

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

FIRST DIVISION  
May 12, 2008

No. 1-07-2294

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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VERA VUKSANOVIC,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County.
	)	
v.	)	No. 05 L 13328
	)	
DOMINICK'S FINER FOODS, INC.	)	Honorable
	)	Robert Lopez-Cepero,
Defendant-Appellee.	)	Judge Presiding.

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ORDER

Plaintiff Vera Vuksanovic filed a negligence and premises liability complaint against defendant Dominick's Finer Foods, Inc. (Dominick's), alleging Dominick's was negligent for failing to provide a reasonably safe means of egress from its store. Plaintiff alleged that after she left defendant's grocery store, she was brutally attacked by an unknown assailant while walking within defendant's fenced-in parking lot. Dominick's filed a motion for summary judgment, contending it did not owe a duty to plaintiff to protect plaintiff because the third-party criminal attack was not reasonably foreseeable. The trial court granted

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Dominick's summary judgment motion. Plaintiff appeals. We affirm.

#### FACTS

On May 1, 2001, plaintiff was violently attacked by an unknown assailant while she was walking through the parking lot of the Dominick's grocery store located at 5235 N. Sheridan Road. During the attack, plaintiff was beaten in the face several times, her wrist was fractured, and her hip was fractured. The attacker did not attempt to steal anything from her during the attack.

On November 22, 2005, plaintiff re-filed a one-count complaint against Dominick's, alleging, in pertinent part, that Dominick's owed plaintiff a duty to protect her against criminal acts of third parties. On September 1, 2006, Dominick's filed its motion for summary judgment, alleging it was entitled to judgment as a matter of law because the criminal attack on the plaintiff was not reasonably foreseeable. In support of its motion, Dominick's attached affidavits from Keith Cwick and Sargina Malik-Ismail, employees of the Dominick's store where the attack occurred.

Cwick, the co-store manager, said he could only recall four criminal incidents taking place outside of the Dominick's store between May 1999 and August 2001--two muggings or robberies, one

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drug arrest, and one domestic incident. Based on his experience, he did not believe the neighborhood where the store was located was a high violent-crime area. Malik-Ismail, a customer service manager at the store, said she was not aware of any criminal attacks similar to what plaintiff reported taking place at the Dominick's store while she was working there from January 1997 until August 2001. She did not recall any violent attacks or physical attacks on any customers taking place in the parking lot while she worked at the store.

In response to Dominick's summary judgment motion, plaintiff submitted an affidavit from Loyal E. Slaughter, a security expert and former Rockford police officer. Slaughter opined that Dominick's was negligent because it did not adhere to the standard applied to a reasonable commercial grocer in an urban area when providing security at its premises, which consequently allowed plaintiff's attack to occur. Slaughter also opined that the attack on plaintiff was the fifth aggressive or violent crime committed against a person on Dominick's property within the proceeding 14 months, indicating Dominick's should have been on notice that an attack was reasonably foreseeable.

Rather than issue an immediate ruling on the summary judgment motion, the trial court directed plaintiff to issue a subpoena and obtain all of the records from the Chicago police

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department for a period of five years before the incident date for the Dominick's store location on January 8, 2007. On April 9, 2007, plaintiff filed copies of all of the newly obtained police department records in support of its response to Dominick's summary judgment motion. On July 17, 2007, the trial court granted Dominick's summary judgment motion.

DECISION

Plaintiff contends the trial court erred in granting Dominick's summary judgment motion. Specifically, plaintiff contends summary judgment was improper because an issue of material fact exists regarding whether the previous criminal activity on Dominick's property made the attack against the plaintiff reasonably foreseeable. We disagree.

Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2006). The purpose is not to try an issue of fact, but rather to determine whether a triable issue of fact exists. Giannoble v. P & M Heating and Air Conditioning, 233 Ill. App. 3d 1051, 1056 (1992). We review de novo a trial court's grant of summary judgment. Giannoble, 233 Ill. App. 3d at 1056.

To establish a cause of action for premises liability, a plaintiff must plead sufficient facts to establish a duty exists, a breach of that duty, and an injury proximately caused by the breach. Salazar v. Crown Enterprises, Inc., 328 Ill. App. 3d 735, 740 (2002). Whether a duty exists is a question of law determined by the court. Salazar, 328 Ill. App. 3d at 740.

Generally, a landowner has no duty to protect individuals against criminal acts of third parties on its property unless a "special relationship" exists. Salazar, 328 Ill. App. 3d at 743; Ignarski v. Norbut, 271 Ill. App. 3d 522, 526 (1995). Here, a special relationship existed because plaintiff was a business invitee of Dominick's. See Osborne v. Stages Music Hall, Inc., 312 Ill. App. 3d 141, 147 (2000). Even when a special relationship exists, however, "no duty to protect against criminal acts will be imposed unless the incident should reasonably have been foreseen by the owner." Osborne, 312 Ill. App. 3d at 147. " 'Where injury results from freakish, bizarre or fantastic circumstances, no duty is present and no negligence claim can be asserted.' " Osborne, 312 Ill. App. 3d at 147, quoting Washington v. City of Chicago, 188 Ill. 2d 235, 240 (1999).

In support of her contention that Dominick's owed her a duty, plaintiff presented four redacted police reports and a

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seven page citizen report listing the criminal activity in and around the Dominick's store. Plaintiff also presented an affidavit from Loyal E. Slaughter, a security expert and former Rockford police officer.

Initially, we note the police records would have been inadmissible at trial and could not have been considered by the trial court in opposition to Dominick's summary judgment motion. See Safeway Insurance Co. v. Hister, 304 Ill. App. 3d 687, 691 (1999). Illinois courts have consistently recognized police reports, standing alone, are inadmissible because the information in the report is generally hearsay or merely states conclusions. Camco, Inc. v. Lowery, 362 Ill. App. 3d 421, 434 (2005).

We also find Slaughter's affidavit was inadmissible on the issue of the reasonable foreseeability of plaintiff's attack. Whether a duty exists under a given set of facts is a question of law properly determined by the trial court, not an issue to be determined or explored through expert testimony. See Salazar, 328 Ill. App. 3d at 740. Slaughter's affidavit did not create a factual question regarding whether plaintiff's attack was reasonably foreseeable.

Even considering the police reports presented in this case, we find the prior criminal activity in the parking lot was not sufficiently similar to plaintiff's attack to create a duty on

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Dominick's part to protect the plaintiff. We have previously recognized that " 'generalized allegations of crime will not suffice to establish that future criminal attacks are foreseeable.' " Salazar, 328 Ill. App. 3d at 745, quoting Popp v. Cash Station, Inc., 244 Ill. App. 3d 87, 93 (1992).

In this case, similar to Salazar and Popp, plaintiff identified four unrelated criminal activities that occurred in or around Dominick's store during the 14-month period prior to her attack. However, none of the prior incidents actually involved a victim that was a customer of Dominick's when the incident occurred. Only one incident took place in the parking lot. While each of the prior incidents involved personal attacks or amounted to assault or battery, all of the reported incidents were minor in nature. No medical treatment was required. None of the prior criminal incidents involved a situation where a customer of Dominick's was brutally attacked in Dominick's parking lot for no apparent reason, as plaintiff was here. We cannot say plaintiff sufficiently alleged her attack was reasonably foreseeable based on the prior criminal incidents identified in the police reports. See Salazar, 328 Ill. App. 3d at 745; Popp, 244 Ill. App. 3d at 93.

Given the record before us, we find the trial court was correct in determining Dominick's did not owe a duty to protect

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plaintiff from a third-party criminal attack on its property.

CONCLUSION

We affirm the trial court's order.

Affirmed.

Wolfson, J., with Garcia, and R. Gordon, JJ., concurring.