S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

ESTATE OF JESSICA READUS by ANGELA READUS, Personal Representative, RAELYNN COLE, a Minor, by her Next Friend ANGELA READUS, and ANGELA READUS and ANTHONY READUS, Individually,

Plaintiffs-Appellants,

UNPUBLISHED
March 20, 2012

v

No. 301218
Wayne Circuit Court
LC No. 10-001123-NI

MICHELLE ROGERS,

Defendant-Appellee.

Before: O'CONNELL, P.J., and SAWYER and TALBOT, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

The facts in this matter are undisputed. On March 3, 2009, at about 7:15 or 7:20 in the morning, defendant went outside and started her car, which was parked in the driveway next to her home behind a closed and latched, but not locked, gate. She was warming up her car before she took her children to school at 7:25 a.m. Minutes later, her car was stolen. The thief got into a car accident approximately 10 minutes later, killing plaintiff Jessica Readus and injuring the other plaintiffs, Jessica's parents and sister. Defendant testified at a deposition that her husband's car had been stolen from in front of their house years before. Plaintiffs presented expert reports indicating that defendant's neighborhood had a high rate of crime, including auto thefts. Plaintiffs sued defendant for negligence. The trial court granted defendant's motion for summary disposition, finding that defendant did not owe a duty to plaintiffs.

In *Terry v City of Detroit,* 226 Mich App 418, 423-428; 573 NW2d 348 (1997), this Court discussed the duty owed by the owner of a vehicle that has been stolen to those injured by the vehicle while driven by the thief. The *Terry* Court established several criteria to evaluate such claims. Duty, the obligation to avoid negligent conduct, is a question of law, and summary disposition is appropriate where a defendant owes no duty to a plaintiff. *Id.* at 424. To determine whether a duty is owed, a court should look at a number of variables, including

the (1) foreseeability of the harm, (2) degree of certainty of injury, (3) existence of a relationship between the parties involved, (4) closeness of connection between the conduct and injury, (5) moral blame attached to the conduct, (6) policy of preventing future harm, and (7) the burdens and consequences of imposing a duty and the resulting liability for breach. . . . The mere fact that an event may be foreseeable is insufficient to impose a duty upon the defendant. [*Id.* at 424, citing *Buczkowski v McKay*, 441 Mich 96, 101; 490 NW2d 330 (1992).]

In *Terry,* a vehicle owned by the defendant General Motors (GM) was stolen, GM employees routinely left their keys under the floor mat of their unlocked cars in a secure, underground parking lot to allow for easier maintenance and cleaning, and other cars had been stolen from another GM lot across the street. The plaintiffs were injured during a high speed chase involving GM's stolen vehicle. The trial court granted summary disposition to GM, finding that "the connection between GM's conduct and plaintiffs' injuries was simply too attenuated to impose a duty and resulting liability for breach of duty on GM." *Id.* at 427. The thief's conduct in stealing the vehicle and driving recklessly was more closely connected to the plaintiffs' injuries. Further, it was found that GM's conduct was not particularly blameworthy and did not create the unreasonable risk of harm to third persons that would warrant a finding of duty. *Id.* at 427-428.

Applying the facts of this case to the *Terry* analysis, this Court finds that defendant owed no duty to plaintiffs. It was not highly foreseeable that leaving one's car running for a few minutes beside one's home, behind a closed and latched gate, would result in the car being stolen, that the thief would drive recklessly, and that the injuries suffered by these plaintiffs would result. There was no relationship between defendant and plaintiffs. Defendant's conduct was not closely related to plaintiffs' injuries and was not blameworthy or morally reprehensible. The policy of preventing future injuries to people in car accidents would not be greatly furthered by punishing defendant for warming up her car. The facts that defendant lived in an area with a high rate of crime, particularly car thefts, that a car had been stolen from in front of her house some years earlier, and that there is a high rate of accidents among stolen cars did not impose a duty on defendant to prevent the accident that injured plaintiffs.

Finally, although plaintiffs argue that summary disposition was improper under *Davis v Thornton,* 384 Mich 138, 144-145; 180 NW2d 11 (1970), the *Terry* Court recognized that the *Davis* foreseeability analysis was no longer viable in light of the holding in *Buczkowski,* 441 Mich at 101-103. *Terry,* 226 Mich App at 426 n 4.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael J. Talbot