

STATE OF MICHIGAN
COURT OF APPEALS

CORAZON CO, Individually and as Next Friend
of STEPHEN CO-LIM, a Minor,

UNPUBLISHED
January 10, 1997

Plaintiffs-Appellants,

v

No. 186249
Wayne County
LC No. 94-405277

CHILDREN'S WORLD LEARNING CENTER
and SANDY HILTON,

Defendants-Appellees.

Before: Corrigan, P.J., and Sullivan* and T.G. Hicks,** JJ.

PER CURIAM.

Plaintiffs¹ appeal by right the order granting summary disposition to defendants in this negligence action arising from a noncustodial parent's abduction of his child from a day care center. We affirm.

Plaintiffs first argue that the circuit court should not have granted summary disposition under MCR 2.116(C)(10) because defendants Children's World Learning Center and its director, Sandy Hilton, owed plaintiff and her son, Stephen, a duty not to release Stephen into the custody of his father, plaintiff's estranged husband Eric Lim. Plaintiffs contend that their updated child emergency information card, which no longer listed Lim as Stephen's parent, put defendants on notice not to release Stephen to Lim. We disagree.

A motion for summary disposition may be granted when, "[e]xcept as to the amount of damages, there is no genuine issue of material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). This subsection of the rule tests whether a factual basis exists for the claim. *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995). When deciding a motion under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence in favor of

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

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

the party opposing the motion. *Id.* This Court's review of a trial court's decision whether to grant summary disposition is de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

To establish a prima facie case of ordinary negligence, a plaintiff must prove: (1) that the defendant owed him a duty; (2) that the defendant breached that duty; (3) that the defendant's breach of that duty was a proximate cause of the plaintiff's damages; and (4) that the plaintiff suffered damages. *Jackson v Oliver*, 204 Mich App 122, 125; 514 NW2d 195 (1994). Duty is an obligation to which the law will give recognition and effect to conform to a particular standard of conduct towards another. *Poe v Detroit*, 179 Mich App 564, 569; 446 NW2d 523 (1989). Whether a duty exists is a question of law for the court to decide. *Schneider v Nectarine Ballroom, Inc (On Remand)*, 204 Mich App 1, 4; 514 NW2d 486 (1994). Summary disposition is appropriate in a negligence action when a court finds that the defendant owed the plaintiff no duty. *Marr v Yousif*, 167 Mich App 358, 361; 422 NW2d 4 (1988).

Viewing the evidence in favor of plaintiffs, we hold that defendants owed plaintiffs no duty. Plaintiff conceded that she never informed defendants that they were no longer authorized to release Stephen to Lim under the existing court order. The updated child information card was not sufficient written notice. Before plaintiff submitted the updated card, Lim had picked up Stephen from defendants' center on several occasions with plaintiff's consent. In those circumstances, plaintiff had not communicated her specific prior approval to defendants. Because defendants previously had released Stephen into Lim's custody without plaintiff's approval, they merely continued the practice because plaintiff had not provided sufficient notice of the custody change.

Further, because plaintiff had not given defendants a copy of the temporary custody order she had been granted before Stephen's abduction, defendants legally could not have prevented Lim from taking Stephen. MCL 722.2; MSA 25.244(2) provides:

Unless otherwise ordered by a court order, the parents of an unemancipated minor are equally entitled to the custody, control, services and earnings of the minor, but if 1 parent provides, to the exclusion of the other parent, for the maintenance and support of the minor, that parent has the paramount right to control the services and earnings of the minor.

Thus, parents equally are entitled to the custody of their minor children and defendants had no authority, absent the custody order itself, to withhold Stephen from Lim. Because defendants owed no duty to plaintiffs under the circumstances of this case, summary disposition was appropriate.

Plaintiffs' arguments based on an alleged breach of contract and negligent misrepresentation and those regarding defendants' employee handbook are abandoned because plaintiffs failed to cite any authority in support of those claims. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Vugterveen Systems, Inc v Olde Millpond Corp*, 210 Mich App 34, 46-47; 533 NW2d 320 (1995). Finally, we find it ironic that plaintiff relies on the subsection of the employee handbook

regarding custody orders when she neglected to provide a copy of the pertinent custody order to defendants and failed to mention to them that the order existed.

Affirmed.

/s/ Maura D. Corrigan

/s/ Joseph B. Sullivan

/s/ Timothy G. Hicks

¹ Hereinafter, "plaintiff" will be used to refer to Corazon Co and Stephen Co-Lim will be identified by his first name.