2015 IL App (4th) 141012-U

NO. 4-14-1012

FILED
September 18, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GEORGIA WELCH, Individually and as Special Administratrix of the Estate of Jack Welch, Deceased, Plaintiff-Appellant, v. MILLIKIN UNIVERSITY, an Illinois Not-for-Profit Corporation; JOHN R. MICKLER; and DEANIA LUTHY, Defendants-Appellees.	)	Appeal from Circuit Court of Macon County No. 10L147
MILLIKIN UNIVERSITY, an Illinois Not-for-Profit Corporation; JOHN R. MICKLER; and DEANIA LUTHY, Third-Party Plaintiffs, v. G4S SECURE SOLUTION U.S.A., INC., f/k/a WACKENHUT; and ARAMARK MANAGEMENT SERVICES LIMITED PARTNERSHIP, a Delaware Corporation, Third-Party Defendants.	)	Honorable Albert G. Webber, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment is proper; defendant owed no duty to plaintiff, a private security officer, who was employed by a firm contracted to provide services for the defendant university and who was criminally attacked while engaged in the performance of her duties.

¶ 2 In August 2008, plaintiff, Georgia Welch, became employed as a security officer for Wackenhut Corporation (Wackenhut). As a Wackenhut employee, Georgia performed

security services on the campus of defendant, Millikin University (Millikin). While performing those services, Georgia was criminally attacked by three assailants in October 2008. Georgia filed suit against Millikin and Millikin employees John R. Mickler and Deania Luthy, asserting they were negligent and liable for her injuries.

¶ 3 In November 2014, the trial court granted Millikin summary judgment on Georgia's claims. The court found Millikin owed Georgia no duty to protect her from attacks by third persons. Georgia appeals, citing the Restatement (Second) of Torts (Restatement) and arguing a duty was created because defendants (1) retained control of the manner in which Georgia was able to fulfill her job responsibilities; (2) deprived Georgia of the normal opportunities for protection, thereby creating a special relationship giving rise to a duty to protect her from harm; (3) voluntarily undertook to provide security measures but performed the undertaking negligently; and (4) ordered the acts that caused her harm. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Parties

¶ 6 Millikin is an educational institution located in Decatur. Two Millikin employees are defendants in this case: John R. Mickler and Deania Luthy. Mickler served as director of Millikin's physical plant, which included safety and security. Luthy had the title of captain and she worked in security. Luthy reported directly to Mickler.

¶ 7 In April 2007, Millikin and Wackenhut entered into a contract by which Wackenhut agreed to provide security services on Millikin's campus. As of October 2008, Wackenhut had 13 employees working at Millikin.

¶ 8 Wackenhut, in 2002, was acquired by an English corporation, Group 4 Falck A/S.

The name of this corporation changed in 2008 to G4S, which is its present name. According to the G4S security officer handbook, "GS4 is the largest global network of security operations worldwide with over 600,000 employees and operations in 125 countries." Unofficially, Wackenhut became known as G4S Wackenhut. In 2010, Wackenhut's name was legally changed to G4S Secure Solution, USA, Inc., the name in the caption of this case.

¶ 9 Georgia Welch began working as a security guard for Wackenhut in August 2008, when she was approximately 50 years old. As a Wackenhut employee, Welch was assigned to Millikin. In the early hours of October 16, 2008, Georgia, working her shift at Millikin, was alone in the "Walker Building" or "Walker Boiler Plant" parking lot, hooking up a "Gator" all terrain vehicle (ATV) (Gator) to a battery charger when she was attacked and assaulted by three men. No arrests were made.

¶ 10 Aramark Management Services Limited Partnership (Aramark) contracted with Millikin to provide maintenance and services for Millikin's buildings and personal property. This agreement included "oversight management" of "Lighting Systems" and the "normal and routine maintenance, such as oil changes[,] tune-ups[,] and tire inflation and rotation for Millikin's fleet vehicles." Aramark also agreed to make decisions "and/or" provide Millikin with major repair and replacement decisions regarding vehicles.

¶ 11 B. The First Amended Complaint

¶ 12 In January 2013, Georgia filed her first amended complaint. Georgia asserted six counts of negligence against Millikin, Mickler, and Luthy, seeking compensation for her injuries and for her husband's loss-of-consortium claims. The complaint avers Millikin owed her a duty of care because Georgia was a "business invitee" of Millikin, as she was present on its campus

by "expressed invitation" and "her presence was connected with [Millikin's] business and/or with an activity conducted by [Millikin] and [Millikin] received benefit from [Georgia's] service."

