

No. 1-12-1905

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALEXANDRA SANTA, individually and as parent)	Appeal from the
and next friend of JANE DOE, a minor,)	Circuit Court of Cook County
)	
Plaintiffs-Appellant,)	
)	
v.)	No. 09 L 6795
)	
MARQUEZ WILLIAMS, CONCORDIA)	
AVONDALE CAMPUS, a corporation, and THE)	
CHICAGO AREA COUNCIL, INC., BOY)	Honorable Jeffrey Lawrence,
SCOUTS OF AMERICA, a corporation,)	Judge Presiding.
)	
Defendants-Appellants.)	

Justice Simon delivered the judgment of the court.
Presiding Justice Harris and Justice Connors, concurred in the judgment.

ORDER

¶ 1 *HELD:* Where defendant youth service organization admittedly sits in a special relationship of custodian and ward with the plaintiff's minor daughter in leading a coeducational teen camping trip involving 12 teen campers and facts of record demonstrate defendant's consideration of sexual activity between teen campers in forming rules and policies against such behavior, 17 year-old male camper's criminal sexual encounter with 14 year-old female camper was reasonably foreseeable and trial court erred in granting summary judgment to defendant organization.

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¶ 2 *HELD*: Charter agreement between local council of Boy Scouts of America and local social organization containing agreement of local organization to develop policies consistent with the standards of the Boy Scouts of America and to promote and utilize scouting as part of its program in return for assistance in developing programs and access to general liability insurance program and camping facilities did not create a joint venture or agency relationship, therefore no special relationship existed between local council and campers to have a duty of care as owner of campsite to protect from criminal action of a third party and summary judgment for local council was proper.

¶ 3 On June 10, 2009, plaintiff Alexandra Santa filed a three-count complaint as parent and next friend of Jane Doe, a minor, against defendants Marquez Williams (Williams), Concordia Avondale Campus (Avondale), and The Chicago Area Council, Inc., Boy Scouts of America (Council). Plaintiff alleged that on and before August 5, 2008, Jane, 14 years-old at the time, was on a camping trip under the supervision of Avondale and Council at the Owasippe Scout Reservation (Owasippe) in Twin Lake, Michigan, when she was sexually assaulted by 17 year-old Williams. Plaintiff's first count alleged that Avondale and Council were the principles of Williams and sought damages sounding in unwanted sexual contact/battery against all defendants. Plaintiff's second count alleged negligent supervision by Avondale and Council and the third count sounded in negligent security against Council.

¶ 4 Following discovery, Avondale and Council filed separate motions for summary judgment. The trial court granted defendants' motions, finding that no duty of care existed based on a lack of foreseeability of the incident and the burden of guarding against the type of incident was excessive. Plaintiff filed a motion for reconsideration, which was denied, but the case continued with Williams remaining as defendant. Plaintiff appealed the grant of summary judgment to Avondale and Council.

¶ 5 Plaintiff argues on appeal that the trial court erred in finding that Avondale and Council

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did not have a duty to protect Jane and that the incident was not reasonably foreseeable. Plaintiff also contends that the trial court erred in considering the burden of guarding against this type of incident is excessive. For the following reasons we affirm in part, reverse in part, and remand the matter for further proceedings.

¶ 6

I. BACKGROUND

¶ 7 Avondale is a social service community based facility located at 3300 North Whipple Street, Chicago, Illinois, that comprises part of Concordia Place, an Illinois not-for-profit corporation affiliated with the Evangelical Lutheran Church of America. In 2008, Avondale sought to expand its youth service programs to include teenagers 13 to 18 years-old through a program called the "Emerging Leaders Program" (Program). Avondale aimed to develop the Program to teach teenagers skills in the areas of team-building, leadership, conflict-resolution, financial literacy, and employment readiness. The Program was developed so that the teenagers could also perform community service and meet the required community service credit hours to graduate from Chicago Public Schools (CPS).

¶ 8 In developing the program, Brenda Swartz, Executive Director for Avondale, worked with Council, an Illinois not-for-profit corporation chartered by Boy Scouts of America (Boy Scouts) to promote scouting in the Chicagoland area. In order to utilize the guidelines and suggestions presented by Council, Avondale obtained a charter from Council on May 2, 2008. The one-page charter agreement contains general responsibilities for both Avondale and Council. Avondale agreed, *inter alia*, to conduct the Program according to its own policies and guidelines as well as those of the Boy Scouts, include scouting as part of its overall program, and select a committee of parents and organization members to select unit leaders who meet the

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Program's standards and Boy Scouts' leadership standards. Council agreed to provide training, support, techniques and methods for selecting quality leaders, camping facilities, full-time professional staff to assist in every way possible, and general liability insurance.

¶ 9 Josh Oswalt, a district executive for Council, assisted Swartz in modeling the Program after Boy Scouts' "Venturing Program," a coeducational program for 13 to 20 year-olds. Oswalt did not provide all the details or develop the curriculum for the Program, but assisted in developing the structure and suggested programming ideas and other suggestions. In addition, he did not take part in the hiring of staff or interns. The initial run of the Program was scheduled from June 23 to August 27, 2008, and included a camping trip to Owasippe.

¶ 10 Eric Richards was hired as lead counselor and Gwyndolyn Siebert as the second counselor for the Program. Both counselors were teachers and held masters' degrees in special education and arts education, respectively. The Program utilized the Boy Scouts' 10-week outline as a backbone for the Program and Siebert developed curriculum for classes to meet the basic structure. Siebert also authored a code of conduct and oath for the Program. The counselors received the general program materials from Council including a "Venture Leaders Manual," but these materials were used only as resources for Avondale to develop the program.

¶ 11 Oswalt met with Richards and Siebert to train them before the program and briefed them on Owasippe, the types of activities available, and the expectations for the campers. Oswalt had one meeting with the students and parents prior to the start of the Program and provided general information about the Program, Boy Scouts' venturing program, and the camping trip. During this meeting, Oswalt also expressed expectations for the campers and general rules.

¶ 12 Avondale volunteered to accept two student interns from a group of high school students

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from CPS who qualified for Mayor Daley's Summer Youth Program. Avondale did not assess or refer the student interns, and it was Swartz's understanding that CPS screened the students to exclude those with criminal backgrounds in an attempt to assure placement sites had confidence in the integrity of the student interns. Following an interview, Avondale was free to accept or reject referred candidates.

¶ 13 Williams and Sarah Tirado were among the students referred to Avondale by CPS for the internship position. They were interviewed and accepted as interns. Swartz indicated that Avondale did not pay the interns and assumed that CPS paid them. The interns did not have any leadership role or responsibility, but served to assist Richards and Siebert. The program ran successfully without incident through the end of July and Williams' internship ended on July 30 or 31, 2008, and he received a positive exit evaluation at that time.

¶ 14 The Program was scheduled to continue for four more weeks, including the camping trip to Owasippe. Although his internship had ended and he had to pay to go on the camping trip, Williams expressed a desire to attend while Sirado did not want to go on the trip. Avondale secured a stipend from CPS to pay Williams' cost of the trip and he attended as a youth participant and not an intern. Therefore, Williams completed a Boy Scout youth membership application to participate in the trip scheduled for August 3 - 8, 2008, and was not considered an intern for the trip, but another camper.

¶ 15 Richards and Siebert were required by Boy Scouts to complete training to be certified prior to leading the camping trip at Owasippe. Richards described it as more a tutorial than a training that took about an hour to complete. He indicated that it provided guidelines for the camping trip including two adults watching the children at all times, guidelines for showering

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and toilets, and no displays of affection between the campers. Richards stated that, although they felt it would not occur, they were not going to tolerate any "sneaking off" activity of a sexual nature or any public displays of affection. He also admitted that it remained a concern because "[w]e're taking teenagers on an overnight trip."

¶ 16 During classes leading up to the camping trip, Richards and Siebert talked about the trip and expectations for the students. Avondale gave the students a three-page handout in preparation for the camping trip. The first page was basic rules, the second page was a list of items to bring and the third page was a proposed daily schedule.

¶ 17 On August 3, 2008, Richards and Siebert drove 12 campers from the Program, including Williams and Jane, to Owasippe. The group got settled in their area of the campground which included several tents, a campfire ring with benches, and three outbuildings with a shower and toilet in each building. The shower and lights in the outbuilding closest to the tents and campfire area were malfunctioning so the campers had to utilize the remaining two outbuildings that were roughly 280 feet from the main area of the campsite. Richards testified that the closer working shower was designated the girls shower and the campers were informed that it was a rule to inform the counselors if a camper needed to use the toilet or shower.

¶ 18 Unfortunately, there was a misunderstanding or miscommunication and there was little to no presence from adults with Owasippe to assist Richards and Siebert. In addition, and parental permission slips had not been signed for some activities and the campers had not passed testing required to use the swimming pool. Therefore, Richards, Siebert and the campers were unable to take part in many of the planned activities and filled their time around the campsite, going on hikes and hanging out.

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¶ 19 The evening of August 5, 2008, Williams helped build a fire at the campsite and the campers planned to go on a nighttime hike with Richards and Siebert around the perimeter of their campsite. At around 8:30 - 9:00 p.m., Jane informed Richards that she wanted to shower and he told her that she could and they would pick her up and hike from there. Approximately 10-15 minutes later, Williams asked to take a shower because he was dirty from building the fire and he was also granted permission to shower. Rather than go to the open shower, Williams went to Jane's shower and performed several sexual acts with her. Williams then left Jane and went to the open shower and showered.

¶ 20 The rest of the campers walked up to the showers around 9:30 p.m. and picked up Jane who was walking out of the shower building when they arrived. Williams exited the other shower as they started on their hike and joined the group. Siebert testified that Jane seemed fine during the hike and told Siebert that she was having fun on the trip. Belany Contreras testified that at some point during the hike she was in the back of the group and Jane walked up to her and, with a very serious expression, told her that "something really bad happened." When Contreras sought more information, Jane said that while she was in the shower, Williams "come up on her while she was taking a shower and that he just raped her." Contreras told Jane that she had to report it, but Jane responded that it was not a big deal, that she was used to it because her father and another relative "used to do that kind of stuff to her and her younger sister."

¶ 21 After the hike, everyone returned to the campsite for a campfire and eventually prepared for bed. Contreras and Yesenia Medina had been sleeping in the van instead of a tent because of their fear of spiders. When they were preparing to go to sleep, Contreras told Medina that Jane told her Williams had raped her. Contreras and Medina were both scared and started crying.

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They found Siebert's cell phone that was charging in the van they and called Contreras' mother. Contreras' mother told them to tell somebody what had happened and the girls talked with Siebert.

¶ 22 Siebert testified that the girls did not say that Jane had sex, but said that Williams had groped her. Siebert asked Richards to talk with Jane because he had a better relationship with her. Richards woke Jane up to talk with her and she said that she had been attacked by Williams and they had sex. Richards and Siebert contacted the Owasippe emergency number and left a message. They then called the Michigan State Police.

¶ 23 The state police arrived shortly thereafter. Williams was questioned by the police and admitted having sex with Jane. He was arrested and taken into custody by the police. Williams was charged with third-degree criminal sexual conduct with a person 13 to 15 years of age and assault with intent to commit a sexual act involving penetration. Williams eventually pleaded no contest to the assault with intent to commit a sexual act involving penetration charge and was sentenced to 10 months in jail.

¶ 24 Siebert called plaintiff and also had Jane speak with her mother. Plaintiff was upset and yelled and berated Siebert and then yelled at Jane and repeatedly hung up on her. Siebert told plaintiff that Jane did not want medical attention but asked plaintiff if she wanted Jane to go to the hospital. Plaintiff stated that Jane had been raped and had to go to the hospital but there was no point in plaintiff meeting them there.

¶ 25 Neither Richards nor Siebert saw any questionable behavior or public displays of affection between Williams and Jane at any time during the summer or while at Owasippe. The campers who testified also indicated that, at most, they saw some hand holding between the two

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of them. Contreras testified that she thought that Jane liked Williams, but nothing more than that. She did not witness any kissing or other public displays of affection. Medina did not see more than a hug or hand-holding either, but testified that Jane was a flirt who separated herself from the other girls so she was not surprised something like this could happen. Oswald testified that there had been no sexual assault or improper sexual contact cases during his seven years with the organization.

¶ 26 Williams testified that he had started to have a relationship with Jane near the end of the summer. He said that they had not had sex prior to the trip but had talked about having sex during the trip. He admitted that this was one motivation for him to go on the trip even though his internship had ended. Williams testified that he and Jane "got away twice" for makeout sessions earlier in the camping trip. He indicated that he and Jane had tried to find a time and place to have sex and when she went to the shower he thought that she made eye contact and nodded so he went to showers a few minutes after her. He stated that he went into the shower and they had consensual sex.

¶ 27 Williams stated that after they had sex, he left the shower and went to the further shower building. He eventually joined the group when they came around for the hike. During the hike he talked with others, including Jane. He stated that she acted quiet and it seemed like something was wrong. They fell back behind the other hikers and he and Jane moved closer to one of the bathrooms so he could see her face in the light to see if something was wrong. He testified that Jane said everything was fine and then pulled his pants down and performed oral sex on him. He testified that they went back with the group, he fell asleep by the campfire and was awoken by Richards.

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¶ 28 Jane testified that she was just friends with Williams before the trip, but had not had sex with him or anyone prior to the trip. She admitted that she had been abused by family members several times when she was younger. Jane did not talk about sex with Williams and stated that the sex was not consensual. She testified that she was in the shower when she was surprised by Williams who grabbed her arm hard, pulled her out of the shower, and forced her to have intercourse on the bench by the shower.

¶ 29 Plaintiff filed her three count complaint at law on June 10, 2009, as mother and next friend of Jane. Plaintiff asserted a count of unwanted sexual contact under an agency theory alleging that Avondale and Council breached their duty to provide supervision, security and safety to Jane. Plaintiff also advanced a count of negligent supervision against both Avondale and Council in failing to properly supervise Williams and allowing for unsafe conditions. In her third count, plaintiff alleged that Council was negligent in failing to safely secure the washrooms and properly and safely maintain the campground.

¶ 30 Avondale and Council each filed motions for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure. 735 ILCS 5/2-1005 (West 2010). The trial court granted summary judgment to both defendants, stating that neither party had a duty of care because Williams' criminal actions were not reasonably foreseeable and the burden of preventing such an incident was excessive. Following the denial of plaintiff's motion for reconsideration, this appeal was filed.

¶ 31

II. ANALYSIS

¶ 32 On appeal, plaintiff asserts that both Avondale and Concordia had a special relationship with Jane as Avondale admitted such a relationship and Concordia shared that relationship per

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the "joint venture agreement" between the two parties. Plaintiff also contends that the trial court erred in finding that Williams' actions were not reasonably foreseeable. Finally, plaintiff asserts that the trial court improperly considered the burden of guarding against this type of incident was excessive because of the special relationship between the parties.

¶ 33 A. Standard of Review for Summary Judgment Motions

¶ 34 Summary judgment is proper where the pleadings, depositions, affidavits, admissions, and exhibits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is thus entitled to judgment as a matter of law. *Kajima Construction Services, Inc. v. St. Paul Fire & Marine Insurance Co.*, 227 Ill. 2d 102, 106 (2007). A triable issue of fact exists where there is a dispute as to one of the material facts, or where a reasonable trier of fact might differ in drawing inferences from facts that are not in dispute. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 162-63 (2007). A defendant may nevertheless succeed on its motion for summary judgment by disproving the plaintiff's case with uncontradicted evidence that would entitle it to judgment as a matter of law or by establishing that the plaintiff lacks sufficient evidence to prove an essential element of its cause of action. *Argueta v. Krivickas*, 2011 IL App. (1st) 102166, ¶ 6. For appeals such as this, on the circuit court's grant of defendant's motion for summary judgment, this court will review the motion *de novo*. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004).

¶ 35 The trial court granted summary judgment for Avondale and Council, finding that they did not owe a duty of care to Jane and that the burden of protecting against the alleged harm was excessive. "The concept of duty in negligence cases is involved, complex, and nebulous," involving consideration of the law, facts, and public policy. *Simpkins v. CSX Transportation*,

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Inc., 2012 IL 110662, ¶¶ 17-18. In order to state a cause of action for negligence, a plaintiff must allege facts that establish a duty of care owed by the defendant to the plaintiff and a breach of that duty proximately causing injury to the plaintiff. *Id.* at ¶ 14. Whether a duty is owed is a question of law the courts must decide while the breach of that duty and proximate cause are questions of fact to be resolved by the jury. *Iseberg v. Gross*, 227 Ill. 2d 78, 87 (2007).

¶ 36 The "touchstone" of the duty analysis is whether the defendant stood in such a relationship to the plaintiff to impose an obligation of reasonable conduct. *Simpkins* at ¶ 18. Four factors are considered when determining whether this relationship exists, "(1) the reasonable foreseeability of the injury, (2) the likelihood of the injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing that burden on the defendant." *Id.* Though "[i]t can be said, with the benefit of hindsight, that everything is foreseeable," the focus is on "whether the injury was reasonably foreseeable at the time defendant engaged in the allegedly negligent action." *Id.* at ¶ 25. Therefore, although a question of law, the duty analysis, particularly the attendant foreseeability question, is a fact specific inquiry related to the specific defendant. *Id.* The foreseeability of the act must be judged on what is objectively reasonable to expect by what was apparent to the defendant at the time of the attack. *Doe v. Goff*, 306 Ill. App. 3d 1131, 1135 (1999).

¶ 37 In addition, four special relationships between two parties have been recognized by our courts that give rise to an affirmative duty to aid or protect another against an unreasonable risk of harm: " 'common carrier and passenger, innkeeper and guest, custodian and ward, and possessor of land who holds it open to the public and member of the public who enters in response to the possessor's invitation.' " *Id.* at ¶ 20, quoting *Marshall v. Burger King Corp.*, 222

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Ill. 2d 422, 438 (2006). There also is a recognized duty to a third party where a special relationship between a defendant and an individual who is the source of harm such as a parent-child, employer-employee, or master-servant relationship. *Id.* While Illinois law generally does not impose a duty to protect against a criminal attack, where a special relationship exists and the attack is reasonably foreseeable so as to put a reasonably prudent person on notice, a duty to protect can exist. *Goff*, 306 Ill. App. 3d at 1134. Again, the duty to protect only applies, even where there is a third party attack, if it was reasonably foreseeable and absent that factor, no duty can exist. *Doe v. Big Brothers Big Sisters of America*, 359 Ill. App. 3d 684, 701 (2005); *Simpkins* at ¶ 24. The trial court found that Williams' criminal actions were not reasonably foreseeable and neither Avondale nor Council had a duty of care. We consider each defendant's alleged duty in turn.

¶ 38

B. Avondale

¶ 39 Avondale conceded in its motion for summary judgment that it was the voluntary custodian of Jane at the time of the incident. Therefore, as Avondale concedes, plaintiff's argument that the trial court's consideration of the burden of guarding against this type of incident was improper because that is not a part of the analysis when a special relationship is involved. However, Avondale argues that the trial court was correct in finding plaintiff's negligence claims failed because the undisputed material facts established that Williams' criminal act was not foreseeable as a matter of law. Avondale asserts that plaintiff's "bald proposition" that sexual contact between teenagers on a co-ed camping trip is without authority, Williams' felonious assault was not foreseeable and the trial court properly granted summary judgment because Avondale did not have a duty to protect in this case.

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¶ 40 We agree with plaintiff that the law, facts and public policy support a finding that Avondale had a duty of care to Jane in this case. First, our supreme court recently reiterated the public policy in Illinois favoring the protection of children is one of the State's most fundamental interests, in particular in its character as *parens patriae* to protect and provide for those "by reason of infancy, defective understanding, or other misfortune or infirmity are unable to care for themselves." *Jane Doe-3 v. McLean County Unit Dist. No. 5 Board of Directors*, 2012 IL 112479, ¶ 36. This is particularly relevant in protecting children from sex offenders. *Id.* at ¶ 37. This philosophy also underlies the custodian-ward special relationship cases because one party has voluntarily taken custody of another, depriving that person of normal opportunities for protection, essentially standing *in loco parentis* to the child. *Platson v. NSM America, Inc.*, 322 Ill. App. 3d 138, 146-47 (2001).

¶ 41 Case law applicable to the facts of this case is sparse and the facts of these cases more often involve the physical or sexual abuse of those in the custodian-ward relationship at the hands of adult leaders employed or affiliated with a group or school and not the nonconsensual, or consensual, sexual acts amongst teenagers. While plaintiff contends that Williams was an employee, the testimony of record clearly showed that his employment had ended. Williams was required to register, pay, and attend the camping trip as a camper and not an intern. He did not have any leadership function or responsibilities on the trip and was not an employee of Avondale.

¶ 42 Avondale argues that this case is distinct from the authority cited by plaintiff that centered on the knowledge of the defendant. See *Hernandez v. Rapid Bus Co.*, 267 Ill. App. 3d 519 (1994) (School bus company not entitled to summary judgment because it knew many

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students transported had a propensity toward violent and criminal behavior, escorts were provided to take students to school door, and rape after students exited the bus without escort was reasonably foreseeable.); *Kigin v. Woodmen of the World Ins. Co.*, 185 Ill. App. 3d 400 (1992) (No dismissal where plaintiff alleged defendant 41 year-old counselor's employer knew counselor was intoxicated and supplied alcohol to 15 year-old camper, and then retreated to remote area where camper was sexually assaulted.); *Platson*, 322 Ill. App. 3d 138 (2001) (Dismissal reversed where male employee's improper touching of 16 year-old female work study employee was well known throughout office and employer had duty to protect employee from older employee.) Avondale asserts that, unlike these cases, there is no evidence that anyone involved with the Program had any knowledge that Williams posed a risk to Jane when he was allowed to shower and, therefore, summary judgment was proper due to the lack of foreseeability.

¶ 43 Also in contrast to the reported cases that considered the failure to protect in similar scenarios, there are not any statistical studies of record to support either side. Unlike *Goff*, where the court cited to the percentage of adult volunteers placed in an ineligible volunteer file for suspected abuse at less than .011% and .0096% for the two years the plaintiff was abused to support its holding that it was not reasonably foreseeable that the plaintiff would be molested, there is no data available in this case. *Goff*, 306 Ill. App. 3d at 1135. Furthermore, any statistical incidence of sexual activity is undercut by the amount of cases never reported, a fact amply demonstrated in social sciences and, for abuse cases, by the Boy Scouts' own documentation. See *Juarez v. Boy Scouts of America, Inc.*, 81 Cal. App. 4th 377, 403 (2000).

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¶ 44 In this case, we must consider the facts and whether, as Avondale argues, Williams' "felonious assault" was reasonably foreseeable. Avondale established rules and procedures concerning public displays of affection between teenage students and campers. Furthermore, there were established rules and guidelines on the use of the bathrooms and showers at Owasippe that Council noted and Avondale included. These rules were formed to protect the campers from situations such as occurred in the case under review. As Richards frankly testified, they were "taking teenagers on an overnight trip" and whether or not there was oversight and strict rules "regardless of the age of consent there's always that heightened concern when boys and girls are together at that age that they - - behave in appropriate ways."

¶ 45 The facts of record, when viewed in a light most favorable to plaintiff, do not present a "bald proposition" but, rather, support a finding that it was reasonably foreseeable that two teenagers would engage in sexual activity on a camping trip. There is conflicting testimony as to whether the activity was consensual at any point, but in either case, the reasonable foreseeability of the act is supported by the evidence of record. This analysis does not decide the ultimate issue in this case as breach and proximate cause are factual matters for the trier of fact. *Iseberg*, 227 Ill. 2d at 87. We have only been confronted with the duty issue on summary judgment and have determined that the sexual contact at issue in this case between teenage campers was reasonably foreseeable and Avondale, having a special relationship as custodian, had a duty of care to protect the campers.

¶ 46 C. Council

¶ 47 Plaintiff contends that Council also had a special relationship with the campers per the "joint venture agreement," the May 2008 charter agreement between Avondale and Council.

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Plaintiff contends that Council was a necessary element to the camping trip. Plaintiff asserts that Council "suggested it, instructed Concordia on it and supplied the campsite." Plaintiff also attempts to link Williams to Council, asserting that he was an employee and the employer-employee relationship requires special oversight. However, as addressed above, the testimony and facts of record clearly indicate that Williams was never an employee of Council and was not employed by Avondale as an intern at the time of the camping trip.

¶ 48 Council argues that, unlike Avondale, it did not admit and does not have a special relationship with Jane. We agree that Council did not have a special relationship with Williams or Jane. Plaintiff simply makes the conclusory statement that it "had a special relationship with the plaintiff per the joint venture agreement with [Avondale] for this class and camp." As Council points out, plaintiff fails to provide any analysis of this agreement that allegedly creates this relationship or any authority to support its contention and concludes that plaintiff waived this claim. *People ex rel., Madigan v. Lincoln, Ltd.*, 383 Ill. App. 3d 198, 208.

¶ 49 Waiver notwithstanding, had plaintiff properly attempted to support her claim that defendants had a joint venture, the elements for the establishment of a joint venture are not present in this case. To determine if parties intended to form a joint venture, the party seeking to establish a joint venture has the burden of proving to the court that the parties share: (1) a community of interest, (2) a proprietary interest in the subject matter, (3) a right to direct and govern the policy; and (4) in both profits and losses. *Daniels v. Corrigan*, 382 Ill. App. 3d 66, 80 (2008). Though the third factor is the most important criterion, the absence of any of the elements forecloses the existence of a joint venture. *Id.* Plaintiff did not attempt to prove these elements and the record does not establish these factors, particularly the most important factor.

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While Council assisted in the development of policy and programming, the testimony clearly established that Avondale completed and maintained control over this area. Likewise, although not asserted by plaintiff, the record does not evidence an agency relationship between Avondale and Council, particularly due to the lack of any control over Avondale's operations by Council. *Id.* at 75.

¶ 50 We also note that, although plaintiff does not raise the arguments, Council does not have a special relationship under the related business inviter/invitee category or under section 344 of the Restatement (Second) of Torts. As addressed in *Sameer*, " 'section 344 may be read to impose a broad duty on landowners' " who hold it open to the public for business purposes. *Sameer*, 343 Ill. App. 3d at 88-89, quoting Restatement (Second) of Torts 344 (1965). However, as explained by our supreme court in *Hills v. Bridgeview Little League Association*, 195 Ill. 2d 210, 247-52 (2000), under this rule, the business where the criminal act occurred, Owasispe, would have to be open to the general public. In *Hills*, the little league field was not open to the general public, the only people permitted on the field at the time were the teams and umpires. Likewise, the only people allowed on the campground were those campers who had registered with the Boy Scouts. Accordingly, the trial court correctly found that Council had no duty to protect and summary judgment for Council was proper. Without a special relationship, a premises owner does not have a duty to protect persons on the property from criminal activity of third parties.

¶ 51

III. CONCLUSION

¶ 52 For the foregoing reasons we affirm summary judgment for Council, reverse the summary judgment for Avondale and remand the matter for further proceedings.

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¶ 53 Affirmed in part and reversed in part; cause remanded for further proceedings.