**[Cite as *Howze v. Carter*, 2009-Ohio-5463.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

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| KEISHA HOWZE, et al.<br><br>Appellants<br><br>v.<br><br>TRINA CARTER, et al.<br><br>Appellees | C.A. No. 24688<br><br>APPEAL FROM JUDGMENT<br>ENTERED IN THE<br>COURT OF COMMON PLEAS<br>COUNTY OF SUMMIT, OHIO<br>CASE No. CV 2007-02-1104 |

DECISION AND JOURNAL ENTRY

Dated: October 14, 2009

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DICKINSON, Judge.

INTRODUCTION

**{¶1}** After two grown women got into a brawl following a peewee football cheerleading banquet at the Radisson, one woman sued the other woman, the hotel, and the athletic association hosting the event. The trial court granted the hotel and the athletic association summary judgment, and the plaintiff, Keisha Howze, has appealed individually and on behalf of her minor daughter. Ms. Howze has presented no assignment of error or argument contesting either the trial court's disposition of her claims against the Radisson or her intentional tort claim against the athletic association. Therefore, this appeal addresses only the trial court's grant of summary judgment to the athletic association on Ms. Howze's negligence claim. Ms. Howze has argued that there were genuine issues of material fact regarding: (1) whether the other woman's criminal acts were foreseeable by the athletic association's officers, and (2) whether the athletic association breached a duty to provide security for the event born of a

special relationship to the children, coaches, and parents involved. This Court affirms because there are no genuine issues of material fact regarding whether the athletic association breached a duty to Ms. Howze.

BACKGROUND

**{¶2}** In November 2006, the South Rangers Athletic Association held its annual banquet to honor the peewee football players, cheerleaders, and volunteer coaches who participated in the program. The South Rangers hosted the event at a banquet facility it rented from the Radisson hotel in downtown Akron. Following the event, two of the cheerleading coaches, both of whom were also parents of young girls participating in the cheerleading program, engaged in a fight in the Cascade parking garage attached to the Radisson.

**{¶3}** According to Ms. Howze, she had been a cheerleading coach for the South Rangers for several years when she began having problems with Trina Carter, a fellow cheerleading coach. During the 2006 season, Ms. Carter was coaching Ms. Howze's daughter, K.H. When Ms. Carter disciplined K.H. by prohibiting her from cheering at a certain football game, Ms. Howze confronted Ms. Carter. During the football game, the two women began screaming at one another and had to be separated.

**{¶4}** Later in the season, Ms. Carter abruptly resigned from her coaching position. According to Ms. Howze, Ms. Carter quit due to a second disagreement over discipline involving K.H. At that time, Ms. Howze stepped into Ms. Carter's role and helped Ms. Carter's former team prepare for the annual cheerleading tournament.

**{¶5}** Ms. Carter did not attend the banquet in November, but her daughter and many of her friends did. At the banquet, Ms. Howze took to the stage to announce that Ms. Carter's former team had won second place. Ms. Howze testified at deposition that she told the

assembled crowd at the banquet that, "unfortunately, earlier this year, A Team's coach quit which was a good thing because I got to step in . . . and take them to competition and win second place."

**{¶6}** Frankie Walker, the director of the South Rangers, testified that, near the end of the event, he noticed Ms. Carter standing around outside the entrance to the banquet hall. Although he testified that, before that evening, he was not aware of any problem between the two women, he had heard what Ms. Howze had told the crowd that evening and expected that Ms. Carter might be upset. According to Mr. Walker, he told Ms. Howze that Ms. Carter was outside in the hallway and asked Ms. Howze to wait a few minutes inside the banquet room while he went out to speak with Ms. Carter.

**{¶7}** Mr. Walker testified that, as people were leaving the event, he went outside the main doors of the banquet hall and spoke with Ms. Carter, who had reportedly come to pick up her daughter. Ms. Carter expressed an interest in discussing with Ms. Howze exactly what she had said about her while on stage. Mr. Walker discouraged Ms. Carter from addressing the issue at the Radisson in front of the children. According to Mr. Walker, Ms. Carter agreed to postpone her discussion with Ms. Howze.

**{¶8}** Mr. Walker testified that he stood with Ms. Carter and continued to chat while Ms. Howze walked by on her way out of the building. Mr. Walker testified that, five to seven minutes after Ms. Howze had passed them, Ms. Carter's daughter came out of the hall and Ms. Carter went on her way. Mr. Walker believed that, by that point, Ms. Howze had safely left the building. He testified that he returned to the banquet hall and did not see Ms. Carter or Ms. Howze again that evening.

