

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 05-02037

PRESENT: PIGOTT, JR., P.J., HURLBUTT, MARTOCHE, PINE, AND HAYES, JJ.

DAVID KROMER, ADMINISTRATOR C.T.A. OF THE
ESTATE OF ALICIA HUMPHREYS, ALSO KNOWN AS
ALICIA M. HUMPHREYS, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

COUNTY OF ONONDAGA, ONONDAGA COUNTY SHERIFF'S
DEPARTMENT, SHERIFF KEVIN E. WALSH, DETECTIVE
J.A. MEHLEK, DEPUTY J.S. CERANKOWSKI, LT. D.R.
COON, DEPUTY T. SHELLEY, SGT. CRAIG CASTANZA,
DETECTIVE S.M. PRICE, LT. J.P. RINELLA, DETECTIVE
FAHEY, DEPUTY R.H. FLANAGAN, SGT. RAHRLE, DEPUTY
D. GRAHAM, DEPUTY K.A. BOWLES, JOHN DOE I, AND
JOHN DOE II, (FICTITIOUS NAMES USED TO IDENTIFY
NAMES OF CAPTAINS, DETECTIVES, LIEUTENANTS,
SERGEANTS AND DEPUTY SHERIFFS WHO ARE AT PRESENT
UNKNOWN AND EMPLOYED BY THE COUNTY OF ONONDAGA
AND THE SHERIFF'S DEPARTMENT) SUED INDIVIDUALLY
AND IN HIS OR HER OFFICIAL CAPACITY,
DEFENDANTS-RESPONDENTS.

BOYLE & ANDERSON, P.C., AUBURN (ROBERT K. BERGAN OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

ANTHONY P. RIVIZZIGNO, COUNTY ATTORNEY, SYRACUSE (KATHLEEN M.
DOUGHERTY OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Onondaga County
(Anthony J. Paris, J.), entered May 16, 2005. The order granted
defendants' motion for summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from be and the
same hereby is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action as administrator
C.T.A. of the estate of his daughter (decedent), who was murdered by
her estranged husband. Plaintiff alleged that defendants acted
recklessly and negligently in failing to protect decedent after she
had reported that, two weeks before the murder, her husband assaulted
and raped her. We affirm the order granting defendants' motion for
summary judgment dismissing the complaint. In our view, defendants
established as a matter of law that there was no justifiable reliance
on any affirmative undertaking by them and thus that plaintiff failed
to establish the special relationship between decedent and defendants

necessary for the imposition of liability (see generally *Cuffy v City of New York*, 69 NY2d 255, 260). Defendants established that decedent did not contact them during the two-week period between the alleged assault/rape and the murder, and plaintiff failed to raise an issue of fact whether any acts of defendants lulled decedent "into a false sense of security, induced [her] to either relax [her] own vigilance or forego other viable avenues of protection, and thereby placed [decedent] in a worse position than [she] would have been in had defendant[s] never assumed the underlying duty" (*Finch v County of Saratoga*, 305 AD2d 771, 773; see *Farley v County of Erie*, 16 AD3d 1134, 1136, lv denied 5 NY3d 711).

Entered: February 3, 2006

JOANN M. WAHL
Clerk of the Court