

STATE OF MICHIGAN
COURT OF APPEALS

CANDIE LEE FARRAR, Personal Representative of
the ESTATE OF NICOLE RAE KENWORTHY,

Plaintiff-Appellant,

v

JODY MISCH,

Defendant-Appellee.

UNPUBLISHED
February 25, 2025
10:43 AM

No. 364360
Muskegon Circuit Court
LC No. 2021-004152-NO

ON REMAND

Before: SWARTZLE, P.J., and LETICA and GARRETT, JJ.

PER CURIAM.

This matter returns to this Court on remand from our Supreme Court with directions “to consider whether plaintiff’s negligence claim based on failure to rescue was separate and distinct from the pleaded premises liability claim.” *Farrar v Misch*, ___ Mich ___, 12 NW3d 440 (2024). We reverse and remand for further proceedings.¹

I. BACKGROUND

Defendant invited plaintiff’s decedent over one evening in April 2020 to his 50-acre family property on which he was staying in a camper. The decedent told him that she was “fighting some serious spiritual battle[s].” The decedent’s roommate dropped her off around 11:00 p.m., and the decedent was in her “right mind” when she arrived. According to defendant, he and the decedent spoke and read scripture together. Defendant and the decedent had previously spoken about how defendant was the son of a missionary and had gone to one year of Christian college. The decedent had previously spoken with defendant about demon possession, not being able to sleep, and feeling

¹ In the original appeal, Judge SERVITTO, now retired, sat on the panel. On remand, Judge LETICA has been substituted in her place.

like voices were talking to her. Defendant and the decedent had also engaged in sexual relations in the past.

When the decedent began to get upset, defendant told her to call her roommate to pick her up. The decedent did not want to do this, threw her belongings on the ground, and began to walk into the woods. Defendant told the decedent that there was no way to walk out, and it was the middle of the night, and the decedent was “half singing a song, half talking to herself” as she walked toward the woods. Defendant followed her, and “she got frantic,” told defendant that he was the devil and not to touch her. Defendant backed away, but the decedent kept walking into the woods, and he followed her again to tell her to call her roommate. The decedent said no and continued into the woods. Defendant saw that the decedent’s feet were in the swamp water.

Defendant returned to the camper and went to bed. He later claimed to have thought that decedent would return, pick up her stuff, and leave. He could not handle the decedent’s “psychotic breakdown or whatever she had.” Defendant woke up in the morning and saw her belongings on the ground. He took his children home and then dropped off the decedent’s belongings at the police department and reported her missing. Defendant told police that it was not easy to get through the property, with swamp “so thick you can’t climb through it.” Defendant noted that the only thing he did wrong was not call the police the night of the incident. Police later found decedent, who had drowned in the swamp.

Plaintiff sued defendant for wrongful death based on negligence and premises liability. As to negligence, plaintiff alleged that defendant represented himself as providing counseling to the decedent, and he knew or should have known about her mental or emotional disorder. Further, defendant was under a duty not to act in a manner to harm or exacerbate her symptoms. Defendant also failed to call for assistance after it became apparent that the decedent needed help.

The trial court granted defendant’s motion to dismiss both claims under MCR 2.116(C)(10). The trial court found that the decedent died from drowning, rather than from her emotional state, and that there were no facts demonstrating that she needed assistance. Further, the trial court found that plaintiff had not demonstrated that the decedent had entrusted herself to defendant’s protection and control. In our previous opinion, we reversed and remanded as to the premises liability claim, but found that the negligence claim was not separate from that claim. We now address whether the negligence claim was separate and distinct and whether the trial court erred by granting defendant summary disposition on that count.

II. ANALYSIS

“We review de novo a trial court’s decision to grant or deny a motion for summary disposition.” *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020). Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* We also review de novo whether one party owes a duty to another. *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007).

