

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-000653-MR

SCOTTSDALE INSURANCE COMPANY

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ELLEN B. EWING, JUDGE  
ACTION NO. 94-CI-216

WILLIAM GRAY; JOHN M. CLARK  
and MARY C. CLARK, Individually  
and d/b/a GREYSTONE APARTMENTS

APPELLEES

AND

NO. 1997-CA-000994-MR

WILLIAM GRAY

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BENJAMIN F. SHOBE, JUDGE  
ACTION NO. 94-CI-216

JOHN M. CLARK and MARY C.  
CLARK, Individually and  
d/b/a GREYSTONE APARTMENTS

APPELLEES

OPINION AND ORDER AFFIRMING IN APPEAL NO. 1997-CA-000994-MR,  
AND DISMISSING IN APPEAL NO. 1997-CA-000653-MR

\* \* \* \* \*

BEFORE: GUDGEL, Chief Judge; ABRAMSON and COMBS, Judges.

GUDGEL, CHIEF JUDGE: These consolidated appeals stem from a  
summary judgment and a directed verdict granted by the Jefferson  
Circuit Court in a tort action for damages filed by a tenant

against his landlords. Although the court first adjudged that appellant Scottsdale Insurance Company (Scottsdale) was obligated to provide the landlords with liability insurance coverage regarding the tenant's claim, at the conclusion of a jury trial it directed a verdict in favor of the landlords. In Appeal No. 1997-CA-000653-MR, Scottsdale contends that the court erred by finding that it was obligated to provide the landlords with coverage respecting the tenant's claim. In Appeal No. 1997-CA-000994-MR, the tenant contends that the court erred by directing a verdict in favor of the landlords. As we disagree with the tenant's contentions and affirm the judgment in Appeal No. 1997-CA-000994-MR, Scottsdale's appeal has been rendered moot and will be dismissed.

In 1989, appellant William Gray and a roommate leased from appellees John and Mary Clark a single family residence located at 104 Boston Court in Louisville. The property, which is situated in a high crime area, apparently was burglarized and damaged at least four times prior to January 1993. According to Gray, despite his numerous requests that the Clarks repair the front door frame, neither the door nor the frame was ever replaced or completely repaired.

On January 13, 1993, an unidentified person kicked the front door numerous times in an apparent attempt to break in. The door frame eventually gave way, and the person was able to insert a shotgun and fire a shot through the partially open front door. Gray, who was sitting in the living room, was struck and

seriously injured, eventually resulting in the amputation of his leg. This action followed.

Gray alleged in his complaint that the Clarks owed him a legal duty "to take reasonable steps to avoid injury" to him stemming from "reasonably foreseeable criminal acts," and that they failed to do so. Specifically, Gray alleged that the Clarks' general duty was breached in the following respects:

a) Failure to act upon numerous requests and warnings by the tenants of 104 Boston Court regarding assaults and threats by Unknown Defendants toward plaintiff William Gray and other tenants of 104 Boston Court; and

b) Failure to act upon numerous requests and warnings by the tenants of 104 Boston Court regarding burglaries of 104 Boston Court; and,

c) Failure to act upon numerous requests by the tenants of 104 Boston Court, including but not limited to the Plaintiff, to provide and repair security locks and framing on entrances and exits to and from 104 Boston Court; and,

d) Failure to provide reasonable security for the tenants of 104 Boston Court, including but no [sic] limited to Plaintiff.

Before trial the Clarks' liability insurer, Scottsdale, was allowed to intervene and prosecute a declaratory judgment action respecting the issue of whether the Clarks' liability policy provided them coverage in regard to Gray's claim. The court determined that the assault and battery exclusion in Scottsdale's policy was capable of two different interpretations, and that it therefore was ambiguous and must be construed in

favor of the Clarks. Thus, the court concluded that the policy provided coverage to the Clarks respecting Gray's claim, and it granted the Clarks a summary judgment as to coverage. However, on the sixth day of a jury trial, the court granted the Clarks a directed verdict as to liability on the ground that they owed Gray no legal duty which was breached. Scottsdale and Gray filed separate appeals from the court's rulings, and we ordered those appeals to be consolidated.

First, we will address the two-pronged argument raised in Gray's appeal. He urges that the court erred by concluding that the Clarks owed him no legal duty which they breached in the circumstances herein, and that the court erred by denying him a right to pursue both a claim for negligence per se and a private cause of action for certain alleged violations of the Louisville Existing Structures Code (Structures Code). We find no merit in either prong of Gray's argument.

