

STATE OF MICHIGAN  
COURT OF APPEALS

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ALMA DAWKINS-DAWSON, Personal Representative of the Estate of REGINALD DAWKINS,  
Deceased,

UNPUBLISHED  
September 10, 2002

Plaintiff-Appellant,

v

IMAGE OF BEAUTY HAIR SALON,

No. 233181  
Wayne Circuit Court  
LC No. 00-007907-CZ

Defendant-Appellee.

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Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court's review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support of a claim. In deciding a motion brought under this subrule, the trial court considers the documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

The general rule is that a business invitor does not have a duty to protect its invitees from the criminal acts of third persons. *Williams v Cunningham Drug Stores, Inc.*, 429 Mich 495; 418 NW2d 381 (1988). In *Mason v Royal Dequindre, Inc.*, 455 Mich 391; 566 NW2d 199 (1997), the Court retreated a bit from *Williams*, holding "that merchants can be liable in tort for failing to take reasonable measures to protect their invitees from harm caused by the criminal acts of third parties. The harm must be foreseeable to an identifiable invitee and preventable by the exercise of reasonable care." *Id.* at 393. Recently, in *MacDonald v PKT, Inc.*, 464 Mich 322; 628 NW2d 33 (2001), the Court limited the holding in *Mason*:

To summarize, under *Mason*, generally merchants "have a duty to use reasonable care to protect their invitees from the foreseeable criminal acts of third parties." The duty is triggered by specific acts occurring on the premises that

pose a risk of imminent and foreseeable harm to an identifiable invitee. Whether an invitee is readily identifiable as being foreseeably endangered is a question for the factfinder if reasonable minds could differ on this point. While a merchant is required to take reasonable measures in response to an ongoing situation that is taking place on the premises, there is no obligation to otherwise anticipate the criminal acts of third parties. Consistent with *Williams*, a merchant is not obligated to do anything more than reasonably expedite the involvement of the police. [*Id.* at 338 (citation omitted).]

Whether the invitee is foreseeably endangered is to be gauged not from past incidents of criminal activity on the merchant's premises, i.e., whether a criminal act in general was foreseeable. The proper inquiry is "once a disturbance occurs on the premises, whether a reasonable person would recognize a risk of imminent harm to an identifiable invitee." *Id.* at 339. An identifiable invitee is a specific individual who is personally endangered by the criminal episode. *Mason, supra* at 402-405.

The criminal episode began with an attempted theft of a salon customer's truck or something in it. Kenneth Answorth, the salon owner, heard a noise and went to investigate. He knew that plaintiff's decedent followed him outside, but the thief did not pose an immediate danger to anyone. He was not known to be armed, did not attack or otherwise try to harm anyone, plaintiff's decedent did not engage in an altercation with him, and they had not previously been involved in a dispute. A disturbance arose after Answorth tried to capture the thief, but it was not foreseeable that plaintiff's decedent would be injured because the last Answorth knew, plaintiff's decedent had run back into the salon.

Moreover, until the thief's partner actually started shooting, Answorth had no reason to know that the partner/shooter was involved in the theft. Therefore, defendant did not owe a duty to plaintiff's decedent in this case. Although the trial court mistakenly concluded that there was no special relationship between the parties giving rise to a duty, this Court will not reverse where the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Plaintiff poses an alternative argument that once Answorth voluntarily assumed the duty to effectuate a citizen's arrest of the thief, he had an obligation to use reasonable care not to endanger plaintiff's decedent. "This argument was not raised by plaintiff below and, consequently, was not addressed by the trial court. Therefore, it is not preserved for appellate review." *Camden v Kaufman*, 240 Mich App 389, 400 n 2; 613 NW2d 335 (2000). Further, this alternative argument would not alter the analysis set forth above.

Affirmed.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen