STATE OF MICHIGAN

COURT OF APPEALS

PATRICK P. YONO as Next Friend for NINA YONO, Minor,

Plaintiffs-Appellants,

v

J. D. CHATHAM, INC., 7-ELEVEN FRANCHISE, JAMES DAVID, A. CHATHAM, and SOUTHLAND, INC.,

Defendants-Appellees,

and

KHALIL GARMO,

Defendant.[1]

UNPUBLISHED
September 6, 2002

No. 229033
Oakland Circuit Court
LC No. 99-015534-NO

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm.

Patrick Yono, as next friend for Nina Yono,[2] commenced this action against defendants after Khalil Garmo assaulted plaintiff in a 7-Eleven store. According to plaintiff, Garmo inappropriately touched her while she and her sister were shopping in the store. Plaintiff left the store without complaining about the incident. Plaintiffs allegedly later learned that defendants knew that Garmo had attempted to assault other young girls on previous occasions. Plaintiffs argue that summary disposition was improper because the submitted evidence showed that

[1] This defendant is a non-party to this appeal, and, therefore will be referred to as Garmo in the remainder of this opinion. As such, the term "defendants" refers only to defendants-appellees.

[2] Because this action was brought on behalf of Nina Yono, she will be referred to as "plaintiff" throughout the remainder of this opinion.

defendants had prior notice of Garmo's assaultive character and, therefore, may be liable for Garmo's criminal assault on plaintiff.

In *MacDonald v PKT, Inc*, 464 Mich 322; 628 NW2d 33 (2001), our Supreme Court addressed the scope of a merchant's duty to protect invitees from the criminal acts of third parties. The Court held that a merchant generally has no obligation to anticipate and prevent criminal acts against its invitees; rather, a duty arises only on behalf of those invitees who are readily identifiable as being foreseeably endangered. *Id*. at 332. The Court further explained, "[i]t is only a present situation on the premises, not any past incidents, that creates a duty to respond." *Id.* at 335. Here, the submitted evidence does not show that defendants had knowledge of a specific situation on the premises in which plaintiff was readily identifiable as being foreseeably endangered. Plaintiffs' reliance on evidence showing that defendants were aware of prior incidents involving Garmo is insufficient to establish a duty with respect to plaintiff.

Plaintiffs argue that liability may also be predicated on rules established by the Liquor Control Commission, which prohibit licensees from (1) allowing on the licensed premises the annoying or molesting of customers by other customers, and (2) allowing the licensed premises to be used for purposes of accosting or soliciting another person to commit prostitution.

Absent a duty owed by the defendant to the plaintiff, an ordinance violation committed by the defendant may not be actionable as negligence. *Stevens v Drekich*, 178 Mich App 273, 278; 443 NW2d 401 (1989). Although violation of an ordinance may be considered as evidence of negligence, it is not itself sufficient to impose a legal duty cognizable in negligence. *Summers v Detroit*, 206 Mich App 46, 52; 520 NW2d 356 (1994). We believe these principles are equally applicable to alleged regulatory violations. Having determined that defendants did not owe any duty to plaintiff, we conclude that the alleged regulatory violations do not give rise to a cognizable action against defendants.

We also find no merit to plaintiffs' claim that defendants may be liable under MCL 436.1801. By its terms, that statute applies only when a person is injured by reason of the *unlawful* sale of alcohol to a minor or a visibly intoxicated person. There is no evidence here that the assault was alcohol-related in that regard.

Finally, plaintiffs argue the trial court abused its discretion in denying their request for discovery of the names of defendants' employees during the year preceding the incident and of all customer complaints during this time period. Plaintiffs sought discovery of this information to substantiate their claim that defendants had notice of prior incidents involving Garmo and, therefore, should have foreseen his actions against plaintiff. Because *MacDonald* holds that it is only a present situation on the premises, not past incidents, that creates a duty to respond, we conclude that the learned trial judge did not abuse his discretion in denying plaintiffs' discovery request.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder