

STATE OF MICHIGAN
COURT OF APPEALS

DONETTE RICHARD, Personal Representative of
the Estate of PETER RICHARD,

Plaintiff-Appellant,

v

RL&D MCDONALD'S OF SASHABAW,

Defendant-Appellee,

and

CLIFFORD WAYNE TRIMBLE, LANCE ALLAN
SCHMITT and JOSEPH WELLS STAPLETON,

Defendants.

UNPUBLISHED
December 1, 2005

No. 255464
Oakland Circuit Court
LC No. 2003-048787-NO

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

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

Plaintiff's decedent¹ was injured during an assault committed by Lance Schmitt and Joseph Stapleton on defendant's premises. The trial court ruled that the decedent's injury was not clearly foreseeable by defendant, which had nonetheless fulfilled any duty owed to the decedent.

We review de novo a trial court's ruling with respect to a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

¹ We note that the decedent died during the pendency of this case in the trial court.

“Owners and occupiers of land have a special relationship to their invitees.” *Mason v Royal Dequindre, Inc*, 455 Mich 391, 398; 566 NW2d 199 (1997), overruled in part on other grounds by *MacDonald v PKT, Inc*, 464 Mich 322, 334 n 10; 628 NW2d 33 (2001). Nevertheless, the general rule is that a business invitor does not have a duty to protect its invitees from the criminal acts of third persons. See, generally, *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 498-499, 501-502; 418 NW2d 381 (1988). However, in *Mason, supra* at 393, the Court held “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.” In *MacDonald v PKT, Inc*, 464 Mich 322, 338; 628 NW2d 33 (2001), the Court limited the holding in *Mason* and stated the following:

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. [Citations omitted.]

Whether an 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. See *id.* at 339. 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.* An identifiable invitee is a particular invitee who is personally endangered by the criminal episode. See *Mason, supra* at 402-405.

Evidence showed that Schmitt and Stapleton were on defendant’s premises for several minutes before the altercation with the decedent. During that time, they allegedly planned to commit a robbery and became involved in a verbal altercation with a customer. However, the decedent did not become personally endangered by their actions until he arrived on the premises. A disturbance was not created until the decedent confronted Schmitt and Stapleton after they swore at him. Assuming that that disturbance created a risk of imminent harm, defendant had an obligation to call the police. Someone did so, and the police arrived on the scene within three and one-half minutes.

If one of defendant’s employees called the police, defendant fulfilled its duty under *MacDonald*. See *Smith v Hamilton’s Henry VIII Lounge, Inc*, 468 Mich 885, 885; 661 NW2d 234 (2003). If defendant’s employees did not call the police, defendant may have breached its duty. However, no evidence showed that had an employee placed such a call, the police would have arrived any sooner. Moreover, even if the police had arrived sooner, they could not reasonably have prevented the decedent’s injuries because the fight ended less than a minute after it began. Therefore, plaintiff has not shown that defendant’s possible breach of its duty was a proximate cause of any damages to the decedent. We will not reverse if the trial court reached

the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

I concur in result only.

/s/ William B. Murphy