IN THE COURT OF APPEALS OF IOWA

No. 7-434 / 97-210

000311

JEFFREY L. VRBSKY,
Appellant,

vs.

STATE OF IOWA, PAGE COUNTY, IOWA, and PAGE COUNTY CONSERVATION BOARD,
Appellees

FILED

Appeal from the Iowa District Court for Fremont County, Timothy O'Grady, Judge.

The plaintiff appeals the district court's grant of the defendants' motions for summary judgment **AFFIRMED.**

Richard D. Crotty, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, and Greg Knoploh, Assistant Attorney General, for appellee State of Iowa.

Jeffrey J. Huber and Michael Pallesen of Gaines, Mullen, Pansing & Hogan, Omaha, Nebraska, for appellees Page County and Page County Conservation Board.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

The plaintiff, Jeffrey L. Vrbsky ("Vrbsky"), appeals the district court's grant of the defendants', State of Iowa, Page County, Page County Conservation Board, and Douglas N. Mutchler ("defendants"), motions for summary judgment. He argues the court erred in failing to find: 1) the defendants had a duty to control the conduct of a prisoner to prevent him from escaping and causing harm to the plaintiff; and 2) he was the third-party beneficiary of a contract which gave rise to a duty to control the prisoners' conduct and prevent his escape.

Background facts. In November 1994 Douglas Mutchler was an inmate at the Clarinda Correctional Facility in Clarinda, Iowa. Mutchler was assigned to a work release program operated jointly by the defendants, the State of Iowa, Page County, and the Page County Conservation Board ("Board"). The program to which Mutchler was assigned required that he work with employees of the Board on park beautification projects at Page County work sites.

The work release program was operated under a Letter of Agreement in which Page County and the Board agreed to duties, policies, and procedures set forth by the State (via the Department of Corrections). Those procedures mandated that inmates were not to possess the keys to vehicles without supervision and keys were not to be left unattended in vehicles.

On November 7, 1994, Mutchler and a Board work crew were working at Pioneer Park in Page County. Shortly after noon, Mutchler asked a Conservation

Board worker if he could light a cigarette from a lighter located in a pickup that the crew used. The worker gave Mutchler permission to do so. The keys were in the vehicle and Mutchler jumped in and escaped. That night, Mutchler rear-ended plaintiff Jeffrey Vrbsky's vehicle causing personal injury and property damage. Vrbsky filed suit alleging that the State of Iowa and Page County and the Board had breached a duty to prevent the escape of the inmate and was negligent in properly supervising the inmate. Vrbsky claimed he was a third-party beneficiary to the agreement between the defendants, using inmate workers.

The defendants filed motions for summary judgment. In granting the motions the district court found there was no "special relationship" between the plaintiff and the defendants giving rise to a duty of care, nor was there any reason the defendants should have known of any dangerous propensities of Mutchler. The court also held the plaintiff's case failed for a lack of causation. The court rejected Vrbsky's contract claim because he was not a party to the agreement and was not an intended third-party beneficiary of the contract.

Scope of review. We review a trial court's granting of summary judgment for correction of errors at law. Iowa R. App. P. 4. Summary judgment is appropriate only if there exists no genuine issue of material fact. *Farm Bureau Mut. Ins. Co. v. Milne*, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact. *Id.* The evidence must be viewed in the light most favorable to the nonmoving party. *Thorp Credit, Inc. v. Gott*, 387 N.W.2d 342, 343

(Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. *Id.* A fact issue is generated if reasonable minds can differ on how the issue should be resolved. *Id.* If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. *Milne*, 424 N.W.2d at 423.

I. Tort claim: duty of care. Vrbsky argues the district court erred in failing to find a duty existed on behalf of the defendants to control the conduct of Mutchler to prevent him from escaping and causing harm to him.

> Restatement (Second) of Torts section 315 (1965) provides:
>
> There is no duty to control the conduct of a third person as to prevent him from causing harm to another unless
>
> > (a) a special relationship exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or
> >
> > (b) a special relationship exists between the actor and the other which gives to the other a right of protection.

Id. A similar issue, addressing whether the State owes a duty to third parties to prevent parolees and prisoners from causing harm to them, is found in *Fitzpatrick v. State*, 439 N.W.2d 663, 666 (Iowa 1989). That court held the duty to prevent the escape of prisoners in custody was owed to the public *generally*. *Accord Morris v. Leaf*, 534 N.W.2d 388, 390 (Iowa 1995). In order for an individual to recover for an inmate's actions, one must establish "a course of conduct between [the individual]

and the state which would create a relationship that would form the basis of a duty to [that person] individually." *Id.* at 666-67. Vrbsky has not established a special relationship between himself and defendants; he only asserts that such a relationship existed.

Moreover, we agree with the trial court's ruling that "any claim that this particular inmate should not have been in the work release program or that the terms of the work release program should have been different would be barred by the discretionary function exception to state tort liability." *See* Iowa Code § 669.14(1) (1995); *Anthony v. State*, 374 N.W.2d 662, 667 (Iowa 1985). We affirm the district court's grant of summary judgment on this issue.

II. Contract claim: breach. Vrbsky additionally argues the court erred in failing to find that an independent duty existed on behalf of Page County and the Board to control Mutchler's conduct and prevent his escape, pursuant to a Letter of Agreement. Vrbsky maintains that he was a third-party beneficiary to this contract and the defendants breached their duties therein.

In order for a third person to be a direct beneficiary of a contract, the contract must have been made or entered into directly or primarily for the benefit of such third person. *Olney v. Hutt*, 251 Iowa 1379, 105 N.W.2d 515 (1960). The third-party beneficiary, in order to enforce a contract, must show the contract was made for his express benefit. *Khabbaz v. Swartz*, 319 N.W.2d 279, 285 (Iowa 1982). Vrbsky has not established he was a party to the contract, and thus, he was not an intended third-

party beneficiary. It appears from the terms of the Letter of Agreement that there was an intent to benefit the general public, not an individual. Members of the public at large are not intended third-party beneficiaries of contracts between governmental entities reached with the intent to benefit the public generally and not a specific individual. *See Uhl v. City of Sioux City*, 490 N.W.2d 69, 73 (Iowa App. 1992). We affirm the district court's grant of summary judgment on this issue.

Having carefully considered all issues before us on appeal, we affirm the district court's grant of summary judgment to defendants.

AFFIRMED.