees/
Cross-Appellants.

Before: Sawyer, P.J., and Marilyn Kelly and D.A. Burress,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition to defendants and dismissing her negligence claim. Defendant Police Officers Darlene Haddon, Rodney Jackson, and Earnest Wilson have filed a cross appeal, arguing that the trial court abused its discretion in reinstating the action against them after it was dismissed by stipulation of the parties. We affirm.

According to plaintiff's complaint, three men appeared at the home where her son, Samuel Teryl White, was staying and demanded to know White's whereabouts as well as the return of some missing money. Early the next morning, as White was leaving the home, he was attacked and abducted

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

by the men. Later that morning, the men returned to the home, attempted to break in, and demanded the return of the money. When the defendant police officers arrived at the scene, the men were still there. The officers allowed the men to search the home for money. The officers then interviewed witnesses and were advised that White had been kidnapped by the men. The officers refused to arrest the men or investigate the matter any further or determine the whereabouts of White. The men were allowed to leave. The next day, White's body was found in a field; he had been tortured and murdered. Plaintiff alleged that the officers owed a duty to protect White and properly investigate the matter, that the officers' conduct was wanton and willful and constituted gross negligence, and that their conduct was the proximate cause of White's death.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). In granting the motion, the trial court held that the City of Detroit and the Detroit Police Department were entitled to governmental immunity, that the police officers only owed a duty to the public at large and did not owe a duty to White, and that the officers' conduct was not the proximate cause of White's death. Plaintiff counters that the trial court erred in determining that the police officers did not owe a duty to White because the officers appeared at the crime scene and were advised that a specific crime (kidnapping) was in progress, that a specific victim was in danger, and that the victim was in the process of being injured. We agree with defendants' position.

This Court reviews the grant of summary disposition de novo. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). A motion for summary disposition under MCR 2.116(C)(8) relies on the pleadings alone, and all well-pleaded factual allegations in a complaint are taken as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Id.* A motion for summary disposition under MCR 2.116(C)(8) should be granted "only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Id.*, 487.

A prima facie case of negligence requires proof of four elements: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty; (3) causation; and (4) damages. *Gazette v Pontiac*, 212 Mich App 162, 170; 536 NW2d 854 (1995). The question of whether a duty exists is one of law for the court's resolution. *Id.* In a negligence action, summary disposition is properly granted pursuant to MCR 2.116(C)(8) if it is determined as a matter of law that the defendant owed no duty to the plaintiff. *Id.* Under the public duty doctrine, a public official, such as a police officer, is regarded as owing his duty to the public in general and not to a specific individual unless a special relationship exists between the official and the individual such that the performance by the public official would affect the individual in a manner different in kind from the way performance would affect the public. *Harrison v Director of Dep't of Corrections*, 194 Mich App 446, 456-457; 487 NW2d 799 (1992).

In *White v Beasley*, 453 Mich 308; ___ NW2d ___ (1996), our Supreme Court recently held that the public duty doctrine shields a police officer from liability for injuries to third parties where the facts do not establish a special relationship between the officer and the victim. Applying the special-relationship test, the Supreme Court found that the plaintiff did not allege facts sufficient to suggest that there was direct contact between the police officer and the victim, and failed to suggest that the victim justifiably relied on any affirmative action taken by the police department. *Id.* at 324-325. The

Supreme Court concluded that the plaintiff failed to state a claim on which relief could be granted. *Id.* at 325.

Similarly, in *Brown v Shavers*, 210 Mich App 272, 275-276; 532 NW2d 856 (1995), this Court relied on the holding in *Harrison* that the existence of a special relationship requires some contact between the government official and the victim and reliance by the victim upon the promises or actions of the government official, to find that the police officer did not have a duty to the victim. See also *Gazette, supra*, 171-172.

Based on these cases, we find that the defendant police officers did not have a special relationship with White and did not owe a duty to him. As in *White*, plaintiff did not allege facts sufficient to suggest that there was direct contact between the defendant police officers and White, or that White justifiably relied on any affirmative action taken by the police department. Therefore, the trial court properly found that plaintiff failed to state a claim on which relief can be granted. *Peters, supra*.

Plaintiff also argues that the trial court erred in determining that defendant police officers were immune from liability because their negligence was not the sole proximate cause of White's death. Even assuming a rational factfinder could determine that the officers' conduct was "a" proximate cause of the victim's murder, *Dedes v Asch*, 446 Mich 99; 521 NW2d 488 (1994), this determination does not require reversal in light of our previous determination that the officers owed no duty to White.

Finally, defendant police officers argue on cross appeal that the trial court abused its discretion in reinstating this action after it was dismissed by stipulation of the parties. We disagree. A trial court's decision on a motion for relief from judgment is governed by MCR 2.612(C), and will not be reversed absent an abuse of discretion. *Redding v Redding*, 214 Mich App 639, 642-643; 543 NW2d 75 (1995). Pursuant to MCR 2.612(C)(1)(a), the trial court may grant a party relief from a judgment or order on the grounds of mistake, inadvertence, surprise, or excusable neglect. A motion for relief from a judgment or order must be made within a reasonable time, and, for these grounds, within one year after the judgment or order was entered. MCR 2.612(C)(2). Whether a given act of neglect is excusable is a matter for the trial court to decide. *Great American Ins Co v Old Republic Ins Co*, 180 Mich App 508, 510; 448 NW2d 493 (1989); *Muntean v Detroit*, 143 Mich App 500, 510; 372 NW2d 348 (1985). Implicit in the court rule is an understanding that mistakes and oversights do occur. *Great American Ins Co, supra*.

Affirmed.

/s/ David H. Sawyer

/s/ Marilyn Kelly

/s/ Daniel A. Burress