

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN COUNTY SUPERIOR COURT

HAMPDEN SS.

Civil Action No.
HDCV2009-00778

STEPHANIE OWENS and
EDDIE OWNES, Individually
And as Co-Administrators of
the Estate of KELSEA LYNN
OWNES, and
SETH OWENS,

Plaintiffs,

v.

JOSHUA WHITAKER, and
LINDA WHITAKER

Defendants.

HAMPDEN COUNTY
SUPERIOR COURT
FILED
NOV 3 0 2009

Brian P. [Signature]
CLERK/MAGISTRATE

*ALLOWED. See memo
of Decision and Order of
this date.*

*SKind
2/25/10*

*HEH
P. 3-8-10*

DEFENDANT LINDA WHITAKER'S MOTION TO DISMISS ALL CLAIMS
AGAINST HER PURSUANT TO MASS. R. CIV. P. 12(b) FOR FAILURE TO
STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

COMES NOW, Mrs. Linda Whitaker, a Defendant in the above-
referenced action, and through her attorney, George E. Bourguignon, Jr.,
moves the Honorable Court to dismiss all claims against her pursuant to
Mass. R. Civ. P. 12(b) for failure to state a claim upon which relief may be
granted. Mrs. Whitaker directs the Court's attention to the Memorandum of
Law filed contemporaneously with the instant Motion.

*2/1/09
notified
to make up*

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
CIVIL ACTION
No. 09-778

STEPHANIE OWENS, Individually and as Co-administrator of the
Estate of KELSEA LYNN OWENS & others¹

vs.

JOSHUA WHITAKER & Another²

HAMPDEN COUNTY
SUPERIOR COURT
FILED

FEB 25 2010

William P. Pless
CLERK-MAGISTRATE

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT LINDA
WHITAKER'S MOTION TO DISMISS**

On August 13, 2009, the plaintiff parents and sibling of decedent Kelsea Lynn Owens ("Owens"), filed this negligence action against defendants Joshua Whitaker and his mother, Linda Whitaker. Joshua Whitaker, who is currently incarcerated, was convicted of murdering Owens in 2006. As to each defendant, the complaint alleges wrongful death, conscious pain and suffering, and multiple claims of negligent infliction of emotional distress. Before the Court is Linda Whitaker's motion to dismiss all claims against her pursuant to Mass. R. Civ. P. 12(b)(6). Specifically, Linda Whitaker asserts that the complaint fails to state a claim against her as a matter of law because she owed no legal duty to Owens. For the reasons that follow, I am persuaded by Linda Whitaker's argument. After hearing and a review of the parties' memoranda and relevant authorities, Linda Whitaker's motion to dismiss the claims against her is

ALLOWED.

¹ Eddie Owens Individually and as Co-administrator of the Estate of Kelsea Lynn Owens, and Seth Owens.

² Linda Whitaker.

BACKGROUND

In summary, the complaint alleges the following material facts:

On August 15, 2006, Owens, then 16 years old, and a friend went to visit Joshua Whitaker, then twenty years-old, at the house he shared with his mother, Linda Whitaker. During Owens' visit she was assaulted and beaten to death by Joshua Whitaker. According to the complaint, Linda Whitaker knew that Owens was visiting and that Joshua Whitaker was not complying with the psychiatric medication and treatment he was to be receiving for a history of violent behavior. The plaintiffs assert that Linda Whitaker was negligent for failing to prevent her son's attack on Owens.

DISCUSSION

A motion to dismiss should be granted when a party fails to state a claim upon which relief may be granted. Mass. R. Civ. P. 12(b)(6). When evaluating the sufficiency of a complaint under Rule 12(b)(6), the court accepts all allegations in the complaint as true and draws all rational inferences in the plaintiff's favor. *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 322 (1998); *Cacciola v. Nellhaus*, 49 Mass. App. Ct. 746, 749-750 (2000). A motion to dismiss should be granted "only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *General Motors Acceptance Corp. v. Abington Cas. Ins. Co.*, 413 Mass. 583, 584 (1992).

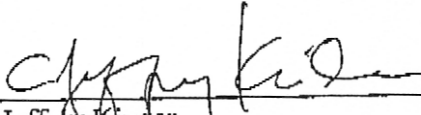
All of the claims against Linda Whitaker are based in negligence. "Before liability for negligence can be imposed ... it must first be established that the defendant owed the plaintiff a legal duty of care." *Doe v. Moe* 63 Mass. App. Ct. 516, 519 (2005). The existence of a duty is a question of law. *Remy v. MacDonald*, 440 Mass. 675, 677 (2004). Generally speaking, a

landowner does not have a duty to protect guests from the criminal acts of third persons. *Luoni v. Berube*, 431 Mass. 729, 731 (2000). Nor does a parent have a duty to monitor or control an adult child. *McDonald v. Lavery*, 27 Mass. App. Ct. 1108, 1110 (1989). However, a duty can arise when there is a 'special relationship' between the defendant and the injured victim. *Kavanagh v. Trustees of Boston Univ.*, 440 Mass. 195, 201 (2003).

The plaintiffs contend that such a special relationship existed in this case because Linda Whitaker knew of her son's violent tendencies and participated in the monitoring of his treatment. The complaint does not allege, however, that Linda Whitaker took any affirmative steps to create a "special relationship" with Owens. *Id* at 202 (no special duty where victim did not depend on defendant and defendant did not exert control or influence over victim). At most, it can be inferred from the complaint that she permitted Owens to visit her mentally unstable son in their home. Such an informal social contact does not, in my judgment, amount to the kind of "special relationship" that is the exception to the rule. To find otherwise would require the extension of this exception to anyone who visited the Whitakers in their home while Joshua Whitaker was present. In my judgment, such an extension would be contrary to public policy and unwarranted. I therefore find, even assuming the truth of the allegations in the complaint, that the plaintiffs cannot establish that Owens was owed a duty of care by Linda Whitaker. Accordingly, as to Linda Whitaker, I conclude that the plaintiffs have not stated a claim upon which relief may be granted. The Motion to Dismiss is **ALLOWED**.

ORDER

For all of the foregoing reasons, Linda Whitaker's Motion to Dismiss is ALLOWED. All of the claims in which Linda Whitaker is the named defendant are hereby DISMISSED.


C. Jeffrey Kinder
Justice of the Superior Court

Dated: February 25, 2010