STATE OF MICHIGAN

COURT OF APPEALS

CAROLINE PERRON,

Plaintiff-Appellant,

v

JOTT, INC., a/k/a ICEHOUSE OF MACOMB COUNTY, a/k/a SHOOTERS OF MACOMB COUNTY, f/k/a ICE HOUSE, f/k/a SILLY'S, SCOTT NADEAU, JEFF NADEAU, CLUB KAOS and TEO MCNEIL,

Defendants-Appellees,

and

JENNIFER NEWCOMB AND MARY SUE GREIB,

Not Participating.

UNPUBLISHED
February 18, 2000

No. 210259
Macomb Circuit Court
LC No. 94-001105-NO

Before: Hood, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant Jott, Inc. (Jott) pursuant to MCR 2.116(C)(10).[1] We affirm.

Plaintiff sustained injuries as a result of an unprovoked beating by Jennifer Newcomb and/or Mary Sue Greib as she was leaving a bar owned by Jott and managed by shareholders Scott and Jeff Nadeau. On the night in question, plaintiff spent about an hour in the bar with her date, Teo McNeil. Unbeknownst to plaintiff, McNeil had a prior relationship with Newcomb. While plaintiff was in the restroom, Newcomb walked by McNeil and Scott Nadeau, uttered an obscenity at McNeil, and tossed some beer on him. When plaintiff returned from the restroom, she asked McNeil to leave. As she and McNeil proceeded toward the exit, plaintiff was struck in the head from behind and beaten by

Newcomb and/or Greib. Plaintiff did not know either Newcomb or Greib and had no contact with the them before the altercation.

Plaintiff filed a four-count complaint, alleging assault and battery against Newcomb and Greib, negligence and breach of contract against Jott and Jeff and Scott Nadeau, and nuisance against Jott. In granting Jott's motion for summary disposition on plaintiff's negligence claim, the trial court found that Jott had no duty to protect plaintiff from the criminal acts of Newcomb and Greib because the assault on plaintiff was unforeseeable as a matter of law.[2]

Plaintiff argues that the trial court erred in granting Jott's motion for summary disposition on her negligence claim. Plaintiff contends that genuine issues of material fact exist regarding whether the assault was foreseeable in light of evidence that Jott had prior notice of Newcomb's and Greib's propensity for violence. We disagree. This Court reviews a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion brought pursuant to MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 454-455.

As a general rule, a person has no duty to aid or protect another person endangered by a third person's conduct. *Mason v Royal Dequindre, Inc*, 455 Mich 391, 397; 566 NW2d 199 (1997). However, an exception arises when there is a special relationship between the parties. *Id*. To impose a duty upon a merchant on the basis of a special relationship, the invitee must be "readily identifiable as [being] foreseeably endangered." *Id.*, at 398, quoting *Murdock v Higgins*, 454 Mich 46, 58; 559 NW2d 639 (1997). "'Readily' is defined as 'promptly; quickly; easily.'" *Id.*

Generally, criminal acts are unforeseeable as a matter of law where there is no evidence of a prolonged disturbance that leads to criminal activity against a readily identifiable plaintiff. See e.g., *Mason*, *supra* at 403-405 (defendant bar had no duty to protect the plaintiff where the plaintiff was not involved in an earlier altercation in the bar, the defendant's employees were not aware that the plaintiff was in danger when he left the bar, and the attack on him was not foreseeable); see also *Perez v KFC National Management Corp, Inc*, 183 Mich App 265, 270-271; 454 NW2d 145 (1990) (defendant merchant was not liable for the unforeseeable attack by a patron against another patron where there was no indication of a prior disturbance or disagreement between them); *Papadimas v Mykonos Lounge*, 176 Mich App 40, 46; 439 NW2d 280 (1989) (defendant lounge had no duty to protect the plaintiff from an assault that was "sudden and unexpected").

On the other hand, a duty to protect an invitee from the criminal conduct of a third person may arise when there is evidence that the merchant was aware of an ongoing or prolonged disturbance directed toward a specific invitee, yet failed to take action to protect the invitee. See, e.g., *Goodman v Driftwood, Inc*, 455 Mich 391, 404-405; 566 NW2d 199 (1997) (defendant bar had a duty to protect the plaintiff where the assailants had earlier fought with the plaintiff on the bar's premises, and an attack on the plaintiff occurred thereafter); see also *Jackson v White Castle System, Inc*, 205 Mich

App 137, 141-142; 517 NW2d 286 (1994) (merchant owed the plaintiff a duty to protect where the assailant was part of an unruly group that had been on the premises and earlier assaulted the plaintiff); *Schneider v Nectarine Ballroom, Inc (On Remand)*, 204 Mich App 1, 6-7; 514 NW2d 486 (1994) (defendant bar breached its duty to the plaintiff where its employees ejected him from the establishment into a "known, obvious, and imminently dangerous situation").

In this case, we agree with the trial court that Jott had no duty to take reasonable measures to protect plaintiff from the assault by Newcomb and Greib. As in *Mason*, *supra*, plaintiff presented no evidence to establish that Jott or its employees had notice that she was "readily identifiable as being foreseeably endangered." It was undisputed that there had been no tension or disagreement between plaintiff and her assailants before the attack. Indeed, plaintiff testified that she was not involved in the original altercation between McNeil and Newcomb and that she was not aware of her assailants' existence until the incident occurred. See *Perez*, *supra* at 270. Moreover, the evidence established that bouncers at the bar intervened and attempted to end the altercation as soon as they discovered that it was occurring. See *Scott v Harper Recreation, Inc*, 444 Mich 441, 451-452; 506 NW2d 857 (1993); *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 501-502; 418 NW2d 381 (1988). While plaintiff maintains that Jott had notice of Newcomb's and Greib's propensity for fighting because they had engaged in previous altercations at the bar, such evidence does not support a finding that their attack on plaintiff was foreseeable to Jott. Accordingly, the trial court properly granted Jott's motion for summary disposition.

Affirmed.

/s/ Harold Hood
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

[1] According to the parties' briefs, and information contained in the lower court file, Jott is the only proper defendant to this appeal.

[2] Plaintiff does not appeal the trial court's grant of summary disposition in favor of Jott on her nuisance and breach of contract claims.