

STATE OF MICHIGAN
COURT OF APPEALS

JOHN DOE, Individually, and as Personal
Representative of the Estate of JANE DOE,
Deceased,

UNPUBLISHED
January 31, 2006

Plaintiff-Appellant,

v

ROMAN CATHOLIC ARCHBISHOP OF THE
ARCHDIOCESE OF DETROIT, ST. FRANCES
CABRINI, CARDINAL ADAM MAIDA,¹
REVEREND ALFRED MILLER, BISHOP
THOMAS J. GUMBLETON and BISHOP
WALTER J. SCHOENHERR,

No. 263555
Wayne Circuit Court
LC Nos. 03-337674-CZ
04-408146-CZ

Defendants-Appellees.

Before: Murray, P.J. and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff, John Doe, filed this action on behalf of himself and his deceased wife, Jane Doe, alleging that, between 1971 and 1975, defendant Reverend Alfred Miller, a former Roman Catholic priest, sexually abused plaintiff's son, "SG,"² while SG attended school at defendant St. Frances Cabrini, a Catholic Church in Allen Park, Michigan. The trial court granted defendants' motions for summary disposition pursuant to MCR 2.116(C)(7) on the basis that the statutory periods of limitation had expired on plaintiff's claims and neither fraudulent concealment nor the discovery rule tolled them. Plaintiff appeals as of right arguing that the trial court erred in ruling that the statutory periods of limitation were not tolled. We affirm the trial court's order, not on

¹ Although the trial court denied plaintiff's motion to amend his complaint to add Cardinal Adam Maida as a party, the trial court granted plaintiff's motion to consolidate docket number 04-408146-CZ with 03-337673-CZ, in which Cardinal Maida was already named as a defendant.

² Plaintiff's complaint designates his son as "SG." In other pleadings, including plaintiff's brief on appeal, he refers to his son as "GS." We use "SG" for the sake of consistency.

the basis that the statutory periods of limitation were not tolled, but, pursuant to MCR 2.116(C)(8) on the grounds that plaintiff failed to state claims upon which relief may be granted.

I. Facts

Plaintiff was a longtime member of Cabrini. He and his now deceased wife, Jane Doe, were married for more than 49 years before Jane Doe's death in 2003. The Does attended church every Sunday and were active in church activities. In 1963, the Does enrolled SG in Cabrini's educational system, where he attended until he finished high school in 1975. Because plaintiff worked as a printer for the Detroit News and Jane Doe was a full-time homemaker, paying for SG's tuition at Cabrini was a hardship for the family.

While SG attended high school, Miller became a mentor to SG purportedly to prepare SG for the priesthood. During this time, Miller took SG on overnight trips, recommended SG for jobs at the rectory, required that SG stay after school for alleged "church related" activities, required that SG spend time with him on weekends and holidays, and refused to allow the Does to observe or participate in these events. According to SG, Miller used this time alone with him to sexually assault him. After SG finished high school, Miller continued to visit SG at Sacred Heart and St. John's Seminaries in attempts to engage in sexual relations with him. Miller threatened SG that if he disclosed their sexual activities, no one would believe him and Miller would no longer recommend SG for the priesthood. SG did not inform his parents of Miller's abuse until July 11, 2002. Subsequently, Jane Doe steadily lost weight, ceased eating, and spontaneously burst into tears. She died of an embolic stroke on September 16, 2002.

II. Standard of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Willis v Deerfield Twp*, 257 Mich App 541, 548; 669 NW2d 279 (2003). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of the of the complaint on the basis of the pleadings alone. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). All well-pleaded factual allegations in support of the claim are accepted as true and construed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.*, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992).

III. Analysis

A. Breach of Contract

Plaintiff alleged a breach of contract claim against the Archdiocese of Detroit and Cabrini. Specifically, he alleged:

62. Plaintiffs^[3]contracted with the Archdiocese of Detroit and Cabrini, jointly and severally, to educate their son in a trusting and safe environment.

63. Plaintiffs paid various sums of money each and every year that their son attended the Cabrini school system.

64. Defendants Archdiocese of Detroit and Cabrini, jointly and severally, knew or should have known of the dangerous conditions and environment to which SG was to be exposed at the time of contracting with Plaintiff, yet failed to disclose same to Plaintiffs, recklessly and intentionally disregarding the facts with reasonably foreseeable harm and consequences to follow.

65. Defendants, jointly and severally, breached their contract with Plaintiffs by failing to provide such safe environment.

