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NATEYSHA MONK ET AL. *v.* TEMPLE GEORGE ASSOCIATES, LLC, ET AL.
(AC 24275)

Foti, Bishop and West, Js.

Argued January 9—officially released May 4, 2004

(Appeal from Superior Court, judicial district of New Haven, Robinson-Thomas, J.)

Steven D. Jacobs, for the appellant (named plaintiff).

Jonathan A. Beatty, for the appellees (named defendant et al.).

Opinion

FOTI, J. In this negligence action, the plaintiff Nateysha Monk[1] appeals from the trial court's judgment, rendered after it granted the motion for summary judgment that was filed by the defendants Temple George Associates, LLC, and Pro Park, Inc.[2] On appeal, the plaintiff claims that the court improperly granted the motion for summary judgment because there is a genuine issue of material fact as to (1) whether the defendants had a legal duty to protect her and (2) whether the defendants' conduct was the proximate cause of her injuries. We disagree with the plaintiff and affirm the judgment of the trial court.

The following undisputed facts are relevant to our resolution of the plaintiff's claims. On December 26, 1998, the plaintiff attended a New Haven nightclub and parked her car at the defendants' parking lot for a fee. While in the nightclub, Ayishea Denson, a former girlfriend of the plaintiff's husband, verbally confronted the plaintiff, as she had done on past occasions.[3] The plaintiff then left the nightclub, and Denson followed her, continuing the verbal attack. Denson then physically attacked the plaintiff in the defendants' parking lot.

The plaintiff filed the present action on January 17, 2001, alleging that her injuries were caused by the defendants' negligence. In their answer, filed August 6, 2001, the defendants denied those allegations. On April 25, 2002, the defendants filed a motion for summary judgment, claiming that (1) they did not have a legal duty to protect the plaintiff from such an attack, and (2) their conduct was not the proximate cause of the attack. In its memorandum of decision, filed April 29, 2003, the court agreed with the defendants and concluded that (1) because the type of harm alleged was not reasonably foreseeable, the defendants did not have a legal duty to protect the plaintiff from such an attack, and (2) even if the plaintiff presented evidence to support a claim of duty, she would fail on the issue of proximate cause. This appeal followed.

We begin by setting forth our standard of review. "Summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Practice Book § 17-49. . . . Our review of the trial court's decision to grant [a] motion for summary judgment is plenary." (Citation omitted; internal quotation marks omitted.) ***Barry*** v. ***Quality Steel Products, Inc.***, 263 Conn. 424, 450, 820 A.2d 258 (2003).

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . First, it is necessary to determine the existence of a duty . . . ." (Internal quotation marks omitted.) ***Baptiste*** v. ***Better Val-U Supermarket, Inc.***, 262 Conn. 135, 138, 811 A.2d 687 (2002). Here, because the plaintiff parked her car at the defendants' parking lot for a fee, she was a business invitee, and the defendants owed her a duty to keep their premises in a reasonably safe condition. See id., 140. The issue presented in this appeal, however, is whether the defendants had a legal duty to protect the plaintiff from this type of attack occurring on its premises.

"The existence of a duty is a question of law and only if such a duty is found to exist does the trier of

fact then determine whether the defendant violated that duty in the particular situation at hand. . . . Our Supreme Court has stated that the test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case. . . . The first part of the test invokes the question of foreseeability, and the second part invokes the question of policy.'' (Citations omitted; internal quotation marks omitted.) *Abramczyk* v. *Abbey*, 64 Conn. App. 442, 445, 780 A.2d 957, cert. denied, 258 Conn. 933, 785 A.2d 229 (2001).

The court determined that, as a matter of law, the defendants did not owe the plaintiff a duty to protect her from the type of harm complained of. To the contrary, the plaintiff argues extensively that there is a genuine issue of material fact on the issue of foreseeability that would preclude the granting of the defendants' motion for summary judgment. Specifically, the plaintiff argues that she produced adequate evidence to create a genuine issue of material fact as to whether the defendants, knowing what they knew, or in light of what they should have known, about the crime in the area in which the parking lot is located, anticipated the type of harm that occurred. We, however, need not address that argument under the first prong of the analysis concerning the existence of a duty if public policy requires that no legal duty be imposed on the defendants. See, e.g., *Gomes* v. *Commercial Union Ins. Co.*, 258 Conn. 603, 618 n.11, 783 A.2d 462 (2001). We therefore must look at the public policies at issue under the second prong of our duty analysis.

We note that ''[t]he fundamental policy purposes of the tort compensation system [are] compensation of innocent parties, shifting the loss to responsible parties or distributing it among appropriate entities, and deterrence of wrongful conduct . . . . It is sometimes said that compensation for losses is the primary function of tort law . . . [but it] is perhaps more accurate to describe the primary function as one of determining when compensation [is] required. . . . An equally compelling function of the tort system is the prophylactic factor of preventing future harm . . . . The courts are concerned not only with compensation of the victim, but with admonition of the wrongdoer. . . . [I]mposing liability for consequential damages often creates significant risks of affecting conduct in ways that are undesirable as a matter of policy. Before imposing such liability, it is incumbent upon us to consider those risks.'' (Citations omitted; internal quotation marks omitted.) *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 578–79, 717 A.2d

215 (1998).

To impose a legal duty on the defendants under the circumstances of this case would (1) be tantamount to imposing strict liability on a parking lot owner or operator for any injury occurring on its property no matter what the circumstances, (2) not act as a deterrent, given the unique circumstances of the attack at issue, where a known attacker attacked the plaintiff because of a personal dispute that arose two years earlier and (3) shift the cost of the plaintiff's harm to parties who were not directly, if at all, responsible for the injuries. The policy goals of the tort compensation system would, therefore, not be met if we were to permit a legal duty to be imposed on the defendants. Consequently, although we do not conclude that a parking lot operator or owner never has a legal duty to protect business invitees from attacks occurring on its premises, public policy requires this court to conclude, as a matter of law, that the defendants did not have a legal duty to protect the plaintiff from the attack at issue.[4]

The judgment is affirmed.

In this opinion WEST, J., concurred.

[1] Jermaine Monk, Nateysha Monk's husband, also was a plaintiff and sought damages on his claims for loss of consortium. Only Nateysha Monk has appealed from the judgment and we refer to her in this opinion as the plaintiff.

[2] John LoRicco, doing business as the Alley Cat Club, and Ayishea Denson also were defendants in the underlying action, but neither is involved in this appeal. We therefore refer in this opinion to Temple George Associates, LLC, and Pro Park, Inc., as the defendants.

[3] Two years prior to the incident at issue in this appeal, Denson challenged the plaintiff to a fight while the two visited a New Haven nightclub.

[4] Because we conclude, as a matter of law, that the defendants did not have a legal duty to protect the plaintiff from the type of attack at issue, we need not address the plaintiff's claim concerning causation.