[Cite as *Bradfield v. Ohio State. Univ.*, 2009-Ohio-5104.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JACOB BRADFIELD

Plaintiff

v.

THE OHIO STATE UNIVERSITY

Defendant

Case No. 2008-09228-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Jacob Bradfield, a resident student attending The Ohio State University ("OSU"), filed this action alleging he suffered property loss and damage as a proximate cause of negligence on the part of OSU staff. Specifically, plaintiff claimed his car was broken into and several property items stored inside were stolen during a period when the vehicle was parked on a lot located on the OSU campus. Plaintiff recalled he parked his 1998 Buick LeSabre at the West Lot 5 (Carmack 5) parking lot on June 5, 2008, at the close of the OSU Spring Quarter term. The Carmack 5 parking lot according to a description provided by defendant, "is an overnight, gated lot restricted to students living in the residence halls." Plaintiff pointed out that after he parked his car on June 5, 2008, he left the area to stay at his permanent residence in Maryland and did not return to OSU until June 14, 2008 to attend the start of summer classes. Plaintiff explained he left his car parked at the Carmack 5 lot because he "had flown home in order to drive a rental truck back to Columbus with furniture for my new apartment." Plaintiff noted that when he returned to the Carmack 5 lot on June 14, 2008 to retrieve his car he discovered the vehicle had been broken into, an attempt was made to hot

wire it, and the property he had stored in the trunk was missing. Plaintiff stated, "I contacted Campus Police immediately and a police report was filed." Along with the damage to his automobile, plaintiff reported his computer, printer, key board and mouse, docking station notebook, small safe, twenty DVDs, passport, coffee pot, Spanish textbook, checkbook, clothing items and shoes had been stolen from the trunk of the automobile. Plaintiff filed this complaint contending his car was damaged and his property was stolen as a result of negligence on the part of OSU in failing to provide adequate parking lot security and not properly investigating the reported theft. Plaintiff seeks damage reimbursement in the amount of $1,954.00 representing his insurance coverage deductible for automotive repair and the estimated replacement value of his stolen property. The filing fee was paid.

{¶ 2} Defendant denied any liability in this matter and denied any OSU personnel acted negligently. Defendant recorded that although the Carmack 5 lot has "gates at the entrance/exit, the lot is not secured otherwise and is accessible by pedestrians." However, defendant noted "[t]he lot is patrolled regularly by Ohio State University Police Department units as well as Ohio State University Security Officers." Defendant expressed the opinion that the "theft could have taken place in a matter of minutes and in a very covert manner and therefore could have occurred undetected despite regular patrols by law enforcement and security personnel." Conversely, plaintiff believed the theft took a considerable amount of time to complete or at least enough time for a security force conducting timely rounds to detect criminal activity.

{¶ 3} Defendant denied OSU personnel negligently conducted the investigation of the theft. Defendant noted OSU employee, Officer Chambers, investigated the theft at the scene and "determined that there were no fingerprint locations in or on the vehicle that would be specific to the theft." Defendant acknowledged that three surveillance cameras monitored activity in the Carmack 5 parking lot. According to defendant, two of the three cameras worked "intermittently" during June 2008 and "[a]ll of the surveillance cameras work on a distant view, panning cycle." Additionally, defendant related the cameras "do not stay stationary to show specific activity in the lot." Defendant explained OSU "Security Services personnel periodically monitor the cameras in the Carmack 5 lot and if they had observed any suspicious activity during the time frame that (plaintiff's) automobile was parked in the Carmack 5 lot they would have reported it

directly to University Police and patrol units would have been dispatched immediately." Furthermore, defendant explained camera recordings are accessible for seventy-two hours before being replaced by a new image. Therefore, defendant contended "[i]t would be extremely time prohibitive to review" three days of recordings with a "'slim chance' that a general description of a suspect or suspect vehicle might be obtained." Based on these contentions, defendant's police personnel decided to not review the camera recording available at the time. Defendant denied the decision to not review camera recordings constituted actionable negligence.

{¶ 4} Plaintiff filed a response. Plaintiff asserted he was never informed by OSU personnel "that the review of the surveillance tapes was found to be unwarranted." Plaintiff pointed out he did not know surveillance tapes existed until well after the "72-hour retention time for the tapes" had expired. Plaintiff did not offer any authority to support his cause of action under the circumstances presented.

{¶ 5} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.,* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707.

