Circuit Court for Baltimore County
Case No. 03-C-17-008360

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0754

September Term, 2019

KARL DANIEL GEIGER

v.

BACKSTAGE, LLC
2306 YORK, LLC,
2300 YORK ROAD, LLC

Leahy,
Shaw Geter,
Wells

JJ.

Opinion by Shaw Geter, J.

Filed: August 17, 2020

Appellant, Karl Geiger, filed a complaint asserting negligence and premises liability against appellees Backstage, LLC, 2306 York, LLC, and 2300 York Road, LLC in the Circuit Court for Baltimore County. The lawsuit stemmed from an assault committed on him by a patron in the Hightopps' parking lot, a business operated by Backstage. Following discovery, appellees filed a motion for summary judgment, which the court granted in favor of 2306 York, LLC and 2300 York Road, LLC and in part, in favor of Backstage, LLC. The court's ruling left Backstage as the sole remaining defendant and barred appellant from presenting evidence of prior similar criminal incidents to establish liability. On June 6, 2019, at the end of a trial, the jury returned a verdict in favor of Backstage. This timely appeal followed.

Appellant presents the following question for our review:

1. Did the trial court err in finding, as a matter of law, that there was no history of prior similar assaults at or near appellees' property that would put them on notice that an assault upon appellant was reasonably foreseeable?

For the reasons set forth below, we affirm.

BACKGROUND

Hightopps Backstage Grill is a bar and restaurant, operated by Backstage, LLC, with indoor and outdoor spacing, located in Timonium, Maryland. The property is owned by 2306 York Road, LLC and the parking lot, at issue, is owned by 2300 York, LLC. Hightopps maintains video surveillance cameras to record the premises, including the bar area and a portion of its parking lots. The restaurant has one designated parking lot for its

patrons and leases an additional parking lot, known as the Turf Village Lot, on evenings and weekends from 2300 York Road, LLC. According to the lease:

> [Backstage] is required to police the [Lot] and the perimeter thereof every day during the Term to confirm that [Backstage's] users are in compliance with this Lease and all applicable laws, rules and regulations. . . ," and that Backstage's employees "must ensure that the tenants of the [Turf Inn complex], and their visitors, are able to park on the [Lot] as needed; accordingly, on weekends, holidays and [Backstage's] peak hours, [Backstage] shall ensure that its employees are routinely policing the [Lot] and the perimeter of the [Lot].

On June 25, 2016, appellant met his friend, Barrett Browning, at Hightopps. At some point, appellant excused himself to use the restroom. When appellant returned, he saw Browning and another individual, Walter Nicholson, who appeared intoxicated, involved in a heated argument. Appellant immediately tried to separate them. Backstage security intervened and eventually escorted Nicholson outside and told him to leave the premises. Nicholson went to his car, which was parked on Backstage's main lot, but did not leave. Security also asked appellant and Browning to leave the premises. After speaking with a Hightopps manager, appellant left the bar and began to walk to his car. As he walked through the main parking lot to his vehicle, Nicholson ran across the Turf Village Lot toward appellant and punched him in the head, knocking him unconscious. Appellant was left in a coma with a fractured skull and multiple head injuries.

On August 25, 2017, appellant filed an initial complaint in the Circuit Court for Baltimore County against Backstage, LLC, 2306 York, LLC, and 2300 York Road, LLC. The complaint was twice amended and asserted the following claims:

Count I Negligence against Backstage,

Count II	Premises Liability against Backstage and 2306 York, LLC, and
Count III	Premises Liability against 2300 York Road, LLC.

Appellees moved for summary judgment on all counts, arguing appellant had failed to assert any recognized theory of negligence or premises liability under which any of the appellees would be liable. Following oral arguments on February 21, 2019, the circuit court granted summary judgment in favor of 2306 York, LLC on Count II, 2300 York Road LLC on Count III, and partial summary judgment in favor of Backstage. The court ruled that appellant could not present evidence of prior similar incidents to establish a duty of care. The court limited appellant to "attempting to prove a theory of liability only under Scenario No 3 under *Corinaldi, Veytsman, and Troxel* . . ." On June 6, 2019, following a five-day trial, the jury returned a verdict in favor of Backstage.

STANDARD OF REVIEW

Maryland Rule 2-501(f) governs motions for summary judgment and provides that a trial court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." An appellate court reviews a circuit court's entry of summary judgment *de novo*. *John B. Parsons Home, LLC, v. John B. Parsons Found.*, 217 Md. App. 39, 53 (2014). In reviewing the circuit court's grant of summary judgment, we determine "whether a dispute of material fact indeed exists," and determine "whether the trial court was legally correct." *Lombardi v. Montgomery Cty.*, 108 Md. App. 695, 710 (1996) (internal citations and quotations

omitted). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Castruccio v. Estate of Castruccio*, 456 Md. 1, 16 (2017).

DISCUSSION

I. The circuit court did not err in finding, as a matter of law, that there was no history of prior similar assaults at or near Appellee's property that would have put it on notice that an assault upon appellant was reasonably foreseeable.

In order to establish a *prima facie* case for negligence, a plaintiff must establish: "'(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual loss or injury, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.'" *Corinaldi v. Columbia Courtyard, Inc.*, 162 Md. App. 207, 218 (2005) (quoting T*odd v. Mass Transit Admin.*, 373 Md. 149, 155 (2003)). This analysis usually begins with whether a duty existed because without a duty there can be no liability in negligence. *Rhaney v. University of Md. E. Shore*, 388 Md. 585, 597 (2005).

"Generally, there is no duty to control the conduct of a third person and prevent him or her from causing physical harm by criminal acts, absent a 'special relationship.'" *Evergreen Associates, LLC v. Crawford*, 214 Md. App. 179, 188 (2013) (citing *Rhaney*, 388 Md. 585, 597)). If, however, a special relationship does exist, such as in the present case, where appellant was a business invitee, the business owner is obligated to take reasonable action to protect his invitee against a risk of physical harm when he knows or should know that a third party's harmful actions are occurring or are about to occur.

Veytsman v. New York Palace, Inc., 170 Md. App. 104, 115–16 (2006). We outlined in *Corinaldi,* three possible fact scenarios when an injured party seeks to hold the possessor of land liable for injuries inflicted by the intentional act of a third person. *Corinaldi*, 162 Md. App. at 223–24. A duty may be based on (1) knowledge of prior similar incidents, (2) knowledge of prior conduct of the assailant, or (3) knowledge of events occurring on the premises. *Id.* Here, appellant was limited to Scenario 3 by the trial court's ruling.

Appellant argues the court erred in determining there was no history of prior similar assaults that would put appellee on notice that the assault was reasonably foreseeable. He argues appellee knew about such incidents and failed to protect its invitees as required. He asserts the trial court ignored both deposition testimony and police reports reflecting such crimes. Appellant points to the depositions of James Bell, the owner of both Backstage and 2306 York, and Farzard Farivar, the security manager, stating that their testimonies established "assaults in and around Hightopps and its parking lots were common occurrences well known to appellees."

Farzard testified that typically six to twelve patrons would be escorted out for various disorderly conducts during warm weather weekends. When asked about the night of the appellant's incident, Farivar answered that he only remembered escorting the three individuals involved in the incident out of the premises that night. When asked if there were frequent altercations in the parking lot Farivar answered "no." He stated this incident was the "first time" he responded to an incident in the Turf Valley Lot. During the deposition of James Bell, he stated Hightopps did not have frequent altercations. He also

responded no when asked whether anyone had been injured "badly enough" so that an ambulance needed to be called. When appellant's counsel asked about an incident involving a patron assaulting a bartender and throwing rocks at security personnel. Bell testified that he remembered "hearing about it."

On review, we examine the record in the "light most favorable to the non-moving party," construing the facts and reasonable inferences against the moving party. *Jurgenson v. New Phoenix,* 380 Md. 106, 114 (2004). In our independent review, we do not find that the deposition testimony established that prior similar incidents occurred. Rather, the testimony recalled incidents when crowds of people, sometimes intoxicated, had to be escorted out of the establishment, typically at closing, and the arguments that ensued. The testimony also did not show that appellee had knowledge of aggravated attacks or stalking inside or outside of the premises by individuals.

Appellant also argues the trial court did not give proper weight to the police reports proffered. The twenty-nine police reports, as noted by appellant, contained "a wide variety of crime and police activity in close proximity to 2306 York Road within two years" of the assault. Our review of the record reflected that the court did review all of the police reports, even though they had not been properly authenticated. During the motions hearing, the court stated:

> . . . I have read these police reports and as I look at them, I say, there's nothing, the, in fact, most of this you could address if there is an assault, it's on a police officer, . . . it's part of your Exhibit 25, when it's property issues. There's a May 7th theft from a car, there's a July 4th theft from a car, a July 30th theft from a car…there's this woman on February 10th, she's removed from the bar but she won't actually leave . . .

> . . . it's not there. There is nothing that is, in my view, remotely close to what your client has suffered. . . . There's no lying in wait, there is no incidents, there's not even an incident that required medical attention.

Our review of the record is in accord. The reports included incidents that occurred at other properties, possible burglaries, an altercation at a local festival, mostly, minor altercations and disagreements between patrons. While, clearly, there was police activity within the two-year time frame, none were similar in nature to appellant's assault so as to impose a duty on appellee to provide additional security measures. Further, appellant failed to establish that appellee had knowledge of the incidents at other properties in the area.

Nevertheless, appellant argues *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 29 (2010), is similar to the case at bar. In *Troxel*, a patron attended a "college night" in a nightclub that permitted adults between the ages of 18 and 21 to attend. *Id.* Troxell was assaulted by several unidentified males on the dance floor and he brought a lawsuit alleging appellees maintained "extremely dangerous conditions" which put patrons at risk of physical harm. *Id.* Troxel further asserted that Iguana failed to provide security for the protection of its customers and failed to use reasonable efforts to control its patrons. . . ." *Id.* The Circuit Court for Baltimore City entered summary judgment in favor of the defendants, and Troxel appealed. This Court reversed, holding that the defendants had a duty to eliminate dangerous conditions caused by its promotions; and genuine issues of material fact precluded summary judgment.

The facts of the present case are quite different. In Troxel, the incident happened inside the establishment. There was, further, testimony regarding prior violent incidents

and assaults during the business' "college nights." Here, no such pattern was shown by the police reports, nor the testimony of security or the manager. In addition, appellant was attacked outside of the bar in a parking lot by a patron who was escorted out of the establishment and failed to leave when requested to do so. A business owner is not an insurer for anything that could possibly happen at its establishment; rather, it "may be liable for injuries to its customers proximately caused by its negligence if it had knowledge of the potential for danger and the ability to prevent it." *Veytsman*, 170 Md. App. at 906; *see also Long v. Joestlein*, 193 Md. 211, 216 (1949).

We hold the circuit court properly examined the facts and legal issues and did not err, as a matter of law, in granting summary judgment. Viewing the evidence in the light most favorable to appellant we hold, there was simply no history of prior similar assaults at or near appellee's property that would have put them on notice the assault upon appellant was reasonably foreseeable.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.