

STATE OF MICHIGAN  
COURT OF APPEALS

---

JAMIE TYLER,

Plaintiff-Appellant,

v

AMY PREDUM and CAROL PREDUM,

Defendants-Appellees.

---

UNPUBLISHED

June 6, 1997

No. 192661

Kalamazoo Circuit Court

LC No. 95-002033-NI

Before: Sawyer, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendants summary disposition in this negligence action. We affirm.

Defendant<sup>1</sup> brought her motion for summary disposition pursuant to MCR 2.116(C)(8), arguing that she owed no duty to plaintiff, and MCR 2.116(C)(10), arguing that her actions were not the proximate cause of plaintiff's injuries. The trial court granted summary disposition solely on the basis that defendant owed plaintiff no duty of care. We assume, therefore, that summary disposition was granted under MCR 2.116(C)(8). See *Dykema v Gus Macker*, 196 Mich App 6, 9; 492 NW2d 472 (1992). Thus the issue before this Court is whether the driver of a car has a legal duty to protect a drunken adult passenger who requests during an argument that the driver stop the car, threatens to jump from the car, and finally does jump from the front passenger seat. The car was moving at fifty-five to sixty miles per hour, and the passenger suffered serious personal injury.

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim, and is reviewed de novo. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994). When reviewing a motion decided under MCR 2.116(C)(8), this Court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. *Id.* Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and thus justify recovery. *Id.*

In order to state a negligence cause of action, a plaintiff must establish the existence of a duty

owed by the defendant to the plaintiff. *Dykema, supra* at 8. The term “duty” has been defined as “essentially a question of whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor’s part for the benefit of the injured person.” *Horn v Arco Petroleum Co*, 170 Mich App 390, 392; 427 NW2d 582 (1988). In general, there is no duty to aid or protect another person. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). However, a special relationship between the plaintiff and defendant, in which the injured plaintiff entrusted himself to the control and protection of the defendant, may give rise to a legal obligation on the defendant’s part for the benefit of the injured plaintiff. *Dykema, supra* at 8-9.

The scope and extent of the duty to protect is essentially a question of public policy. *Williams, supra* at 499. In determining whether to impose a legal duty to protect, a court should

balance the societal interests involved, the severity of the risk, the burden upon the defendant, the likelihood of occurrence, and the relationship between the parties. . . . Other factors which may give rise to a duty include the foreseeability of the [harm], the defendant’s ability to comply with the proposed duty, the victim’s inability to protect himself from the [harm], the costs of providing protection, and whether the plaintiff had bestowed some economic benefits on the defendant. [*Dykema, supra* at 9.]

Under the facts of this case, we decline to find the existence of a special relationship imposing a duty upon defendant to protect plaintiff from injuring himself. These facts do not support a finding that plaintiff entrusted himself to defendant’s protection or lost the ability to protect himself. See *Id.* at 10. We agree with the trial court, which stated during its grant of summary disposition to defendant that “it would be bad social policy to reward somebody with a cause of action who has, in their own hands, the ability to control their own fate to the extent that this person had in his hands.” As a matter of public policy, plaintiff had complete control to prevent his own injuries and should not now be allowed to look to defendant to compensate him for those injuries.

Affirmed.

/s/ David H. Sawyer  
/s/ Henry William Saad  
/s/ Hilda R. Gage

<sup>1</sup> “Defendant” refers to Amy Predum, the driver of the car. Carol Predum, Amy’s mother, owned the car.