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*Farwell v. Keaton*, 240 N.W.2d 217  
Supreme Court of Michigan  
April 1, 1976

[Attorney listings]

LEVIN, Justice.

There is ample evidence to support the jury determination that David Siegrist failed to exercise reasonable care after voluntarily coming to the aid of Richard Farwell and that his negligence was the proximate cause of Farwell's death. We are also of the opinion that Siegrist, who was with Farwell the evening he was fatally injured and, as the jury found, knew or should have known of his peril, had an affirmative duty to come to Farwell's aid.

I.

On the evening of August 26, 1966, Siegrist and Farwell drove to a trailer rental lot to return an automobile which Siegrist had borrowed from a friend who worked there. While waiting for the friend to finish work, Siegrist and Farwell consumed some beer.

Two girls walked by the entrance to the lot. Siegrist and Farwell attempted to engage them in conversation; they left Farwell's car and followed the girls to a drive-in restaurant down the street.

The girls complained to their friends in the restaurant that they were being followed. Six boys chased Siegrist and Farwell back to the lot. Siegrist escaped unharmed, but Farwell was severely beaten. Siegrist found Farwell underneath his automobile in the lot. Ice was applied to Farwell's head. Siegrist then drove Farwell around for approximately two hours, stopping at a number of drive-in restaurants. Farwell went to sleep in the back seat of his car. Around midnight Siegrist drove the car to the home of Farwell's grandparents, parked it in the driveway, unsuccessfully attempted to rouse Farwell, and left. Farwell's grandparents discovered him in the car the next morning and took him to the hospital. He died three days later of an epidural hematoma.

At trial, plaintiff contended that had Siegrist taken Farwell to the hospital, or had he notified someone of Farwell's condition and whereabouts, Farwell would not have died. A neurosurgeon testified that if a person in Farwell's condition is taken to a doctor before, or within half an hour after, consciousness is lost, there is an 85 to 88 percent chance of survival. Plaintiff testified that Siegrist told him that he knew Farwell was badly injured and that he should have done something.

The jury returned a verdict for plaintiff and awarded \$15,000 in damages. The Court of Appeals reversed, finding that Siegrist had not assumed the duty of obtaining aid for Farwell and that he neither knew nor should have known of the need for medical treatment.

II.

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49

50 [issues and definitions]

51

52           The existence of a duty is ordinarily a question of law. However, there  
53 are factual circumstances which give rise to a duty. The existence of those facts  
54 must be determined by a jury.

55

56 [procedural discussion]

57

58           Without regard to whether there is a general duty to aid a person in  
59 distress, there is a clearly recognized duty of every person to avoid any  
60 affirmative acts which may make a situation worse. [I]f the defendant does  
61 attempt to aid him, and takes charge and control of the situation, he is regarded  
62 as entering voluntarily into a relation which is attended with responsibility.  
63 Such a defendant will then be liable for a failure to use reasonable care for the  
64 protection of the plaintiff's interest's. Prosser, *supra*, § 56, pp. 343-344.  
65 "Where performance clearly has been begun, there is no doubt that there is a  
66 duty of care." *Id.* 346.

67           In a case such as the one at bar, the jury must determine, after  
68 considering all the evidence, whether the defendant attempted to aid the victim.  
69 If he did, a duty arose which required defendant to act as a reasonable person.

70

71 [discussion on foundation]

72

73           There was ample evidence to show that Siegrist breached a legal duty  
74 owed Farwell. Siegrist knew that Farwell had been in a fight, and he attempted  
75 to relieve Farwell's pain by applying an ice pack to his head. While Farwell and  
76 Siegrist were riding around, Farwell crawled into the back seat and laid down.  
77 The testimony showed that Siegrist attempted to rouse Farwell after driving him  
78 home but was unable to do so.

79

80 [testimony from trial court]

81

82

### III.

83           Siegrist contends that he is not liable for failure to obtain medical  
84 assistance for Farwell because he had no duty to do so.

85           Courts have been slow to recognize a duty to render aid to a person in  
86 peril. Where such a duty has been found, it has been predicated upon the  
87 existence of a special relationship between the parties; in such a case, if  
88 defendant knew or should have known of the other person's peril, he is required  
89 to render reasonable care under all the circumstances.

