

STATE OF MICHIGAN
COURT OF APPEALS

RICK HILL, JR.,

Plaintiff-Appellant,

v

GARB KO, INC., d/b/a SEVEN ELEVEN STORES,

Defendant-Appellee.

UNPUBLISHED
October 31, 1997

No. 199030
Genesee Circuit Court
LC No. 96-042679 NO

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Plaintiff brought this action, alleging negligence and nuisance and seeking damages for injuries he sustained when, while waiting for his friend to emerge from defendant's store, he was attacked in a parking lot by a person or persons unknown. Plaintiff contends that the assailant had been in the parking lot for up to 30 minutes, acting in a loud and boisterous manner, urinating on the side of the building, and consuming alcoholic beverages immediately prior to the attack. From summary disposition in favor of defendant, plaintiff appeals by right. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As to plaintiff's negligence theory, he identifies no evidence indicating that he or any other patron was in a situation involving a known, obvious, and imminently dangerous peril which defendant or its employees or agents must have recognized. Public urination, public consumption of intoxicants, and annoying verbal behavior is simply not equivalent to assaultive conduct, nor does it necessarily constitute a precursor to such assaults. *Mason v Royal DeQuindre*, 445 Mich 391, 403-404; ___ NW2d ___ (1997). Accordingly, summary disposition of plaintiff's negligence theory was properly granted.

As to plaintiff's nuisance theory, putting aside for the moment that the urination occurred on the side of the building, and thus out of sight of defendant's agents and employees, and granting that the assailant's conduct violated numerous Flint City ordinances and perhaps the indecent exposure statute, plaintiff's injuries were not a result of the urination or consumption of alcohol, but of an assault. Accordingly, a showing of proximate causation, as a prerequisite to

recovery on such a cause of action, is absent. *Singerman v Municipal Service Bureau*, 455 Mich 135; ___ NW2d ___ (1997). Summary disposition was therefore properly granted on this theory as well.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs