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2011 IL App (3d) 100678-U

Order filed August 17, 2011

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

CHAD PETERSON,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	La Salle County, Illinois
)	
v.)	Appeal No. 3--10--0678
)	Circuit No. 07--L--122
BUSTED PROP, INC., d/b/a The)	
Busted Prop, an Illinois Corporation,)	
)	Honorable Joseph P. Hettel,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant had no duty to protect plaintiff from the criminal actions of a third party. Summary judgment for defendant affirmed.
- ¶ 2 Chad Peterson appeals the trial court's grant of summary judgment in favor of Busted

Prop Inc., a bar. A patron of the bar who had been involved in an altercation inside the bar, attacked Peterson in the bar's parking lot. Peterson filed a complaint asserting the bar was liable for his injuries. The trial court granted summary judgment in favor of the defendant. Peterson appeals. We hold that the bar did not have a duty to protect Peterson from the criminal acts of a third party; judgment affirmed.

¶ 3

FACTS

¶ 4 After 1 a.m. on August 12, 2006, Peterson was at Busted Prop with a friend. While he was there, another bar patron was involved in a confrontation with other patrons. It involved some pushing, a "little pile-on" of people on the floor and some people standing around the people on the floor. Peterson also described it as "almost just a pushing contest."

¶ 5 Peterson and a friend who was with him both gave deposition testimony. Peterson claimed that when the altercation happened, the bar "threw the light on to the bar and told everybody, you know, last call, leave." Peterson's friend described the altercation as a "skirmish." He said at that point, the bar "flipped the lights on and told everybody to get out and leave."

¶ 6 With everyone leaving the bar at the same time, the parking lot was backed up. Peterson originally tried to get out of the parking lot but decided to wait until the congestion cleared. He and his friend got out of his truck and started to talk. A woman got out of a car parked behind Peterson's truck and accused him of almost hitting her car. She yelled at Peterson, tapped him on the chest and twisted his thumb. Peterson kept backing away from her, trying to avoid a

confrontation.

¶ 7 While the woman was arguing with Peterson, the patron who was part of the altercation inside the bar, approached Peterson without being seen; he hit Peterson in the head, knocking him down. The attacker and the woman left when someone in the crowd indicated they called the police.

¶ 8 Later, Peterson filed a complaint against Busted Prop claiming it was liable for his injuries based on the Dram Shop Act and negligence. The bar moved for summary judgment on both counts; the trial court granted the motion on both counts. Peterson now appeals only the trial court's grant of summary judgment of his common law negligence count.

¶ 9 ANALYSIS

¶ 10 We review a grant of summary judgment *de novo*. *Forsythe v. Clark USA, Inc*, 224 Ill. 2d 274, 280 (2007). Section 2-1005 of the Code of Civil Procedure provides for summary judgment when the pleadings, depositions, and admissions on file, together with any affidavits, 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. *Id.*; 735 ILCS 5/2-1005 (West 2008). We review the record in the light most favorable to the nonmoving party. *Id.*

¶ 11 In order to prevail on a claim of negligence, the plaintiff must prove “that the defendant owed a duty of care, that the defendant breached that duty, and that the plaintiff incurred injuries proximately caused by the breach.” *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 43 (2004). Generally, landowners have no duty to protect people from the criminal actions of third

parties unless a special relationship exists and the criminal attack was reasonably foreseeable.

Osborne v. Stages Music Hall, Inc., 312 Ill. App. 3d 141, 147 (2000); *Shortall v. Hawkeye's Bar & Grill*, 283 Ill. App. 3d 439, 442 (1996). One such special relationship exists between business owners and patrons. *Shortall*, 283 Ill. App. 3d at 443. “A criminal attack by a third person is reasonably foreseeable when the circumstances are such as to put a reasonably prudent person on notice of the probability of an attack or when a serious physical altercation has already begun” and the bar has knowledge of the altercation. See *Id.* at 443–44 (citing *Lucht v. Stage 2, Inc.*, 239 Ill. App. 3d 679, 686 (1992)). “ ‘Since anyone can foresee the commission of a crime virtually anywhere at any time[,] *** [t]he question is not simply whether a criminal event is foreseeable, but whether a *duty* exists to take measures to guard against it.’ (Emphasis in original.)” *Osborne v. Stages Music Hall, Inc.*, 312 Ill. App. 3d 141, 147 (2000). The existence of a duty is a legal determination for the court. *Osborne*, 312 Ill. App. 3d at 146. “Foreseeability is measured by the individual facts and circumstances of each case.” *Id.* at 147.

¶ 12 Peterson argues that since the bar announced last call, turned on the lights, and told everyone it was time to leave at the time of the altercation, those actions were in response to the altercation. Illinois courts have long recognized the fallacy in assuming that because something happens after something else, the first was caused by the last. *Rittler v. Industrial Comm'n*, 351 Ill. 338, 352 (1933) (“*Post hoc ergo propter hoc* is a fallacious argument.”); *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 175 (2008) (“*propter hoc* must be distinguished from *post hoc*. [Citation.]”).

¶ 13 Peterson presents no evidence: that any of the bar employees actually witnessed the altercation; that the bar was on notice of the attacker's violent tendencies; that the announcement of last call was, in any way, related to the altercation; or, that the altercation was of such a manner that Busted Prop should have reasonably foreseen the attacker's alleged criminal action. Plaintiff has failed to show that any of the bar's employees actually knew about the altercation involving the attacker. We will not impose a duty upon the bar holding it responsible for every minor altercation or pushing contest that might occur, especially without evidence of actual notice. There is no evidence that the defendant was on any notice that plaintiff's attacker was a risk to plaintiff or anyone else. There is no evidence that plaintiff's attacker was the aggressor in the pushing match that took place in the bar. Even if the bar did know about the altercation, we are not prepared to say the bar had a duty to call the police. We note that all of the testimony describing the altercation used language minimizing its scope.

¶ 14

CONCLUSION

¶ 15 We find that in the absence of evidence that the attack was reasonably foreseeable, Busted Prop did not have a duty to protect Peterson from the criminal actions of a third party.

¶ 16 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 17 Affirmed.