“In a premises liability claim, liability emanates merely from the defendant’s duty as an owner, possessor, or occupier of the land.” *Laier v Kitchen*, 266 Mich App 482, 493; 702 NW2d

199. A plaintiff may, however, make “a separate claim grounded on an independent theory of liability based on the defendant’s conduct.” *Id.*

Plaintiff alleged negligence separately from the premises-liability claim. For purposes of the negligence claim, the injury arose, allegedly, out of defendant’s conduct in inviting the decedent to his property for counseling and failing to respond properly to the circumstances presented, unrelated to defendant’s duty as an owner, possessor, or occupier of the property.

Next, there was question of fact about whether defendant had a duty to rescue in this situation. To establish a claim premised on common-law negligence, “a plaintiff must demonstrate that (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the plaintiff suffered damages, and (4) the defendant’s breach was a proximate cause of those damages.” *Jeffrey-Moise v Williamsburg Towne Houses Coop, Inc.*, 336 Mich App 616, 624; 971 NW2d 716 (2021). “Duty is 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.” *Moning v Alfonso*, 400 Mich 425, 438-439; 254 NW2d 759 (1977). “[T]he question whether there is the requisite relationship, giving rise to a duty, and the question whether the cause is so significant and important to be regarded a proximate cause both depend in part on foreseeability.” *Id.* at 439.

A person does not, generally, have a duty to aid or protect another person. *Williams v Cunningham Drug Stores, Inc.*, 429 Mich 495, 498-499; 418 NW2d 381 (1988). There are, however, certain special relationships that give rise to a duty to aid or protect another from foreseeable harm. *Id.* at 499. A determination of whether a duty-imposing special relationship exists must “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.” *Murdock v Higgins*, 208 Mich App 210, 215; 527 NW2d 1 (1994) (cleaned up). Factors that “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 benefit on the defendant.” *Id.* (cleaned up). “Implicit in a social venture is the understanding that one will render assistance to the other when he is in peril if one can do so without endangering himself.” *Dumka v Quaderer*, 151 Mich App 68, 73; 390 NW2d 200 (1986).

Viewing the evidence in the light most favorable to the nonmovant, plaintiff raised a question of fact to support her negligence claim. On the question of duty, plaintiff alleges that defendant and the decedent had a special relationship to support defendant’s duty. Plaintiff contends that this case is factually analogous to *Farwell v Keaton*, 396 Mich 281; 240 NW2d 217 (1976), in which a plurality of our Supreme Court recognized a duty to render aid to a person in peril between two social companions. In *Farwell*, 396 Mich at 287, our Supreme Court also noted that there is a “recognized legal duty of every person to avoid any affirmative acts which may make a situation worse.” In that case, the defendant drove around with his unconscious friend, who later died, for two hours after he was injured. *Id.* at 285. The defendant could not wake up his friend, and he left him in the car in the driveway of the friend’s grandparents’ home without telling anyone about his friend’s state. *Id.* Because the defendant knew, or should have known, that his friend was unconscious and that nobody would find him before morning, he had the duty

to obtain medical assistance for his friend or at least notify someone, which he could do so without endangering himself. *Id.* at 291-292.

Likewise, in this case, plaintiff has raised a genuine question of fact about whether defendant should have sought assistance for the decedent. Defendant invited the decedent to his remote property, and the decedent wanted to talk with him about her struggles. After the decedent became upset, defendant told her to leave. Plaintiff argues that the decedent was in her right mind when she arrived at defendant's home, but his spiritual counseling was disturbing to her, which resulted in the decedent "flee[ing] whereupon she became tangled in heavy brush, in a swamp, on a dark cold night." Defendant admittedly saw the decedent standing in swamp water while emotionally distressed, with nobody else around who could have helped.

There is also a genuine question of material fact about whether the risk was foreseeable. Defendant knew that the decedent could not walk out of the property and that she was in mental distress, and he did not contact anyone to help her. The burden on him was minimal compared to the risk faced by the decedent, who was in swamp water, in the dark, on a property with which she was unfamiliar. See *Murdock*, 208 Mich App at 215. Accordingly, the trial court erred by dismissing plaintiff's negligence claim.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Anica Letica
/s/ Kristina Robinson Garrett