Opinion issued July 26, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00221-CV

ADA HICKS, Appellant

V.

G4S SECURE SOLUTIONS, Appellee

On Appeal from the 127th District Court
Harris County, Texas
Trial Court Case No. 2017-59911

MEMORANDUM OPINION

This is an appeal from a judgment granting appellee G4S Secure Solutions's (hereinafter "G4S") motion for no-evidence summary judgment and ordering that appellant Ada Hicks take nothing on her claims. Those claims arise from personal injuries that Hicks suffered after an unknown assailant attacked her when she left a

bar in the River Oaks Shopping Center. Hicks alleges that the trial court erred in granting summary judgment on her premises liability, negligence, negligent hiring, training, and supervision, and negligent infliction of emotional distress claims. She also alleges that the trial court abused its discretion in granting summary judgment without ruling on her motion for sanctions against G4S. We affirm.

Background

On the evening of June 6, 2017, Hicks was a patron at Marfreless, a bar located in the River Oaks Shopping Center. She went to the bar alone, and she did not interact with other patrons except for a brief exchange with a man sitting next to her at the bar. While sitting at the bar, she noted a woman sitting on her other side who looked at her strangely and appeared to be staring at her purse. After about two glasses of wine, Hicks left the bar. As she was leaving the bar and walking to her car, she was attacked by an unknown assailant in the parking lot. The unknown assailant took her wallet, repeatedly struck and kicked her, and slammed her face against her automobile and the asphalt ground. She lost consciousness and suffered injuries.

In September 2017, Hicks sued the owner of the shopping center, Weingarten Realty Investors; the owner of the bar, Asylum Entertainment, L.L.C.; and the company contracted with Weingarten to provide security for the shopping center, G4S. She alleged claims for premises liability, negligence, negligent hiring,

training, and supervision, and negligent infliction of emotional distress. Defendants Weingarten Realty Investors and Asylum Entertainment were dismissed after Hicks failed to respond to their motions for no-evidence summary judgment. The case proceeded against G4S.

G4S moved for no-evidence summary judgment, which was initially granted in August 2019. The trial court later granted Hicks's motion for reconsideration. After additional discovery, G4S filed a second no-evidence motion for summary judgment in January 2021. In February 2021, Hicks filed a motion for sanctions claiming that G4S committed discovery abuse both in written discovery and during the deposition of its corporate representative. G4S filed a motion to compel and for sanctions against Hicks for her failure to update her discovery responses and produce documents requested by G4S.

The trial court initially denied G4S's second no-evidence summary judgment motion on March 6, 2021. On March 8, 2021, the trial court granted G4S's second no-evidence motion for summary judgment, stating that the March 6, 2021 order had been filed in error and was void. Hicks filed a motion for new trial, which was denied in April 2021. Hicks appeals.

No-Evidence Summary Judgment

In her first issue, Hicks contends that the trial court erred in granting G4S's no-evidence summary judgment motion. She alleges that there are genuine issues

of material fact regarding the scope of G4S's contract with Weingarten and whether it breached a duty to her in the method it provided security at the shopping center. We hold that the trial court did not err in granting summary judgment.

A. Standard of Review

Texas Rule of Civil Procedure 166a(i) provides that "[a]fter adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim . . . on which the adverse party would have the burden of proof at trial." TEX. R. CIV. P. 166a(i). We review a trial court's decision to grant a motion for summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). A no-evidence motion for summary judgment is essentially a directed verdict granted before trial, to which we apply a legal-sufficiency standard of review. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750–51 (Tex. 2003).

In general, a party seeking a no-evidence summary judgment must assert that no evidence exists as to one or more of the essential elements of a claim on which the nonmovant would have the burden of proof at trial. *Flameout Design & Fabrication, Inc. v. Pennzoil Caspian Corp.*, 994 S.W.2d 830, 834 (Tex. App.—Houston [1st Dist.] 1999, no pet.). Once the movant specifies the elements on which there is no evidence, the burden shifts to the nonmovant to raise a fact issue

on the challenged elements. TEX. R. CIV. P. 166a(i); *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). The trial court must grant the motion unless the nonmovant produces summary judgment evidence that raises a genuine issue of material fact. *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex. 2008).

A no-evidence summary judgment will be sustained on appeal when (1) there is a complete absence of evidence of a vital fact, (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered by the nonmovant to prove a vital fact, (3) the nonmovant offers no more than a scintilla of evidence to prove a vital fact, or (4) the nonmovant's evidence conclusively establishes the opposite of a vital fact. *King Ranch*, 118 S.W.3d at 751. Less than a scintilla of evidence exists when the evidence is so weak as to do no more than create a mere surmise or suspicion. *Id.* (quoting *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983)). More than a scintilla of evidence exists when the evidence rises to a level that would enable reasonable, fair-minded people to differ in their conclusions. *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997).

B. Analysis

Hicks alleges that G4S failed to provide adequate security measures which created an unreasonable risk of harm to patrons of the shopping center. According to Hicks, the fact that no security guard was stationed or patrolling immediately

outside the entrance of Marfreless and that no security guard was in the common area of the parking lot creates a fact issue, precluding summary judgment, as to whether G4S failed to keep the premises safe. G4S responds that the trial court did not err in granting the motion because G4S did not control the shopping center property. Weingarten controlled the property and decided the amount, type, and scope of security on the premises. G4S also argues that Hicks was the victim of a targeted crime against her that it could not have foreseen, and the crime against Hicks also did not equate to the typical criminal activity in the area, which was predominantly property crime.

1. Premises Liability

Hicks contends that the trial court erred in granting summary judgment for G4S on her premises liability claim because she alleged sufficient evidence to create a fact question on duty. She alleges that G4S owned, occupied, or managed the shopping center and that it failed to maintain the area in a safe manner. Specifically, she alleged that the security company owed her a duty, as an invitee, to have sufficient security personnel and security cameras available.

The threshold question in a premises liability case is whether a defendant owes a duty to the injured plaintiff. *See Hillis v. McCall*, 602 S.W.3d 436, 440 (Tex. 2020). The existence of a duty is a question of law for the court to decide based on the facts of the case. *Id.* For a duty to exist, the defendant must have

possession or control over the premises where the injury occurred. *County of Cameron v. Brown*, 80 S.W.3d 549, 554 (Tex. 2002).

"Premises liability is a special form of negligence where the duty owed to the plaintiff depends upon the status of the plaintiff at the time the incident occurred." *W. Inv. Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005). In the case of an invitee, such as Hicks, a premises liability inquiry focuses on whether the defendant proximately caused the plaintiff's injuries "by failing to use ordinary care to reduce or eliminate an unreasonable risk of harm created by a premises condition that it knew about or should have known about." *Id.* "An invitee is 'one who enters the property of another with the owner's knowledge and for the mutual benefit of both.'" *Austin v. Kroger Tex., L.P.*, 465 S.W.3d 193, 202 (Tex. 2015) (quoting *Motel 6 G.P., Inc. v. Lopez*, 929 S.W.2d 1, 3, (Tex. 1996) (internal quotation and citation removed)).

"Generally, a person does not have a duty to protect others from third-party criminal acts." *Trammell Crow Cent. Tex., Ltd. v. Gutierrez*, 267 S.W.3d 9, 17 (Tex. 2008); *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998); *West v. SMG*, 318 S.W.3d 430, 438 (Tex. App.—Houston [1st Dist.] 2010, no pet.). The exception to this rule is that, one who controls the premises has "a duty to use ordinary care to protect invitees from criminal acts of third parties if [the possessor] knows or has reason to know of an unreasonable and foreseeable

risk of harm to the invitee." *Timberwalk*, 972 S.W.2d at 757 (internal quotation and citation removed).

The trial court did not err in granting summary judgment on Hicks's premises liability claim because Hicks did not present evidence to create a fact question on the element of duty. G4S neither owned, operated, managed, possessed, or controlled the premises. G4S was contracted by Weingarten to patrol the common areas of the shopping center. Security companies such as G4S owe no generalized duty to provide security services beyond their contract terms. *Banzhaf v. ADT Sec. Sys. Sw., Inc.*, 28 S.W.3d 180, 186 (Tex. App.—Eastland 2000, pet. denied); *see also Mayer v. Willowbrook Plaza Ltd. P'ship*, 278 S.W.3d 901, 910–11 (Tex. App.—Houston [14th Dist.] 2009, no pet.). The Guard Services Agreement between Weingarten and G4S provides that Weingarten "desires to contract for the security guard services (as from time to time requested by [Weingarten]) hereinafter set forth to be performed by [G4S] and [G4S] desires to provide such services (as from time to time requested by [Weingarten]) in the common areas of shopping centers, owned, leased or managed by [Weingarten] (the 'Protected Premises')." The contract further provides that the number of hours would be specified in purchase orders and that the security services "do not constitute maximum security but provide a degree of security resulting from the reasonable efforts of security personnel to carry out security procedures in

accordance with this Agreement." Weingarten dictated that the guard patrol the property in a random pattern. G4S's corporate representative further testified that Weingarten, rather than G4S, received quarterly reports of police activity at the shopping center and determined whether armed or unarmed or a mixture of both types of guards would patrol the shopping center.

At the time of the assault, the assigned security guard was patrolling the area at random, and at the exact time of the incident he was patrolling inside a multi-tenant building on the property. In her response to G4S's motion for no-evidence summary judgment, Hicks alleges that her evidence raises a fact issue on this claim because her security expert opined that the security provided by G4S was inadequate. For example, the expert stated in his affidavit that G4S did not have security cameras, did not use virtual patrol services, and had not conducted a risk assessment of the area. The expert also opined that it was negligent not to have a security guard stationed outside or near the bar in the early hours of the morning. G4S provides services only pursuant to contracts with its customers, such as Weingarten. Weingarten selects the services for which it will pay. *See Banhzhaf*, 28 S.W.3d at 185. G4S's obligation was to provide security according to its contract with the landowner, Weingarten. Weingarten chose the level of security, measure of security, and whether and how to study crime in the area. The expert's

statements do not raise a fact question as to whether G4S controlled the premises or had a duty to Hicks.

G4S did not have control of the premises, and therefore did not have a duty to protect invitees from the criminal acts of third parties. The trial court did not err in granting summary judgment in favor of G4S on the premises liability claim.

2. Negligence

As to Hicks's negligence claim, the trial court did not err in granting summary judgment because Hicks did not allege evidence to create a fact question of whether G4S breached a duty of ordinary care. Hicks alleges that G4S was negligent in failing to have adequate security measure in place and failing to properly train its employees to respond to threats to patrons.

A showing of negligence requires a plaintiff to establish three elements: (1) a legal duty owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) damages proximately resulting from the breach. *West*, 318 S.W.3d at 437 (citing *W. Inv., Inc.*, 162 S.W.3d at 550). Duty is a threshold question in a negligence case. *West*, 318 S.W.3d at 437. Whether a duty exists is a question of law for the court to decide from the facts surrounding the occurrence in question. *Id.* If the trial court determines that there is no duty, the inquiry regarding negligence ends. *Id.*, 318 S.W.3d at 437; *see also Van Horn v. Chambers*, 970 S.W.2d 542, 544 (Tex. 1998).

Hicks alleges that G4S failed to exercise ordinary care to protect her. She alleges that G4S failed to have a security guard posted outside the bar, and that G4S should have done so because it was the only establishment open in the shopping center that served alcohol from 1:00 a.m. to 2:00 a.m. She also alleges that G4S should have made invitees aware of crimes after they were committed on the property.

In her response to G4S's motion for summary judgment, Hicks points to her expert witness's opinion that G4S did not carry out its duties reasonably or prudently because it did not have security posted outside of the bar. As explained with respect to premises liability, G4S owed no specific duty to Hicks as to where a specific security guard was stationed. *See Banhzhaf*, 28 S.W.3d at 186. G4S's corporate representative testified that its employees patrolled the shopping center on a random basis and were responsible for the common areas of the shopping center, including the common areas of its multi-tenant buildings. Hicks has not put forth evidence to show that G4S's guard was not fulfilling his contractual duties of security. The trial court did not err in granting summary judgment against Hicks on her negligence claim.

3. Negligent Hiring, Training, and Supervision

"Negligent hiring, training, supervision, and retention claims, are simple negligence causes of action based on an employer's direct negligence rather than

on vicarious liability." *Doe v. YUM! Brands, Inc.*, 639 S.W.3d 214, 225 (Tex. App.—Houston [1st Dist.] 2021, no pet.) (internal quotations and citations removed). To prevail on a claim of negligent hiring, the plaintiff must show that the employer (1) owed a legal duty to protect the plaintiff from an employee's actions and (2) the plaintiff sustained damages proximately caused by the employer's breach of that legal duty. *See Thomas v. CNC Invs., L.L.P.*, 234 S.W.3d 111, 123 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

The components of proximate cause are cause in fact and foreseeability, and these elements may not be established by mere conjecture, guess, or speculation. *See id.* at 124. The test for cause in fact is whether the negligent act or omission was a substantial factor in bringing about injury, without which the harm would not have occurred. *Id.* "Cause in fact is not shown if the defendant's negligence did no more than furnish a condition that made the injury possible." *Id.* A negligent hiring claim "requires that the plaintiff suffer some damages from the foreseeable misconduct of an employee hired pursuant to the defendant's negligent practices." *Wansey v. Hole*, 379 S.W.3d 246, 247 (Tex. 2012).

G4S asserted in its motion for summary judgment that there was no evidence that its actions in hiring security guards were the cause in fact of Hicks's injuries. G4S asserted that it did not owe Hicks a generalized duty to provide security services beyond its contract terms and that Hicks failed to offer evidence that

shows a duty of care beyond a generalized duty. G4S also alleged that Hicks failed to show that G4S's employee committed a predicate act of negligence that proximately caused her injuries.

With respect to her negligent hiring claim, we conclude that Hicks's summary judgment evidence failed to raise a fact issue. Hicks did not present any evidence showing that an employee was negligent or that an employee's negligence caused her injuries. She also did not present evidence of a duty owed to her by G4S or its employees beyond performing security according to its contract with Weingarten. Instead, she reiterated that G4S was negligent for not having a security guard posted outside the bar or near its entrance at the time of the attack. The trial court did not err in granting summary judgment on this claim.

4. Negligent Infliction of Emotional Distress

With respect to Hicks's claim for negligent infliction of emotional distress, G4S alleged in its motion for summary judgment that there is no general duty in Texas not to negligently inflict emotional distress. G4S also alleged that the court dismissed this claim against all parties in an order signed February 5, 2020. This order is not in the record. Texas does not recognize an independent cause of action for negligent infliction of emotional distress. *Boyles v. Kerr*, 855 S.W.2d 593, 596 (Tex. 1993) (op. on reh'g) (stating mental anguish damages should be compensated only in connection with defendant's breach of another duty imposed by law). In

her response to the motion for summary judgment, Hicks did not point to any evidence to create a fact issue as to this claim nor did she mention it. We hold that to the extent this claim was viable at the time of the summary judgment ruling, the trial court did not err in granting summary judgment in favor of G4S.

Failure to Rule on Sanctions Motion

Hicks alleges that the trial court abused its discretion by granting G4S's motion for summary judgment without ruling on her motion for discovery sanctions related to alleged discovery abuse during the G4S corporate deposition. Hicks alleges that the trial court abused its discretion by failing to rule on the motion after hearing. She alleges that because the motion alleged that G4S withheld evidence, it was per se an abuse of discretion for the trial court to grant G4S' no-evidence summary judgment without ruling on Hicks's motion for sanctions.

Unlike a pending cause of action, a pending motion for sanctions does not make interlocutory an otherwise-final judgment. *See Lane Bank Equip. Co. v. Smith S. Equip., Inc.*, 10 S.W.3d 308, 312 (Tex. 2000) (stating judgment does not have to resolve pending sanctions issues to be final); *In re T.G.*, 68 S.W.3d 171, 179 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (op. on reh'g) (noting same). The trial court retains jurisdiction to rule on the motion until the expiration of its plenary power. *Nnaka v. Mejia*, No. 01-18-00779-CV, 2020 WL 425126, at

*3 (Tex. App.—Houston [1st Dist.] Jan. 28, 2020, no pet.) (mem. op.). The trial court did not abuse its discretion by granting G4S's summary judgment motion before ruling on Hicks's motion for sanctions.

Conclusion

We affirm the judgment of the trial court.

Peter Kelly
Justice

Panel consists of Justices Kelly, Goodman, and Guerra.