90

91 [common law illustrations]

92

93           Farwell and Siegrist were companions on a social venture. Implicit in  
94 such a common undertaking is the understanding that one will render assistance  
95 to the other when he is in peril if he can do so without endangering himself.  
96 Siegrist knew or should have known when he left Farwell, who was badly

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97 beaten and unconscious, in the back seat of his car that no one would find him  
98 before morning. Under these circumstances, to say that Siegrist had no duty to  
99 obtain medical assistance or at least to notify someone of Farwell's condition  
100 and whereabouts would be "shocking to humanitarian considerations" and fly in  
101 the face of "the commonly accepted code of social conduct." "[C]ourts will find  
102 a duty where, in general, reasonable men would recognize it and agree that it  
103 exists."

104 Farwell and Siegrist were companions engaged in a common  
105 undertaking; there was a special relationship between the parties. Because  
106 Siegrist knew or should have known of the peril Farwell was in and could render  
107 assistance without endangering himself he had an affirmative duty to come to  
108 Farwell's aid.

109 The Court of Appeals is reversed and the verdict of the jury reinstated.

110

111 T.G. KAVANAGH, C.J., and WILLIAMS, J., concur.

112 LINDMER and RYAN, JJ., not participating.

113 FITZGERALD, Justice (dissenting).

114

115

116 [initial points of disagreement]

117

118 The close relationship between defendant and the decedent is said to  
119 establish a legal duty upon defendant to obtain assistance for the decedent. No  
120 authority is cited for this proposition other than the public policy observation  
121 that the interest of society would be benefited if its members were required to  
122 assist one another. This is not the appropriate case to establish a standard of  
123 conduct requiring one to legally assume the duty of insuring the safety of  
124 another.

125

126 []

127

128 Plaintiff believes that a legal duty to aid others should exist where such  
129 assistance greatly benefits society and only a reasonable burden is imposed upon  
130 those in a position to help. He contends further that the determination of the  
131 existence of a duty must rest with the jury where questions of foreseeability and  
132 the relationship of the parties are primary considerations.

133 It is clear that defendant's nonfeasance, or the "passive inaction or a  
134 failure to take steps to protect [the decedent] from harm" is urged as being the  
135 proximate cause of Farwell's death. We must reject plaintiff's proposition  
136 which elevates a moral obligation to the level of a legal duty where, as here, the  
137 facts within defendant's knowledge in no way indicated that immediate medical  
138 attention was necessary and the relationship between the parties imposes no  
139 affirmative duty to render assistance.

140

141 []

142

143 The relationship of the parties and the question of foreseeability does  
144 not require that the jury, rather than the court, determine whether a legal duty

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145 exists. We are in agreement with the general principle advanced by plaintiff that  
146 the question of negligence is one of law for the court only when the facts are  
147 such that all reasonable men must draw the same conclusion. However, this  
148 principle becomes operative only after the court establishes that a legal duty is  
149 owed by one party to another. Prosser's analysis of the role of the court and jury  
150 on questions of legal duty, recently quoted in *Moning v. Alfonso*, Mich. (1975),  
151 bears repeating:

152 "The existence of a duty. In other words, whether, upon the facts in  
153 evidence, such a relation exists between the parties that the community  
154 will impose a legal obligation upon one for the benefit of the other - or,  
155 more simply, whether the interest of the plaintiff which has suffered  
156 invasion was entitled to legal protection at the hands of the defendant.  
157 This is entirely a question of law, to be determined by reference to the  
158 body of statutes, rules, principles and precedents which make up the  
159 law; and it must be determined only by the court. \*\*\*

160 A decision by the court that, upon any version of the facts, there is no  
161 duty, must necessarily result in judgment for the defendant." Prosser,  
162 Torts (4<sup>th</sup> ed.), § 37, 206.

163

164 [Michigan state law discussion]

165

166 The Court of Appeals properly decided as a matter of law that  
167 defendant owed no duty to the deceased.

168

We would affirm.

169

170

COLEMAN, J., concur