**{¶9}** Although she entered an appearance in this case, it does not appear that Ms. Carter was deposed. Ms. Howze testified, however, that, before she left the banquet hall that night, Mr. Walker and his assistant, Robert Dowdell, approached her table to warn her about Ms. Carter. According to Ms. Howze, the men told her that she should not have made the public comments she made about Ms. Carter and that she would have to deal with the consequences. Ms. Howze testified that Mr. Walker told her that Ms. Carter was out in the hallway and that "[s]he wants to fight you." According to Ms. Howze, her friend and fellow cheerleading coach, Tameka Thornton, overheard the warning and insisted that the men escort Ms. Howze from the building. Ms. Howze said that Mr. Walker told her to wait inside the banquet hall while he spoke with Ms. Carter outside.

**{¶10}** Ms. Howze testified that, despite Mr. Walker's warning, she was not concerned for her safety. Although she spent at least an additional 15 minutes inside the banquet hall after talking with Mr. Walker, she did not ask for an escort or tell anyone associated with the South Rangers or the Radisson when she decided to leave the building. Ms. Howze testified that she had no reason to believe she was going to be attacked.

**{¶11}** She testified that, when she passed Ms. Carter in the hallway, Ms. Carter leaned in her direction and yelled, "I heard you were talking about me." One of the South Rangers football coaches stood between the two women and another football coach guided Ms. Howze past Ms. Carter and down the hallway. Even after Ms. Carter yelled at her, according to Ms. Howze, she continued to believe she was in no danger. She testified that she was in no hurry to leave the event and spent an additional ten to fifteen minutes talking with cheerleaders and their parents before getting on the elevator to the parking garage.

**{¶12}** Ms. Howze and her daughter, K.H., both testified that, when they were near their car, Ms. Carter appeared and demanded to know what Ms. Howze had said about her during the banquet. Ms. Howze repeated what she had said, but Ms. Carter did not believe her. Ms. Carter was carrying a small trophy in her hand and, after Ms. Howze suggested that if she wanted to hit her she should just use her hand and not the trophy, Ms. Carter struck Ms. Howze in the lip with the trophy three times. Ms. Howze testified that, in response, she immediately removed her fur coat and high heels and began to fight with Ms. Carter.

**{¶13}** Despite Ms. Howze's claim that Ms. Carter enjoyed a significant size advantage over her, Ms. Howze testified that the two women fought for approximately ten minutes before being separated. She testified that she suffered distinct injuries to her upper lip and scalp, as well as numerous cuts and scratches all over her body.

**{¶14}** Ms. Howze moved for summary judgment against each defendant. Ms. Carter did not respond to the motion, and the trial court granted summary judgment in favor of Ms. Howze on her claims against Ms. Carter. The Radisson and the South Rangers each moved for summary judgment. The trial court denied Ms. Howze's motions for summary judgment against the Radisson and the South Rangers and granted summary judgment in favor of both entities. Ms. Howze has appealed the trial court's decision granting the South Rangers summary judgment on her negligence claim.

## NEGLIGENCE

**{¶15}** Ms. Howze's only assignment of error is that the trial court incorrectly granted summary judgment in favor of the South Rangers on her negligence claim. The trial court determined that Ms. Howze had failed to establish that the South Rangers had breached a duty

owed to her because Ms. Carter's criminal actions were not foreseeable and the South Rangers' duty did not extend to the parking garage where the incident occurred.

**{¶16}** Ms. Howze has argued that there was a genuine issue of material fact regarding whether Ms. Carter's criminal acts were foreseeable by South Rangers officers. In reviewing a trial court's ruling on a motion for summary judgment, this Court applies the same standard a trial court is required to apply in the first instance: whether there are any genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law. *Parenti v. Goodyear Tire & Rubber Co.*, 66 Ohio App. 3d 826, 829 (1990). If the moving party meets its summary judgment burden by identifying specific parts of the record that demonstrate that there are no issues of material fact regarding the essential elements of a claim, the nonmoving party bears a reciprocal burden of setting forth specific facts demonstrating that an issue of fact exists for trial. *Vahila v. Hall*, 77 Ohio St. 3d 421, 428-29 (1997); Civ. R. 56(E).

THE DUTY

**{¶17}** To prove that the South Rangers officials were negligent in allowing the assault and battery to occur, Ms. Howze had to prove that the South Rangers owed her a duty, that it breached that duty, and that the breach was a proximate cause of an injury. *Mussivand v. David*, 45 Ohio St. 3d 314, 318 (1989). "The existence of a duty in a negligence action is a question of law for the court to determine." *Id.* In a premises liability case, the duty is determined by the status of the injured party in relation to the landowner. *Gladon v. Greater Cleveland Reg'l Transit Auth.*, 75 Ohio St. 3d 312, 315 (1996).

