

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD E. MCDONALD and DIANE
MCDONALD,

UNPUBLISHED
February 26, 2002

Plaintiffs-Appellants,

v

FIRST SAVINGS BANK,

No. 227526
St. Joseph Circuit Court
LC No. 99-001336-NO

Defendant-Appellee.

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At 11:30 p.m. on August 31, 1998, Richard E. McDonald was attempting to make a deposit at defendant's night depository when an assailant jumped from behind nearby bushes, attacked him, and took his money. McDonald sustained permanent injuries as a result of the attack. Lighting in the area was regularly turned off at 11:00 p.m., and a light fixture located directly over the depository slot was inoperable.

Plaintiffs filed suit, alleging that defendant breached its duty to maintain its premises in a reasonably safe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that it had no liability for injuries resulting from the criminal acts of third parties. In response, plaintiffs argued that defendant knew or had reason to know that criminals would likely endanger the safety of its customers on its premises, and that defendant breached its duty to take reasonable steps to remedy conditions on its premises that posed an unreasonable risk of harm. The trial court granted defendant's motion for summary disposition, finding that an invitor had no duty to protect an invitee from criminal acts of third parties. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The relationship between an invitor and an invitee imposes a duty on the invitor to take reasonable steps to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). An invitor must warn of hidden defects, but is not required to eliminate or warn of

open and obvious dangers unless the invitor should anticipate the harm notwithstanding the invitee's knowledge of the condition. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516-518; 629 NW2d 384 (2001).

A business invitor is not normally required to protect invitees from the crimes of third parties. *Perez v KFC Management Co*, 183 Mich App 265, 268-269; 454 NW2d 145 (1990). A business invitor has a duty to *respond* reasonably to situations occurring on its premises that pose a risk of foreseeable, imminent risk to identifiable invitees. *MacDonald v PKT, Inc*, 464 Mich 322, 334-335; 628 NW2d 33 (2001). However, a business invitor does not have a duty to protect invitees from unreasonable risks that are unforeseeable, and does not have a general obligation to anticipate and prevent criminal acts against invitees. *Id.*

Plaintiffs argue that the trial court erroneously granted defendant's motion for summary disposition. Essentially, plaintiffs assert that defendant should have anticipated that all customers who use the night depository will likely be victims of crime, and thus should be readily identified as being foreseeably endangered. This argument is without merit for the reason that criminal activity is irrational and in a sense is foreseeable under all circumstances. To impose liability based only on a foreseeability analysis would render an invitor vicariously liable for any criminal act on its premises. *Id.* at 335. An invitor's duty to use reasonable care to protect identifiable invitees from foreseeable criminal acts of third parties is triggered by the occurrence of specific acts on the premises that pose a risk of imminent and foreseeable harm. *Id.* at 338. Here, plaintiffs did not allege that defendant maintained criminal activity or failed to take reasonable steps to end criminal activity that took place in its presence. *Fuga v Comerica Bank—Detroit*, 202 Mich App 380, 382-383; 509 NW2d 778 (1993). Hence, summary disposition was appropriately granted. *Id.*

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin M. Doctoroff
/s/ Donald S. Owens