

STATE OF MICHIGAN  
COURT OF APPEALS

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BRIAN DICKERSON,

Plaintiff-Appellant,

v

PINKERTON SECURITY COMPANY,

Defendant-Appellee,

and

DELPHI AUTOMOTIVE SYSTEMS,<sup>1</sup>

Defendant.

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UNPUBLISHED

December 20, 2005

No. 257124

Eaton Circuit Court

LC No. 03-000939-NO

Before: Fitzgerald, P.J., and O’Connell and Kelly, JJ.

PER CURIAM.

Plaintiff Brian Dickerson appeals as of right from an order granting summary disposition under MCR 2.116(C)(10) to defendant Pinkerton Security Systems Company. We affirm. This case arises from plaintiff’s altercation with Richard Kinney in a parking lot leased by Delphi Automotive Systems. Plaintiff worked at the adjacent Delphi plant and had Kinney’s ex-wife, Debra Mills, in his truck when he arrived at the plant. Kinney pulled in behind plaintiff’s truck, opened plaintiff’s door, and tried to yank plaintiff out of the truck, injuring plaintiff’s arm. Kinney’s daughter had arrived with Kinney, and she broke up the altercation soon after it started.

Plaintiff first argues that he was an intended third-party beneficiary of the security services contract between Pinkerton and Delphi. We disagree. We review de novo the interpretation of a contract, which is a question of law. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003). “[O]nly intended, not incidental, third-party beneficiaries may sue for a breach of a contractual promise in their favor.” *Id.* at 427. “A person

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<sup>1</sup> Due to Delphi Automotive Systems’ pending bankruptcy proceeding, this Court has ordered that this case is closed as to that party only. Thus, we only consider plaintiff’s claim against Pinkerton Security Company in this opinion.

is a third-party beneficiary of a contract only when that contract establishes that a promisor has undertaken a promise ‘directly’ to or for that person.” *Id.* at 428, citing MCL 600.1405. Further, determining that a contract establishes a third-party beneficiary through a direct promise to the third party must be based on an objective review of the form and meaning of the contract. *Schmalfeldt, supra* at 428. A contract is presumed to have been made for the benefit of the parties to it, and a party asserting third-party beneficiary status has the burden of proving that he or she is an intended beneficiary. *Oja v Kin*, 229 Mich App 184, 193; 581 NW2d 739 (1998).

Plaintiff points to a provision in defendants’ security services contract that provides that Pinkerton’s security officers will protect Delphi’s employees and invitees from injury from “theft, fire, trespass, espionage, sabotage, riot, and/or insurrection . . . .” However, Pinkerton was not required by the contract to protect Delphi employees and invitees from criminal acts generally. Further, the form and meaning of the contract objectively indicates that Delphi was contracting to protect its own interests, not those of third parties, so plaintiff was not an intended third-party beneficiary to the contract.

Plaintiff next argues that Pinkerton voluntarily assumed the obligation to protect him against Kinney based on alleged statements by a security officer to Mills. We disagree. We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Ordinarily, determining whether a defendant breached a duty of care is a jury question, but “when the moving party can show either that an essential element of the nonmoving party’s case is missing, or that the nonmoving party’s evidence is insufficient to establish an element of its claim, summary disposition is properly granted.” *Latham v Nat’l Car Rental Sys, Inc*, 239 Mich App 330, 340; 608 NW2d 66 (2000).

To establish a prima facie case of negligence, a plaintiff must prove: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages. *Fultz v Union-Commerce Assocs*, 470 Mich 460, 463; 683 NW2d 587 (2004). Whether a legal duty existed is a question of law for the court. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 262; 571 NW2d 716 (1997). Plaintiff does not allege that the security guard or any other Pinkerton personnel directly promised him that they would protect him. To the extent that Pinkerton voluntarily assumed any obligations to protect plaintiff, the terms of the promise are limited to Mills’ affidavit, which is the only evidence asserted by plaintiff regarding the alleged promises made by the security guard. See *Scott v Harper Recreation, Inc*, 444 Mich 441, 448; 506 NW2d 857 (1993). Mills’ affidavit merely asserts that the security guard promised to watch for Kinney and call the police if anything were to happen in the future. “A promise to take specific steps to reduce danger is a promise to do just that—not a promise to eliminate the danger.” *Id.* at 450. Because the undisputed facts demonstrate that the security guard notified the police as soon as Mills reported his presence in the parking lot, plaintiff has presented no evidence that would create a genuine issue of material fact that the security guard breached this duty. Plaintiff did not present any evidence that the security guard owed him any other duty, so the trial court properly granted Pinkerton summary disposition.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Peter D. O’Connell  
/s/ Kirsten Frank Kelly