{¶ 6} The existence of a duty depends upon the foreseeability of harm. *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142-143, 539 N.E. 2d 614. Whether such a duty exists is a question of law for the court to decide on a case-by-case basis. See *Hickman v. Warehouse Beer Systems, Inc.* (1993), 86 Ohio App. 3d 271, 273, 620 N.E. 2d 949; *Reitz v. May Co. Dept. Stores* (1990), 66 Ohio St. 3d 188, 583 N.E. 2d 1071.

{¶ 7} In the instant action, plaintiff would be classified under the law as a business invitee. "A business owner has a duty to warn or protect its business invitees from criminal acts of third parties when the business owner knows or should know that there is a substantial risk of harm to its invitees on the premises in the possession and control of the business owner." *Simpson v. Big Bear Stores Co.,* 73 Ohio St. 3d 130, 1995-Ohio-203, 652 N.E. 2d 702, at syllabus. To prevail, the business invitee must demonstrate the criminal act was foreseeable. *Reitz*, at 191-192; *Howard v. Rogers* (1969), 19 Ohio St. 2d 42, 48 O.O. 2d 52, 249 N.E. 2d 804, paragraphs one and two of

the syllabus. "The test for foreseeability is whether a reasonably prudent person would have anticipated that an injury was likely to result from the performance or nonperformance of an act." *Menifee*, at 77, 150 Ohio St. 3d, 15 OBR 179, 472 N.E. 2d 707. The court looks at the totality of the circumstances to determine whether, absent special circumstances, the landowner conformed to a standard of ordinary care in providing security and to the owner's knowledge of criminal acts, keeping in mind that the circumstances must be "somewhat overwhelming." *Walworth v. BP Oil Co.* (1996), 112 Ohio App. 3d 340, 678 N.E. 2d 959. The Ohio Supreme Court found that circumstances must be "somewhat overwhelming" because business owners are not absolute insurers of the safety of their business invitees and criminal acts are generally unpredictable. *Reitz*, 66 Ohio St. 3d at 194, 583 N.E. 2d 1071.

{¶ 8} In *Ross v. Nutt* (1964), 177 Ohio St. 113, 114, 20 O.O. 2d 313, 203 N.E. 2d 118, the court defined "proximate cause" as follows: "For an act to be the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of such act." To find that an injury was the natural and probable consequence of an act, it must appear that the injury complained of could have been foreseen or reasonably anticipated from the alleged negligent act. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477.

{¶ 9} It is settled that: "[W]here the original negligence of the defendant is followed by the independent act of a third person which directly results in injurious consequences to plaintiff, defendant's earlier negligence may be found to be a proximate cause of those injurious consequences, if, according to human experience and in the natural and ordinary course of events, defendant could reasonably have foreseen that the intervening act was likely to happen." *Taylor v. Webster* (1967), 12 Ohio St. 2d 53, 56, 41 O.O. 2d 274, 231 N.E. 2d 870. Thus, even if it could be said that the defendant engaged in negligent conduct, that conduct would not be the proximate cause of the plaintiff's injury where an intervening act of a third party was not reasonably foreseeable from the standpoint of the defendant and such intervening act directly causes the plaintiff's injury. See, e.g. *Person v. Gum* (1983), 7 Ohio App. 3d 307, 7 OBR 390, 455 N.E. 2d 713.

{¶ 10} Plaintiff, in the instant action, has failed to produce any evidence to

establish the damage to his car and theft of his personal property were acts foreseeable by OSU. Plaintiff did not offer any evidence of past crimes in the area or previous incidents. Plaintiff did not provide evidence of the frequency of criminal activity at the Carmack 5 parking lot. In order for such criminal acts to be viewed as foreseeable the court must look to the totality of the circumstances. See *Reitz*. Under the facts of the instant claim, plaintiff has failed to prove foreseeability. The lack of foreseeability negates both the existence of an underlying duty and the element of proximate cause necessary to establish a prima facie case of negligence. See *Collins v. Down River Specialities* (1998), 128 Ohio App. 3d 365, 369, 719 N.E. 2d 189. Additionally, plaintiff has failed to prove any act or omission on the part of OSU personnel in investigating the reported theft constituted actionable negligence. Consequently, this claim is denied.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth

in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Jacob Bradfield
8225 Cambourne Court
Gaithersburg, Maryland 20877

Kimberly C. Shumate
Associate General Counsel
The Ohio State University
1590 N. High Street, Suite 500
Columbus, Ohio 43201

RDK/laa
5/8
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