In Waldon v. Housing Authority of Paducah, Ky. App., 854 S.W.2d 777 (1991), this court recognized that a landlord is not a guarantor of a tenant's safety. Nevertheless, for the first time we allowed a landlord, who had failed to take reasonable steps to avoid injury to a tenant stemming from a reasonably foreseeable criminal act of a third party, to be adjudged liable to the tenant. Our adoption of that view appears to comport with the modern trend. See generally Gary D. Spivey, Annotation, Landlord's Obligation to Protect Tenant Against Criminal Activities of Third Persons, 43 A.L.R.3d 331 (1972).

Contrary to the Clarks' contention, Waldon is not inconsistent with the supreme court's recent reaffirmation of the principle of caveat emptor in Adams v. Miller, Ky., 908 S.W.2d 112 (1995), overruled on other grounds, 951 S.W.2d 318 (1997). In Adams, the court refused to hold that a landlord had a common law duty to use reasonable care to protect tenants from injury by a fire which allegedly was proximately caused by a defect in the premises. In the instant proceeding, by contrast, we are concerned with the issue of whether the Clarks should be adjudged liable to Gray for failing to take reasonable steps to protect him from injury stemming from a third party's reasonably foreseeable criminal acts. Thus, the Clarks' potential liability turns upon an application of the principles discussed in Waldon, rather than upon the concepts and issues addressed in Adams.

Although Waldon recognizes that landlords can be liable for the reasonably foreseeable criminal acts of third persons, we believe that Gray has read the opinion as having a much broader application than was intended or is warranted. Waldon involved a multi-unit public housing project which had significant indoor and outdoor common areas under a public agency's exclusive control. Moreover, although the agency's employees knew that a person who was living in an apartment without permission had threatened a particular tenant, they made no effort to evict the offender or to discourage his presence. Further, even though crimes frequently occurred at the complex, the agency employed no security guards to patrol the common areas and protect its

tenants. The court concluded that the agency was subject to liability based on both its inaction in removing the offender from the complex, and its failure to provide security guards for the common areas thereof.

Obviously, in a case involving a landlord's rental of premises which include common areas which the landlord maintains and controls, it is not unfair to impose a legal duty on the landlord to protect the tenants from the reasonably foreseeable commission of criminal acts in those areas. It would be ludicrous, however, to impose such a legal duty in regard to a single-family residential unit, such as the one herein, which includes no significant common areas under the landlord's control. Indeed, as we view the matter, the Waldon rule clearly was intended to apply only to larger rental properties which include common areas under the landlord's control. To conclude otherwise, we believe, would impose duties and obligations upon the owners of single-family residential properties which would be cost prohibitive and which would unfairly impact numerous persons, including not only those landlords who rent multiple units, but also those individuals who are not engaged in the real estate business but who happen to rent their personal residences to other persons. This is especially true since the owners of such properties have no practical or realistic way of protecting against the commission of criminal acts by persons, using public highways and sidewalks, who choose to burglarize or commit other criminal acts at particular residences. We hold, therefore, that

the Waldon rule simply does not apply to single-family residences such as the one involved herein. It follows, therefore, that the Clarks owed Gray no legal duty to protect him from the reasonably foreseeable criminal acts of others, and that the court did not err by granting the Clarks a directed verdict. Moreover, even if we had found that the Clarks owed Gray such a duty, we are of the opinion that in any event, reasonable minds could not differ and the Clarks' negligence, if any, was not a substantial factor in causing Gray's injury.

We also find no merit in Gray's contention that he was entitled to maintain a private cause of action based upon the Clarks' alleged violations of the Structures Code. There is nothing in the code's language which even remotely suggests that the city's legislative body intended to create the right to file a private cause of action for violations of the code. Absent such language, no such cause of action may be implied. Miles v. Shauntee, Ky., 664 S.W.2d 512 (1983). Thus, even if the Clarks did violate certain provisions of the code, Gray was not entitled to assert a private cause of action for damages respecting those violations. Further, the code clearly was not intended to provide and includes no language providing protection for tenants against the reasonably foreseeable criminal acts of others, and no civil action may be maintained based upon the doctrine of negligence per se stemming from the Clarks' alleged violations of the code. See Carmichael v. Lexington-Fayette Urban County Government, Ky., 608 S.W.2d 66 (1980).

Because we have determined that the court did not err by granting a directed verdict in favor of the Clarks, Scottsdale is not obligated to provide any insurance coverage herein and its appeal is rendered moot. Hence, Scottsdale's appeal must be dismissed.

The court's judgment in Appeal No. 1997-CA-000994-MR is affirmed, while Appeal No. 1997-CA-000653-MR is hereby ORDERED dismissed as moot.

ALL CONCUR.

ENTERED: October 9, 1998

/s/ Paul D. Gudgel  
CHIEF JUDGE, COURT OF APPEALS

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