**{¶18}** In addition to the traditional categories of invitee, licensee, and trespasser, the Ohio Supreme Court has included the category of social guest. *Scheibel v. Lipton*, 156 Ohio St. 308, 329 (1951). A social guest is someone the owner or occupier of land invites onto the

property for the purpose of social interaction. *Id.*; *White v. Brinegar*, 9th Dist. No. 16429, 1994 WL 232692 at *2 (June 1, 1994). Although the landowner or occupier may derive some benefit from the visit, it is limited to the intangible personal benefit of social interaction. *Brinegar*, 1994 WL 232692 at *3 (quoting *Hamm v. Heritage Prof'l Servs. Inc*., 4th Dist. No. 92CA2082, 1993 WL 112566 at *4 (Apr. 9, 1993)). The duty owed to a social guest is less than that owed to a business invitee, but more than that owed to a mere licensee. *Id.* (quoting *Zenisek v. Haycook*, 3d Dist. No. 9-93-39, 1994 WL 29861 at *3 (Jan. 27, 1994)).

**{¶19}** "In tort law an 'invitee' means a business visitor, that is, one rightfully on the premises of another for purposes in which the possessor of the premises has a beneficial interest." *Scheibel v. Lipton*, 156 Ohio St. 308, paragraph one of the syllabus (1951). An occupier of land owes an invitee a duty "to exercise ordinary care and to protect the invitee by maintaining the premises in a safe condition." *Light v. Ohio Univ.*, 28 Ohio St. 3d 66, 68 (1986).

**{¶20}** "A business owner may be subject to liability for injuries to its invitees from harm caused by third parties, but the business owner is not an insurer of the invitee's safety." *Spicer v. Rich*, 9th Dist. No. 21295, 2003-Ohio-2639, at ¶12 (citing *Howard v. Rogers*, 19 Ohio St. 2d 42, paragraphs one and two of the syllabus (1969)). The Ohio Supreme Court has held that, "[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." *Id.* (quoting *Simpson v. Big Bear Stores Co.*, 73 Ohio St. 3d 130, syllabus (1995)). "The foreseeability of criminal acts depends upon the knowledge of the business owner, and is determined by the totality of the circumstances." *Id.* at ¶13. Courts require "somewhat overwhelming" circumstances to establish the foreseeability of the harm and, therefore, the existence of a duty to

protect invitees from the criminal acts of third parties. *Id.* (quoting *Brake v. Comfort Inn*, 11th Dist. No. 2002-A-0006, 2002-Ohio-7167, at ¶16).

**{¶21}** The South Rangers have argued that Ms. Howze was a social guest rather than an invitee because it was hosting the event on land owned by the Radisson. This Court agrees with the trial court's holding that Ms. Howze was an invitee, rather than a social guest, on the evening of this incident. The South Rangers leased and occupied the Radisson banquet facility, controlling admittance to its ticketed event. The South Rangers issued an express invitation to all coaches, student participants, and parents to attend the annual banquet. Although Ms. Howze did not have to purchase a ticket because she was a coach, the future of the South Rangers depends on the volunteers' continued interest and participation in the program. Ms. Howze was an invitee at the banquet because the South Rangers invited her to the event at the Radisson Hotel and enjoyed some benefit from her attendance that extended beyond the personal enjoyment of social interaction.

FORESEEABILITY

**{¶22}** A premises owner or occupier owes its invitees a duty to warn or protect them from the criminal acts of third parties only if it "knows or should know that there is a substantial risk of harm to its invitees on the premises in [its] possession and control . . . ." *Spicer v. Rich*, 9th Dist. No. 21295, 2003-Ohio-2639, at ¶12 (quoting *Simpson v. Big Bear Stores Co.*, 73 Ohio St. 3d 130, syllabus (1995)). The South Rangers have argued that the violence was not foreseeable and have pointed to Ms. Howze's own admission that even she did not expect Ms. Carter to become violent that night. The South Rangers have also argued that it "took all reasonable steps to advise [Ms.] Howze" of Ms. Carter's presence and pointed to evidence that Ms. Howze "left the banquet hall under the supervision of the South Rangers and without

incident." In response, Ms. Howze has argued that Ms. Carter's criminal actions were "clearly foreseeable by the South Rangers." In support, she has pointed to her own testimony regarding Mr. Walker's warning to her before she left the banquet hall.

**{¶23}** According to Ms. Howze, Mr. Walker told her that Ms. Carter was present at the banquet facility, that she was angry with Ms. Howze, and that she wanted "to fight" her. Considering all of the evidence in the light most favorable to Ms. Howze, she has provided evidence demonstrating a genuine issue of material fact regarding the foreseeability of harm because, according to her, the director of the South Rangers warned her that Ms. Carter was looking for her for the purpose of physically assaulting her.

**{¶24}** The South Rangers' duty to Ms. Howze was limited, however, extending only as far as warning or protecting her from a substantial risk of harm "on the premises in [its] possession and control . . . ." *Spicer v. Rich*, 9th Dist. No. 21295, 2003-Ohio-2639, at ¶12 (quoting *Simpson v. Big Bear Stores Co.*, 73 Ohio St. 3d 130, syllabus (1995)). There is no dispute that the assault and battery occurred on property owned by the City of Akron that was not in any way being controlled by the South Rangers on the night of the incident. According to Ms. Howze's own testimony, South Rangers officials not only warned her of the danger, but also worked to keep Ms. Carter busy while Ms. Howze exited the banquet facility. Ms. Howze testified that, despite the warning, she did not believe she was in any danger. The evidence indicated that Ms. Howze had plenty of time to leave the building and the parking garage before Ms. Carter could have caught up to her, but Ms. Howze did not feel the need to hurry. In fact, she admitted that she felt comfortable talking with parents for an additional ten to fifteen minutes after Ms. Carter verbally attacked her in the hallway. Ms. Howze has failed to point to evidence in the record tending to show that the South Rangers breached its duty to her.

**{¶25}** Ms. Howze has also argued there is a genuine issue of material fact regarding whether the athletic association breached its duty to provide security for the event born of a special relationship to the children, coaches, and parents involved. Ms. Howze has relied on *Di Gildo v. Caponi*, 18 Ohio St. 2d 125, 127 (1969), for the proposition that "children are entitled to a higher degree of care than adults and that the amount of care required to discharge a duty to a child is greater than that required to discharge a similar duty to an adult." Ms. Howze has argued that, as a youth organization, the South Rangers "had a duty to hire or provide security for the event, and but for their failure . . . Keisha Howze could have had . . . security escort her and her daughter to her car . . . ." The trial court noted that Ms. Howze testified that she did not believe she was in any danger and did not request that anyone walk her to her car. The trial court, therefore, pointed out that her argument that, "had South Rangers provide[d] security she could have requested an escort[,] is illogical and without merit." Further, if this Court adopted Ms. Howze's policy argument in this case, the mere presence of children would require private security at every youth sports event, Girl Scout gathering, and school open house.

**{¶26}** The Ohio Supreme Court has held that "[c]hildren of tender years, and youthful persons generally, are entitled to a degree of care proportioned to their inability to forsee and avoid the perils that they may encounter" because they cannot be expected to exercise "[t]he same discernment and foresight . . . that older and experienced persons habitually employ." *Di Gildo v. Caponi*, 18 Ohio St. 2d 125, 127 (1969) (quoting 39 Ohio Jur. 2d Negligence §21 (1959)). Thus, "greater caution in warning of danger is ordinarily . . . required" when a child may get into some mischief on one's property. *Id.* at 130. This case, however, is not about a failure to warn or protect a child from a peril she may encounter due to her tender years and lack of discernment. The minor plaintiff in this case happened to be present when her mother

engaged in a physical fight with another woman in a parking garage. The eight-year-old child was completely passive in this incident. The South Rangers did not owe K.H. a higher duty to warn her of the threat to her mother's safety.

**{¶27}** There is no genuine issue of material fact regarding whether the South Rangers breached its duty to warn or protect Ms. Howze from the criminal acts of a third party. *Spicer v. Rich*, 9th Dist. No. 21295, 2003-Ohio-2639, at ¶12 (quoting *Simpson v. Big Bear Stores Co.*, 73 Ohio St. 3d 130, syllabus (1995)). Ms. Howze's assignment of error is overruled.

CONCLUSION

**{¶28}** Ms. Howze has not pointed to any evidence in the record that creates a genuine issue of material fact regarding whether the South Rangers breached its duty to her and K.H. Therefore, the trial court correctly granted the South Rangers' motion for summary judgment on the negligence claim against it. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellants.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
MOORE, P. J.
CONCUR

APPEARANCES:

CEDRIC B. COLVIN, attorney at law, for appellants.

PAUL ADAMSON, attorney at law, for appellee.

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TRINA CARTER, pro se, appellee.