MICHAEL STEVEN SAMPSON	*	**NO. 2003-CA-1115**
VERSUS	*	**COURT OF APPEAL**
FELICITA CARRASQUILLO, THE XYZ INSURANCE COMPANY, KEITH M. SCHNEIDER, II, KEITH M. SCHNEIDER, I, INDIVIDUALLY AND AS TUTOR OF HIS MINOR CHILD, ASHLEY SCHNEIDER, THE ABC INSURANCE COMPANY, AND ASHLEY SCHNEIDER, AS ADMINISTRATOR OF HER OWN ESTATE	* * * * * * * *	**FOURTH CIRCUIT** **STATE OF LOUISIANA**

APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 96-846, DIVISION "D"
HONORABLE KIRK A. VAUGHN, JUDGE
* * * * * *
JUDGE MICHAEL E. KIRBY
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby, Judge Edwin A. Lombard)

MICHAEL A. MULE'
3014 METAIRIE ROAD
METAIRIE, LA 70001
AND
ROCH P. POELMAN
LEMLE & KELLEHER, L.L.P.
601 POYDRAS STREET
21ST FLOOR
NEW ORLEANS, LA 70130
COUNSEL FOR PLAINTIFF/APPELLANT

THOMAS G. BUCK
BLUE WILLIAMS, L.L.C.
3421 NORTH CAUSEWAY BOULEVARD
SUITE 901
METAIRIE, LA 70002
COUNSEL FOR DEFENDANT/APPELLEE

Plaintiff, Michael Steven Sampson, appeals the trial court judgment granting summary judgment in favor of defendant, Felicita Carrasquillo.

Plaintiff filed a petition for damages on August 9, 2002, naming as defendants Felicita Carrasquillo, her homeowner's insurer, and Ms. Carrasquillo's two grandchildren, Keith M. Schneider, II and Ashley Schneider. Also sued was Keith M. Schneider, I, as the tutor of his minor child, Ashley, and Mr. Schneider's liability insurer. Keith Schneider, II was twenty-two years old at the time of the incident that is the subject of this lawsuit.

Plaintiff alleges that either late on August 11, 2001 or very early on August 12, 2002, he went to a residence owned by Ms. Carrasquillo at the invitation of Ashley Schneider. He further alleges that he later fell asleep on the couch, and when Ashley's brother Keith arrived at his grandmother's home, he severely beat plaintiff causing severe injuries. Plaintiff alleged

that Ms. Carrasquillo was in an adjacent room at the time of the incident. The plaintiff's petition alleges that Ms. Carrasquillo shared liability for plaintiff's injuries by failing to see or hear what she should have seen or heard, failing to regulate the activities of persons, including minors, residing in her home and failing to contact the proper authorities to report the incident that occurred in her home.

Ms. Carrasquillo filed an exception of no cause of action and/or motion for summary judgment. In support of the exception and motion, Ms. Carrasquillo filed a memorandum, a copy of plaintiff's petition, her affidavit, a drawing of the floor plan of her house and a statement of uncontested material facts. In opposition to Ms. Carrasquillo's exception and motion, plaintiff submitted a memorandum, a response to Ms. Carrasquillo's statement of uncontested material facts, excerpts from a motion hearing relating to criminal charges brought against Keith Schneider, II, as a result of this incident, the arrest form and copies of newspaper articles about the incident.

The trial court rendered judgment granting the motion for summary judgment filed by Ms. Carrasquillo. In light of that ruling, the court stated that the exception of no cause of action is moot. The court issued reasons for judgment, stating that Ms. Carrasquillo's legal duty as a homeowner does

not extend to unforeseeable or unanticipated criminal acts of her grandson. The court further stated that the facts did not reflect that Ms. Carrasquillo knew or should have known that an argument would take place at her house late that night, and did not even know that plaintiff was invited to her house. The court found that the criminal attack of plaintiff was not reasonably foreseeable and there was, as a matter of law, no breach of duty owed by the homeowner, Ms. Carrasquillo, to plaintiff. Additionally, the court noted that Ms. Carrasquillo was asleep at the time of the incident and therefore, had no opportunity to intervene. Plaintiff appealed the trial court judgment.

On appeal, the plaintiff argues that the trial court erred in granting summary judgment in favor of Ms. Carrasquillo. Specifically, the plaintiff argues that the trial court erred in finding that no genuine issues of material fact remain, in finding that the events occurring on the night in question have been concluded to be criminal acts and in failing to draw those inferences from undisputed facts most favorable to the party opposing the motion for summary judgment. Ms. Carrasquillo responds that the trial court correctly granted summary judgment because no issues of material fact remain, and she is not liable for an unforeseeable assault committed by another adult in her home while she was asleep in another room.

Summary judgment is properly granted only if the pleadings,

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966. Article 966 was amended in 1996, but the burden of proof remains with the mover to show that no genuine issue of material fact exists. If the mover will not bear the burden of proof at trial, his burden on the motion does not require him to negate all essential elements of the plaintiff's claim, but rather to point out that there is an absence of factual support for one or more elements essential to the claim. La. C.C.P. art. 966 C(2); Fairbanks v. Tulane University, 98-1228 (La.App. 4 Cir. 3/31/99), 731 So.2d 983. After the mover has met its initial burden of proof, the burden shifts to the non-moving party to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden at trial. La. C.C.P. art. 966 C(2); Smith v. General Motors Corp., 31,258 (La.App. 2 Cir. 12/9/98), 722 So.2d 348. If the non-moving party fails to meet this burden, there is no genuine issue of material fact and the mover is entitled to summary judgment as a matter of law. La. C.C.P. art. 966; Schwarz v. Administrators of Tulane Educational Fund, 97-0222 (La.App. 4 Cir. 9/10/97), 699 So.2d 895. Appellate courts review summary judgments de novo, using the same criteria that govern the trial court's consideration of whether summary

judgment is appropriate.

A homeowner is not an insurer of the safety of persons lawfully on the premises. Vertudazo v. Allstate Insurance Company, 542 So.2d 703, 704 (La.App. 4 Cir. 1989). The duty owed by a homeowner to a social guest is to avoid reasonably foreseeable danger to the guest and to keep his premises safe from hidden dangers in the nature of traps or pitfalls. Id. The Louisiana Supreme Court has held that generally, there is no duty to protect others from the criminal activities of a third person. Harris v. Pizza Hut of Louisiana, Inc., 455 So.2d 1364 (La. 1984).

We are not persuaded by plaintiff's argument that Ms. Carrasquillo's grandson's actions cannot be characterized as criminal in nature until the criminal proceedings stemming from this incident are concluded. The undisputed material facts of this case show that Keith Schneider, II criminally attacked plaintiff at Ms. Carrasquillo's home while Ms. Carrasquillo slept in another room. Plaintiff did not offer any factual support to dispute Ms. Carrasquillo's statement in her affidavit that she was asleep when the incident occurred. The facts do not show that Ms. Carrasquillo knew or should have known that any type of altercation would occur in her home on the evening in question, and she was not even aware that her granddaughter had invited plaintiff into her home.

The trial court correctly concluded that the attack was not reasonably foreseeable, and therefore, there was no breach of any duty owed by Ms. Carrasquillo to the plaintiff. The court also correctly held that Ms. Carrasquillo had no opportunity to intervene given the undisputed fact that she was asleep in another room at the time of the attack. Summary judgment was properly granted in favor of Ms. Carrasquillo.

For these reasons, we affirm the trial court judgment.

AFFIRMED