It is well established that the gravamen of an action is determined by reading the claim as a whole. *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 253; 506 NW2d 262 (1993). Plaintiff has labeled this claim “Breach of Contract.” However, as pleaded, plaintiff’s claim alleges that the Archdiocese and Cabrini failed to keep SG safe when they “knew of should have known of the dangerous conditions and environment to which SG was to be exposed . . . failed to disclose same to Plaintiffs, recklessly and intentionally disregarding the facts with reasonably foreseeable harm and consequences to follow.” These allegations sound in premises liability.

In the context of premises liability, the duty a defendant landowner owes a plaintiff depends on the plaintiff’s status on the land. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). A person invited on the land for the owner’s commercial purposes or pecuniary gain is an invitee. *Id.* at 604. In general, an owner “owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land.” *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001).⁴ In this case, the invitee who was allegedly injured was SG, not plaintiff. Therefore, plaintiff has no standing to bring a premises claim against defendant for SG’s injury.

B. Breach of Fiduciary Relationship or Special Relationship

1. Fiduciary Relationship

Plaintiff also alleged a breach of fiduciary relationship against the Archdiocese and Cabrini. A fiduciary relationship arises from the reposing of faith, confidence, and trust, along with the reliance of one on the judgment and advice of another. *Vicencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 508; 536 NW2d 280 (1995). A fiduciary is under a duty to the principal

³ Although plaintiff used the plural term “plaintiffs,” plaintiff John Doe is the only plaintiff in this case filing on behalf of himself and the estate of his deceased wife Jane Doe.

⁴ Furthermore, see section III(B)(2) which notes that a person generally owes no duty to protect another from the criminal acts of a third party.

to act for the benefit of the principal concerning matters within the scope of the relationship. *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 581; 603 NW2d 816 (1999). A plaintiff is entitled to relief when a fiduciary relationship arises and the fiduciary's influence has been acquired and abused, or when confidence has been reposed and betrayed. *Vicencio, supra* at 508.

To the extent that the alleged relationship was premised on religious matters, this Court has already declined to recognize a fiduciary duty on the part of a religious organization if it would involve inquiry into religious doctrine and ecclesiastical policy. *Teadt, supra* at 578-580. To the extent that the alleged fiduciary duty was not based on religious matters, it is a basic principle that a negligence claim requires breach of a duty owed to the *plaintiff*. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 469; 646 NW2d 455 (2002). Plaintiff has alleged that defendants owed him a duty to protect SG. But if defendants owed any duty to protect SG, that duty ran to SG, not to plaintiff. Therefore, plaintiff has failed to state a breach of fiduciary duty claim upon which relief may be granted.

2. Special Relationship

Plaintiff also alleged negligence based on a special relationship against the Archdiocese and Cabrini. It is well-established that in all negligence claims, "a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). "[A] negligence action may be maintained only if a legal duty exists that requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm." *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). In general, there is no legal duty obligating one person to aid or protect another, and in particular, "an individual has no duty to protect another from the criminal acts of a third party in the absence of a special relationship between the defendant and the plaintiff or the defendant and the third party." *Id.* at 493.

Plaintiff alleged that he had a special relationship with the Archdiocese and Cabrini. If so, these defendants would have had a duty to protect *plaintiff* from the criminal acts of a third party. If the Archdiocese and Cabrini has a special relationship with SG, then it would have had a duty to protect SG from the criminal acts of a third party. Thus, as pleaded, plaintiff cannot maintain an action for SG's injury on the basis that plaintiff had a special relationship with the Archdiocese and Cabrini.⁵

⁵ On appeal, plaintiff cites several cases for the proposition that a fiduciary or special relationship exists in this case. These cases, however, support our conclusion that the duties alleged ran to SG, not his parents. In each of these cases, the child, not the parents, maintained claims for breach of fiduciary duty or a duty owed by special relationship. *Phillips v Deihm*, 213 Mich App 389; 542 NW2d 566 (1995); *Gaincott v Davis*, 281 Mich 515; 275 NW 229 (1937); *Garza v Northwest Airlines, Inc*, 305 F Supp2d 777 (ED Mich 2004); *Funkhouser v Wilson*, 89 Wash App 644, 660; 950 P 2d 501 (1998).

C. Negligence Under MCL 722.621

Plaintiff also alleged negligence arising from MCL 722.621 *et seq.* against all defendants. Specifically, they alleged that MCL 722.623 imposed a duty on defendants to report child abuse. However, neither the statute nor any case law provide that the statutory reporting duty, with its attendant civil liability, runs to any person other than the allegedly abused child. *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). Therefore, plaintiff has failed to state a claim upon which relief can be granted.

