

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TIMOTHY P. CUOLAHAN, as Personal  
Representative of the Estate of NICHOLAS J.  
CUOLAHAN, Deceased,

Plaintiff-Appellee,

v

CHRISTOPHER LEE STAMPER,

Defendant-Appellant,

and

MARK LUDWIG, JOHN PAUL MERCER,  
DAVID ADAMS, GREGORY FRAUNHOFFER,  
d/b/a COUNTRY HERITAGE MOBILE HOME  
COMMUNITY PARK, ROBERT VILCEK, and  
COUNTRY HERITAGE MOBILE, LLC, d/b/a  
COUNTRY HERITAGE MOBILE HOME,

Defendants.

UNPUBLISHED  
November 9, 2004

No. 249244  
Monroe Circuit Court  
LC No. 01-013389-NZ

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Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant Christopher Stamper (defendant) appeals as of right following entry of a consent judgment that preserved his right to challenge the trial court's denial of his motion for summary disposition. We reverse. This appeal is being decided without oral argument under MCR 7.214(E).

This case arises from the tragic death of plaintiff's decedent Nicholas Cuolahan (Nicholas). At the time of the incident, Mark Ludwig, evidently believing his shotgun was unloaded, aimed it at Nicholas and pulled the trigger, apparently in an attempt to scare him as a practical joke. Unfortunately, the gun was actually loaded and fired a bullet that fatally injured Nicholas. At the time, Ludwig and Nicholas were both residing in defendant's home.

Defendant argues that the trial court erred by denying his motion for summary disposition under MCR 2.116(C)(10). We agree. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and a trial court's decision on such a motion is reviewed de novo on appeal. We consider the facts in the light most favorable to the nonmoving party. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

Plaintiff's complaint asserted a claim against defendant based on a premises liability theory framed in terms of defendant's failure to protect Nicholas from Ludwig. The parties do not dispute that defendant's duty to Nicholas was as an invitee because Nicholas was to contribute financially to help pay the household bills, thus conferring a pecuniary benefit on defendant. *Stanley v Town Square Coop*, 203 Mich App 143, 149; 512 NW2d 51 (1993). Both defendant and the trial court relied on our Supreme Court's decision in *MacDonald v PKT, Inc*, 464 Mich 322; 628 NW2d 33 (2001), regarding the duty owed to an invitee vis-à-vis the criminal acts of a third party. However, the rules cited in *MacDonald* pertain to merchants' (business inviters) duty to commercial invitees and are inapplicable to this case where the parties' relationship is essentially one of landlord-tenant.<sup>1</sup>

*Stanley, supra*, remains the authority regarding a landlord's duty to a tenant with regard to third-party criminal acts. The duty a possessor of land owes to his invitees is not absolute, as he is not an insurer of their safety. A landlord must exercise reasonable care to protect their tenants from foreseeable criminal activities in common areas inside the structures that the landlord controls. *Id.* at 149. And this duty "exists only when the landlord created a dangerous condition that enhances the likelihood of exposure to criminal assaults." *Id.* at 150. The landlord's duty is limited to the common areas because "a landlord exercises exclusive control over the common areas of the premises," and thus, is the only one who can take reasonable precautions to ensure these areas are safe. *Id.* at 146.

The essential facts of this case are not in dispute. Ludwig and Nicholas were long-time friends and moved in with defendant approximately two weeks before the shooting incident, the specific third-party criminal act at issue. Ludwig kept his gun under the couch in the living room. There is no evidence that the living room of defendant's home was a common area as the couch also served as Ludwig's bed. And the shooting actually occurred in a bedroom. Even if we were to assume that all rooms in defendant's home were common areas, defendant owed no duty to Nicholas because defendant did not create the condition which led to the criminal act.

Moreover, a landowner owes no duty to an invitee to protect him from known dangers unless the landowner should anticipate the harm despite such knowledge. *Id.* at 148-149. The evidence showed that Nicholas had been present on at least one prior occasion where Ludwig had been playing with the gun pretending to shoot people and was aware of this proclivity. And

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<sup>1</sup> In *MacDonald, supra* at 326, 334-335, our Supreme Court reaffirmed the limitations placed on a merchants duty in *Scott v Harper Recreation, Inc*, 444 Mich 441; 506 NW2d 857 (1993), and *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495; 418 NW2d 381 (1988). In *Williams, supra* at 502 n 17, the Court specifically noted the differences regarding the duty owed by a merchant and a landlord as to their respective invitees. *Stanley, supra* at 149.

despite the fact that Ludwig had been playing with the gun in the moments before approaching Nicholas, Ludwig's act of shooting Nicholas was not foreseeable. Ludwig had brought the gun out on previous occasions without incident and there was no reason for defendant to foresee that the gun was actually loaded. Accordingly, the trial court erred in denying defendant's motion for summary disposition. Because the terms of the consent judgment provide that reversal of the court's decision would not result in a trial, but rather in defendant not being liable for the judgment amount, a remand is unnecessary.

Reversed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski