

MSC Order: Brooks v. Starr Commonwealth

8. May 2010 By Matthew Nelson

After oral argument on the application in *Brooks v. Starr Commonwealth*, No. 139144, the Michigan Supreme Court decided the Youth Rehabilitation Services Act does not create an actionable duty to the general public.

Accordingly, the Court reversed the Court of Appeals' [decision](#) and reinstated the circuit court's order granting summary disposition to the defendants. Chief Justice Kelly and Justices Cavanagh and Hathaway dissented. The case arose after Michael Kirksey escaped from a medium-security correctional facility operated by Starr Commonwealth in Albion, Michigan. Eleven days later, Kirksey murdered Dominique Wade. Wade's estate sued Starr alleging negligence per se based on Starr's failure to immediately notify law enforcement of Kirksey's escape.

The circuit court granted summary disposition against the plaintiff because it concluded the Youth Rehabilitation Services Act, MCL 803.306a did not create a duty to protect the general public and because the plaintiff could not show proximate cause. The Court of Appeals reversed, reasoning that the Act's requirement that a facility immediately report an escape is intended "to prevent harm to the public." The Court of Appeals further concluded that the issue of proximate cause is for a jury. Accordingly, the Court of Appeals reversed.

The Michigan Supreme Court reversed the Court of Appeals' decision in a terse, one-paragraph order. The Court restated the well-known proposition that a person generally does not owe a duty to protect third persons from harm absent a special duty. The Court analyzed the Act and concluded it did not create a special duty. Instead, the Court concluded the Act is intended to protect the youthful offenders (public wards). The Court further concurred with the circuit court's assessment that the plaintiff did not have evidence of causation.

The dissenting justices would have remanded the case to the circuit court for a jury to determine whether Starr's failure to report Kirksey's escape proximately caused Wade's death.