D. Intentional or Negligent Misrepresentation

Plaintiff also alleged against defendants intentional or negligent misrepresentation that induced him and Jane Doe to “contract, pay, and entrust their son to Defendants.” Fraudulent misrepresentation requires proof:

(1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. [*Temborius v Slatkin*, 157 Mich App 587, 596-597; 403 NW2d 821 (1986) (punctuation and citations omitted).]

“In allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity.” MCR 2.112(B)(1).

Plaintiff only alleged that defendants “made misrepresentations and/or omitted material facts, in order to induce Plaintiffs to believe that their son would receive a quality education under the guidance of the Catholic Church in a safe and trusting environment.” Plaintiff nowhere in the complaint alleged with particularity the circumstances in which the representations were made. Therefore, plaintiff has failed to state a fraud claim upon which relief may be granted.

Plaintiff also alleged that defendants intentionally omitted information to induce plaintiff to enter into a contract with them. Plaintiff appears to rely on silent fraud, which requires a duty to make a disclosure. However, mere nondisclosure is insufficient. To prove silent fraud, there must be a suppression of material facts where the defendant has a legal or equitable duty of disclosure. *Hord v Environmental Research Institute of Michigan (After Remand)*, 463 Mich 399, 412; 617 NW2d 543 (2000); *Mable Cleary Trust v The Edward-Marlah Muzyl Trust*, 262 Mich App 485, 500; 686 NW2d 770 (2004). “A legal duty to disclose commonly arises from a circumstance in which the plaintiff inquires regarding something, to which the defendant makes a false or misleading representation by replying incompletely with answers that are truthful but omit material information.” *Mable, supra* at 500. Plaintiff has merely pleaded nondisclosure. He has not pleaded that he inquired about something only to have defendants make a false or misleading representation. Thus, plaintiff has failed to state silent fraud claim upon which relief may be granted.

E. Negligence

Plaintiff also alleged negligence against Miller, the Archdiocese, and Cabrini. The existence of a legal duty is a question of law. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). "Duty can arise from a statute or a contract or by application of the basic rule of common law, which imposes an obligation to use due care or to act so as not to unreasonably endanger the person or property of others." *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999). "Duty concerns whether a defendant is under any legal obligation to act for the benefit of the plaintiff." *Valcaniant v Detroit Edison Co*, 470 Mich 82, 86 n 4; 679 NW2d 689 (2004) (emphasis omitted). Here, if there was any common law duty to protect SG from harm, it was to SG, not plaintiff. Therefore, plaintiff has failed to state a negligence claim upon which relief can be granted.

F. Tortious Infliction of Emotional Distress

Michigan has recognized a cause of action based on negligence in a parent who witnesses the negligent infliction of injury to his or her child and suffers emotional distress as a consequence. See, *Miller v Cook*, 87 Mich App 6; 273 NW2d 567 (1987); *Gustafson v Faris*, 67 Mich App 363; 241 NW2d 208 (1976). The parameters of this cause of action were delineated in *Gustafson, supra* at 368-369, which adopted the limitations set forth in Prosser, Torts (4th ed), § 54, pp 334-335 and thereby created four elements which must be established in order to recover: (1) "the injury threatened or inflicted on the third person must be a serious one, of a nature to cause severe mental disturbance to the plaintiff"; (2) the shock must result in actual physical harm; (3) the plaintiff must be a member of the immediate family, or at least a parent, child, husband or wife; and (4) the plaintiff must actually be present at the time of the accident or at least suffer shock "fairly contemporaneous" with the accident.

Plaintiff has not alleged that he or Jane Doe was "actually present at the time of the accident" or that the suffered shock "fairly contemporaneous" with the accident. Therefore, plaintiff has failed to state a claim upon which relief may be granted.

Because plaintiff has failed to state any claim upon which relief may be granted, we affirm the trial court's order granting summary disposition to defendants.⁶ This Court will affirm a trial court's ruling even if it reached the right result for a different reason. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000).

⁶ Plaintiff's remaining counts of fraudulent concealment and conspiracy to commit fraud do not assert individual claims, but rather, set forth allegations of fraudulent concealment, which may have tolled the statutory period of limitation if plaintiff had pleaded claims upon which relief could be granted.

Affirmed.

/s/ Christopher M. Murray

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly