

STATE OF MICHIGAN
COURT OF APPEALS

JAMES F. ELLUL, JR.,

Plaintiff-Appellant,

v

BEST BUY CO., INC.,

Defendant-Appellee.

UNPUBLISHED

August 9, 2002

No. 232789

Oakland Circuit Court

LC No. 00-022581-NO

Before: Talbot, P.J., and Cooper and D. P. Ryan*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was in a store owned by defendant when he became involved in a fracas with two female customers. He alleged the women made racially derogatory comments, and that one of them attempted to assault him. Plaintiff captured the woman in a headlock. James Williams, a loss prevention officer for defendant, came on the scene and instructed plaintiff to release the woman. When plaintiff eventually let the woman go, she lunged at him and Williams grabbed her. Plaintiff claimed the woman kicked him in the knee. The police were called, but both women fled the store before they arrived.

Plaintiff filed suit alleging that defendant negligently failed to bar dangerous persons from its premises, failed to warn of the presence of dangerous persons, failed to stop the altercation as soon as possible, failed to provide a staff adequate to police the premises, failed to train its employees in security measures, and failed to restrain the assailant in order to prevent harm to plaintiff. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing it had no duty to hire armed, visible security guards to protect plaintiff from unforeseen criminal acts by third parties. In response, plaintiff argued that because defendant actively intervened in the incident, it had a duty to act with reasonable care under the circumstances and that defendant's negligent failure to restrain the woman proximately caused his injury.

The trial court granted defendant's motion, observing that a merchant is generally not liable for the unforeseen criminal acts of third parties, even where the merchant voluntarily

* Circuit judge, sitting on the Court of Appeals by assignment.

undertakes safety precautions. The court found no evidence showing that plaintiff and defendant had a special relationship that would create a duty for defendant to protect plaintiff from the acts of third parties.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree. We review a trial court's decision on a motion for summary disposition de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A business invitor has "a duty to respond reasonably to situations occurring on the premises that pose a risk of imminent and foreseeable harm to identifiable invitees." *MacDonald v PKT, Inc*, 464 Mich 322, 345; 628 NW2d 33 (2001). However, a business invitor is not normally required to protect invitees from the crimes of third parties. *Perez v KFC Nat'l Management Co*, 183 Mich App 265, 268-269; 454 NW2d 145 (1990). A business invitor only has a duty to respond reasonably; e.g., make reasonable efforts to contact the police in situations occurring on its premises that pose a risk of foreseeable, imminent risk to identifiable invitees. *MacDonald, supra* at 336, 345. However, if a business invitor voluntarily takes safety precautions, an action cannot be maintained on the theory that the precautions were less effective than they could or should have been. *Scott v Harper Recreation, Inc*, 444 Mich 441, 452; 506 NW2d 857 (1993).

A business invitor's duty to use reasonable care to protect identifiable invitees from foreseeable criminal acts of third parties is triggered by the occurrence of specific acts on the premises that pose a risk of imminent and foreseeable harm. *MacDonald, supra* at 338; see also *Mason v Royal Dequindre, Inc*, 455 Mich 391, 404-405; 566 NW2d 199 (1997).

Plaintiff has failed to come forth with any evidence that he was an identifiable invitee who was in foreseeable danger from specific criminal acts. *MacDonald, supra* at 338. Defendant responded reasonably by contacting the police. *Id.* at 335-336. Defendant's actions could not serve as the basis for a suit and summary disposition was proper. *Scott, supra*.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan