

STATE OF MICHIGAN
COURT OF APPEALS

GARY N. KARASCH,

Plaintiff-Appellant,

v

ROBERT ZACHOES,

Defendant-Appellee.

UNPUBLISHED

February 5, 2004

No. 243218

Iosco Circuit Court

LC No. 01-003679-NO

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant hired plaintiff, a contractor, to paint his house. Plaintiff placed his ladder against defendant's house in order to climb to a second story window. Defendant held the base of the ladder while plaintiff climbed to a height of approximately ten feet. Defendant ceased holding the ladder and left the area without giving notice to plaintiff. Several minutes later the ladder lurched to one side and plaintiff fell to the ground, sustaining injuries.

Plaintiff filed suit alleging that defendant's act of volunteering to hold the ladder imposed a duty on him to exercise due care, and that by leaving the area without giving notice, defendant breached that duty. Plaintiff asserted that his injuries were proximately caused by defendant's breach of duty. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that he owed no legal duty to plaintiff to protect him in the use of the ladder and/or to prevent him from falling from the ladder, and that plaintiff presented nothing more than conjecture as to why the ladder lurched to the side.

The trial court granted defendant's motion for summary disposition, noting that the undisputed evidence showed that defendant volunteered to hold the ladder, and that plaintiff did not base his decision to climb the ladder on defendant's action. The trial court concluded that defendant's act of holding the ladder did not create a duty to plaintiff, and did not increase the risk to plaintiff.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

The issue of duty is a question of law for the court. *Moning v Alfonso*, 400 Mich 425, 437; 254 NW2d 759 (1977). The concept of duty encompasses whether the defendant owes the plaintiff an obligation to avoid negligent conduct. In deciding whether a duty should be imposed, the court must look at several factors, including the relationship of the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented. Absent a duty there can be no actionable negligence. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 359; 584 NW2d 345 (1998). If a person who has no duty nevertheless chooses to act, he is bound to use reasonable care so as not to increase the danger to the plaintiff. *Terrell v LBJ Electronics*, 188 Mich App 717, 720; 470 NW2d 98 (1991).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree. Defendant volunteered to hold the ladder for plaintiff. The record fails to show that plaintiff ascended the ladder in reliance upon defendant's act, or that defendant's act of leaving the area contributed to the ladder lurching to the side. Put another way, there was nothing to prove that defendant's actions increased the risk to plaintiff. Cf. *Lindsley v Burke*, 189 Mich App 700, 704-705; 474 NW2d 158 (1991). Because plaintiff failed to present evidence establishing the cause of the accident, he has not made out a prima facie case of negligence. *Stefan v White*, 76 Mich App 654, 661; 257 NW2d 206 (1977). The trial court properly found that defendant owed no duty to plaintiff to hold the ladder or that defendant's voluntary act of holding the ladder increased the danger to plaintiff. Accordingly, summary disposition was properly granted to defendant. *Moning, supra; Hakari, supra; Terrell, supra*.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood