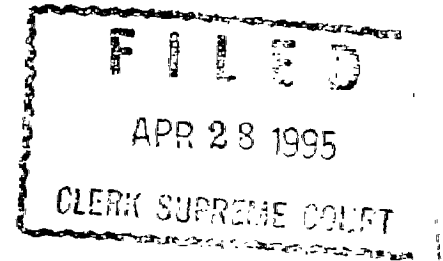


IN THE COURT OF APPEALS OF IOWA

No. 5-080 / 94-127



BRIAN HOLLENBECK, A Disabled Person, By His Conservators and Guardians, LEO HOLLENBECK and ELIZABETH HOLLENBECK,

Appellant,

vs.

**THE CITY OF MUSCATINE, THE MUSCATINE POLICE DEPARTMENT,
OFFICER KEVIN SINK, and OFFICER LESLIE WEGTER,**

Appellees,

Appeal from the Iowa District Court for Muscatine County, Edward B. deSilva,
Judge.

Hollenbeck challenges the order granting the defendants' motion for summary
judgment. **AFFIRMED.**

Anthony Jamison of the Anthony Jamison Law Offices, Rock Island, Illinois,
for appellants.

Michael C Walker and George A. Goebel of the Goebel & Koury Law Offices,
Davenport, for appellees.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Hollenbeck, appeals from the district court's judgment dismissing his claim against the City of Muscatine and two of its police officers. We affirm.

On August 29, 1991, Brian Hollenbeck phoned the police, seeking assistance in obtaining the keys to his moped from his parents, Elizabeth and Leo Hollenbeck. Brian was nineteen years old at the time. Brian's parents allegedly refused to give him the keys because they believed he had failed to take the afternoon dosage of his hyperactivity medication.

Officers Kevin Sink and Leslie Wegter began an investigation of the complaint and visited the scene. The officers learned Brian was an adult and had a valid driver's license. The officers directed Brian's parents to give Brian the keys to his moped.

Approximately twenty minutes later, Brian failed to yield the right-of-way and collided with an automobile as he exited an alley. Brian suffered injuries as a result of the accident.

Brian brought this action, by his parents as his conservators and guardians, claiming the officers were negligent in ordering his parents to give him the keys. Brian claimed the officers should have remained neutral in this family dispute. He claimed the officers' negligence was a proximate cause of the injuries he sustained in the moped accident.

The district court found the defendants had no common-law or legislatively imposed duty to prevent Hollenbeck from hurting himself. The defendants' motion for summary judgment was accordingly granted.

On appeal Hollenbeck argues the special circumstances found in this case place him within the "special relationship exception" to the general rule of nonliability relied on by the district court. He also argues the officers' actions violated the express provisions of the Muscatine Police Department's policy and procedures governing police investigation of domestic disputes.

It is a well-settled rule that, when reviewing the propriety of a motion for summary judgment, we, like the district court, review the record in a light most favorable to the party opposing summary judgment. *Hike v. Hall*, 427 N.W.2d 158, 159 (Iowa 1988). Summary judgment is proper only when the entire record before the court shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Id.*; Iowa R. Civ. P. 237. "While we agree that negligence actions are seldom capable of summary judgment adjudication, see Iowa R. App. P. 14(f)(10), the threshold question [] is whether the defendant owed the plaintiff a duty of care. *Wilson v. Nepstad*, 282 N.W.2d 664, 667 (Iowa 1979). Whether such a duty exists is a question of law. *Anthony v. State*, 374 N.W.2d 662, 668 (Iowa 1985)." *Sankey v. Richenberger*, 456 N.W.2d 206, 207 (Iowa 1990).

An actionable duty is defined by the relationship between individuals. It is a legal obligation imposed upon one individual for the benefit of another person or particularized class of persons. *Id.* at 209 (citations omitted). This duty, or standard of conduct of a reasonable person may be established by legislative enactment or by judicial decision. *Engstrom v. State*, 461 N.W.2d 309, 315 (Iowa 1990) (citation omitted). Not every claim of negligence creates a civil cause of action. *Id.* (citation omitted).

Iowa does not recognize a duty of care arising out of police investigation of criminal activity. *Hildenbrand v. Cox*, 369 N.W.2d 411, 415 (Iowa 1985); *Smith v. State*, 324 N.W.2d 299, 300-01 (Iowa 1982). The general rule regarding police investigations is subject to two recognized exceptions:

1. Where the police create the situation which places the citizen's life in jeopardy.
2. Where the police take a citizen into custody or control.

Hawkeye Bank & Trust Co. v. Spender, 487 N.W.2d 94, 96 (Iowa App. 1992) This rule is consistent with the common-law principle that a person owes no duty to act for the protection of others unless the actor has a special relationship to the other person. *Hildenbrand*, 369 N.W.2d at 415 (citations omitted). Hollenbeck argues the police created a dangerous situation placing him at risk of death or injury when they directed his parents to give him the keys to his moped. We disagree.

The summary judgment record reveals the officers conducted a reasonable investigation of Hollenbeck's complaint. The officers determined Hollenbeck was an adult, he was the owner of the moped, and he had a valid license to operate it. Although there is evidence Hollenbeck was upset and needed medication, his condition did not suggest any undue risk to his safety resulting from return of the keys to his moped. These circumstances are much less dangerous than those found in cases giving rise to a special relationship. *See, e.g., Weymire v. Wolfe*, 52 Iowa 533, 3 N.W. 541 (1879) (tavern owner owed duty of care to intoxicated patron who died of exposure after being expelled from tavern in a drunk and unconscious condition). The district court correctly determined the officers' intervention in the Hollenbeck dispute did not create a special relationship and that the officers therefore owed Hollenbeck no duty of care as a matter of law.

Hollenbeck also argues the special relationship issue presents fact questions for the jury's determination. We disagree. The court's determination of the duty necessarily requires the resolution of factual disputes underlying the existence of a legal duty. The facts to which Hollenbeck refers were properly determined as a matter of law by the district court. *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 814 (Iowa 1994) (citations omitted).

We next consider Hollenbeck's claim the officers negligently breached a duty of neutrality established by the policies and procedures of the Muscatine Police

Department regarding civil disputes. Hollenbeck makes specific reference to policy and procedure language that provides:

Civil disputes--when the dispute is civil in nature, officers can stand by and keep peace and generally not get involved in civil matters. . . . Officers should remain neutral in their actions bearing in mind that their main purpose at a civil disturbance is to protect life, property and maintain the peace. All attempts will be made to refer the parties to the proper persons

We find no language in the referenced policy and procedure expressly authorizing a private cause of action for a violation of its provisions. When a statute or rule does not expressly authorize an action, one will be implied if it is consistent with the legislative intent underlying its adoption. There is nothing in the record from which we can determine the adoption of this policy and procedure included an implied civil cause of action for its breach. *See Seeman v. Liberty Mutual Ins. Co.*, 322 N.W.2d 35, 40-42 (Iowa 1982). Although the requirements of the policy may be properly accorded evidentiary significance, we do not believe they may be used to define a duty of care. *See, e.g., Gipson v. State*, 419 N.W.2d 369, 372 (Iowa 1988).

In summary, we agree with the district court's determination that the police officers owed Hollenbeck no duty to prevent him from injuring himself. The judgment of the district court is affirmed.

AFFIRMED.

Cady, J., concurs; Sackett, P. J., concurs and concurs specially.

SACKETT, J. (specially concurring)

I concur with the majority I agree with the majority the trial court correctly found plaintiffs do not have a cause of action. I write specially because I want to be certain my concurrence is not interpreted as my approval of the officer's conduct.