

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD HUNT,

Plaintiff-Appellant,

v

NORMA APPLGATE,

Defendant-Appellee.

UNPUBLISHED

December 1, 1998

No. 205732

St. Joseph Circuit Court

LC No. 96-000404 NO

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of his negligence action. MCR 2.116(C)(10). Plaintiff sought to impose liability on defendant for failing to take actions to prevent her husband from shooting him. We affirm.

Generally, an individual has no duty to protect another who is endangered by a third party's conduct. *Murdock v Higgins*, 454 Mich 46, 54; 559 NW2d 639 (1997). Where there is a duty to protect another from a harm by a third party, that duty to exercise reasonable care arises from a special relationship either between the defendant and the victim or the defendant and the third party who caused the injury. *Id.*

Plaintiff relies on the marital relationship existing between defendant and her husband to support his claim of the existence of a special relationship sufficient to have imposed a duty on defendant to protect him from her husband. The existence of a marital relationship does not automatically impose upon one spouse a legal obligation to protect third persons from the dangerous or negligent acts of the other spouse. *Petersen v Heflin*, 163 Mich App 402, 407; 413 NW2d 810 (1987). Special facts and circumstances underlying some marital relationships may give rise to such a duty, however. *Id.* These special facts and circumstances include special knowledge or training with regard to a spouse's mental state, a special ability to control the conduct of a spouse or the involvement of both spouses in the circumstances culminating in the harm to the third party. *Id.*, 407-408.

On the instant evidentiary record, there are no special facts or circumstances underlying defendant's marital relationship that would give rise to a duty to protect plaintiff from her husband.

Defendant had no knowledge that her husband was going to shoot plaintiff on the date in question. There is no evidence that defendant had any special knowledge or training with regard to her husband's mental state. There is no evidence that defendant had a special ability to control her husband's conduct on the day of the shooting, particularly where defendant was not home at the time of the shooting and had no notice of her husband's intent to shoot plaintiff that day. Finally, there is no evidence that defendant in any way created or contributed to the circumstances immediately surrounding the shooting. In light of the foregoing, the trial court did not err when it granted summary disposition because of the lack of any duty on the part of defendant to plaintiff. *Id.*, 407-408.

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra