

STATE OF MICHIGAN
COURT OF APPEALS

TERRY ALBANYS,

Plaintiff-Appellee,

v

19055, INC., d/b/a COYOTE II,

Defendant-Appellant.

UNPUBLISHED

March 20, 2001

No. 220505

Wayne Circuit Court

LC No. 97-732662-NO

Before: Murphy, P.J., and Hood and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in favor of plaintiff following a jury trial. We affirm.

First, defendant argues that the trial court erred when it denied defendant's motion for judgment notwithstanding the verdict. Defendant contends that plaintiff failed to make out a prima facie case of negligence. We disagree.

This Court reviews a trial court's decision on a motion for JNOV de novo. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). A prima facie case of negligence requires proof of four elements: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty; (3) causation; and (4) damages. *Schneider v Nectarine Ballroom, Inc, (On Remand)*, 204 Mich App 1, 4; 514 NW2d 486 (1994). This Court has stated that, ordinarily, merchants do not have a duty to provide security guards to protect customers from the criminal acts of third parties. *Krass v Tri-County Security, Inc*, 233 Mich App 661, 681; 593 NW2d 578 (1999). However, this Court also noted that inviters have a duty to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties. *Id.* The duty of a tavern keeper to protect a patron from injury by another arises only when one or more of the following circumstances exists: (1) a tavern keeper allowed a person on the premises who has a known propensity for fighting; (2) the tavern keeper allowed a person to remain on the premises whose conduct had become obstreperous and aggressive to such a degree that the tavern keeper knew or ought to have known he endangered others; (3) the tavern keeper had been warned of danger from an obstreperous patron and failed to take suitable measures for the protection of others; (4) the tavern keeper failed to stop a fight as soon as possible after it started; (5) the tavern keeper failed to provide a staff adequate to police the premises; and (6) the tavern keeper tolerated disorderly conditions. *Schneider, supra* at 4-5. In the instant case, it is

undisputed that plaintiff was an invitee. The next step is to determine if the jury was correct in finding that defendant breached its duty owed to plaintiff and that this breach was the factual and proximate cause of plaintiff's injury.

In *Schneider*, the plaintiff was involved in an altercation, which began inside the bar, after two men began harassing the plaintiff's friend when she left the table to go to the rest room. When the plaintiff's female companion returned to the table, the plaintiff moved her to his side and told her to ignore the men. As the plaintiff told one of the men to relax and drop the matter, he was hit in the eye and a fight ensued. The plaintiff, weak and ready to pass out, was escorted to the door. The plaintiff was allowed to sit in the vestibule area while the bouncer left to help eject other participants in the fight. After three other men were ejected, the plaintiff was told to leave and pushed out the door. As soon as the plaintiff was out the door, one of the three men previously ejected put his arm around the plaintiff's neck and held him in a headlock. The plaintiff was then dragged toward a curb and beaten by two men.

The trial court granted the defendant's motion for summary disposition, finding that the defendant owed the plaintiff no duty with regard to any injuries sustained off the premises. *Id.* at 7. However, this Court reversed, finding the injuries the plaintiff sustained should have been reasonably foreseeable to defendant and that the situation could have been easily avoided without much difficulty. *Id.* This Court noted that the plaintiff did not assert that the defendant owed the plaintiff a duty to ensure his assailants had vacated the area once they had been ejected. Rather, it agreed with the plaintiff that the defendant breached its duty to the plaintiff when its employees affirmatively ejected the plaintiff into a known, obvious, and imminently dangerous situation. *Id.*

The instant case is similar to *Schnieder*. Plaintiff was ejected from defendant's bar and into the parking lot following some type of confrontation with another patron. During the process of ejecting plaintiff from the bar, there were other patrons leaving the bar. Defendant's head of security testified that while plaintiff was in the parking lot, plaintiff was involved in a fist fight with another individual. Unlike the defendant in *Schnieder*, defendant in the instant case held the other individual involved in the argument with plaintiff inside the bar. However, defendant in the instant case let other patrons exit the bar while plaintiff was being ejected. Further, the head of security testified that the bouncers were not sure if the patrons who were leaving the bar were friends of plaintiff or friends of the individual plaintiff was arguing with. The responding police officer testified that fights in defendant's parking lot were not an unusual occurrence. Given these circumstances, it was foreseeable that a friend of the other individual involved in the argument with plaintiff could have left the bar and had a fight with plaintiff in the parking lot. See *Mason v Royal Dequindre, Inc.*, 455 Mich 391, 404; 566 NW2d 199 (1997). Moreover, the jury could have found that defendant was negligent because defendant's head of security allowed plaintiff to engage in a fight on defendant's property. Our Supreme Court has stated that merchants have a duty to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties. *Id.* at 405. The measures they take must be reasonable. *Id.* A reasonable jury could have found that defendant did not take reasonable steps to prevent plaintiff's injury. Although defendant forcefully removed plaintiff from the bar, defendant did not make reasonable attempt to protect plaintiff while he was on defendant's property.

Next defendant argues that it is entitled to a new trial on the claim because the jury's verdict was inconsistent and illogical. Defendant contends that the jury could not logically find that defendant's bouncers did not batter plaintiff, but nevertheless find that defendant was negligent. Again, we disagree.

We review the trial court's decision regarding defendant's motion for a new trial for an abuse of discretion. *Meyer v City of Center Line*, 242 Mich App 560, 564; 619 NW2d 182 (2000). A jury's verdict is to be upheld, even if it is arguably inconsistent, if there is an interpretation of the evidence that provides a logical explanation for the findings of the jury. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000). In deciding whether to grant a new trial, a circuit court must make every effort to reconcile the seemingly inconsistent verdicts. *Id.* Further, such an effort requires a careful look, beyond the legal principles underlying the plaintiff's causes of action, at how those principles were argued and applied in the context of this specific case. *Id.* at 31-32.

After a thorough review of the record, it appears that the jury rejected the testimony of plaintiff and five other patrons. All of these witnesses testified that defendant's bouncers either threw punches at plaintiff or actually struck plaintiff. It appears that the jury did not believe these witnesses, and thus, found that defendant's employees did not assault and batter plaintiff. However, the jury had undisputed testimony that plaintiff received injuries to his eye while he was on defendant's property. Further, all of the witnesses agreed that plaintiff was ejected from the bar by at least one of the bouncers. While plaintiff was being escorted from the bar, other patrons were leaving. Defendant's head of security testified that he watched plaintiff fight another individual on defendant's property but did not intervene because it was in the parking lot. Additionally, evidence suggested that fights in the parking lot of defendant's bar were not an unusual occurrence. In light of these facts, it was foreseeable that a friend of the other individual involved in the argument with plaintiff may have left the bar and had a fight with plaintiff in the parking lot. Thus, there was ample evidence to support the jury's finding of negligence on behalf of defendant. There is an interpretation of the evidence that provides a logical explanation for the findings of the jury and, consequently, the jury's verdict must be upheld. *Bean, supra* at 31.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Jessica R. Cooper