¶ 13 The complaint alleges Millikin was negligent in the following manner:

> "(a) In spite of repeated requests by [Georgia] and other security personnel, [Millikin] did not permit [Georgia] to use available automobiles, vans or John Deere ATV's when conducting her rounds on October 16, 2008;
>
> (b) [Millikin] [d]irected [Georgia] to use a 'Gator' ATV with a weak battery which continuously needed recharging and which prevented the use of headlights;
>
> (c) [Millikin] [f]ailed to direct another security guard to accompany [Georgia];
>
> (d) [Millikin] [s]ent [Georgia] to 1008 West William Street at approximately 1:00 a.m. by herself when students were on break;
>
> (e) [Millikin] [f]ailed to provide adequate lighting at 1008 West William Street; and/or
>
> (f) [Millikin] [s]ent [Georgia] to 1008 West William Street when the third[-]shift sergeant, a male, was not working due to sickness."

¶ 14 C. The Millikin and Wackenhut Contract

¶ 15 In April 2007, Millikin and Wackenhut entered into a "Services Contract."

Millikin "specified the nature, type and degree of, and hours for, the services to be provided by [Wackenhut] for the purpose of carrying out the terms and conditions of this Contract." Wackenhut agreed to "furnish and/or perform the security services described in Schedule A, attached hereto ***." We note Schedule A does not appear in the record. Millikin cites Schedule A as identifying the number and rank of Wackenhut employees, including the number of hours those employees may work each week, but Millikin provides a citation to a "Services Contract" that does not include Schedule A.

¶ 16 This contract specifies the duties of security officers. Section 4 specifies the following:

> "[Wackenhut's] security officers assigned to the Premises will perform the Services set forth in the Contract. The security officers will perform the duties assigned to them in accordance with applicable written post orders or guidelines, but shall be under the sole control and direction of [Wackenhut]. [Millikin] assumes the risk and responsibility in the event that [Millikin] takes over direct control or supervision of a [Wackenhut] employee by requiring the employee to perform contrary to the Contract or not perform duties as contemplated by the Contract. The security officers while on duty, shall wear uniforms, present a neat and orderly appearance, and shall perform their duties in a courteous and respectful manner."

¶ 17 D. Evidence

¶ 18 1. *Georgia Welch's Deposition*

¶ 19 Georgia testified she was hired as a security officer by Wackenhut in August 2008 and assigned to Millikin. Training for the position occurred over four or five days at the Wackenhut office, where she watched movies and participated in discussions. A Wackenhut employee provided the training. No training manuals or other written materials were provided at Millikin, but orders were posted daily in the office. The "post orders" informed security officers of the buildings to be checked and informed officers of "occurrences."

¶ 20 According to Georgia, there were three shifts of Wackenhut employees at Millikin. During each shift, there was a sergeant or supervisor, a dispatcher, and two or three officers per shift. Valerie Gerling, the lead officer and a lieutenant, worked the day shift. She was the highest level working officer from Wackenhut at Millikin. Luthy, employed by Millikin, prepared the schedules.

¶ 21 At the beginning of her shifts, Georgia reported to "our little security compound." No one other than Wackenhut employees were assigned to the officer area in the "security compound," but Luthy made several trips during the day. Her office was down the hall from the Wackenhut offices. Mickler would at times visit the Wackenhut offices, but "not very often."

¶ 22 During most shifts, there were two security officers on duty, sometimes three, and the officers made rounds to different buildings. The officers performed these rounds on foot or by use of a Gator. The officers called dispatch when they arrived at the building and when they left. When Georgia began working, there were two Gators available for use. The Gators had weak batteries and would break down, which is why two battery chargers were kept at the office. A few days before the attack, the second Gator was not available.

¶ 23 Regarding the area near the boiler room and maintenance parking lot, officers would usually question an individual seen there because it was not an area where people were generally seen. Georgia was unaware of any criminal activity in the maintenance lot or near the boiler room before her attack.

¶ 24 According to Georgia, when she began at Millikin, she worked the day shift for two weeks for training to learn the buildings and different alarms. The rest of her tenure, Georgia worked third shift. During her first two weeks, Gerling trained Georgia. Georgia reported no direct communications with Luthy. On one occasion, Luthy mentioned to a group of security officers they were not allowed to use the security vehicles. Luthy reported, due to mileage and gasoline concerns, the security officers could use a Gator or walk. Georgia did not recall any other instructions given by Luthy.

¶ 25 Georgia testified she often had problems with the Gator's battery. "It probably happened at least six or seven times a week." When this occurred, Georgia exited the Gator, walked to the passenger side, retrieved the battery from under the passenger seat, and attached the battery charger.

¶ 26 On the night of the attack, Georgia took the Gator. She stopped at the boiler plant to check and record the boiler's temperature. This was done several times each night. When Georgia returned to the Gator, she found it would not start, as it failed to do earlier in the shift. Georgia did not notice anything around her as "it was real pitch black and a train was going by." Georgia exited the Gator. As she went to hook up the battery charger, a man put his hand over her mouth and carried her to the other two men.

¶ 27 2. *Ronald Burke's Deposition*

¶ 28 Ronald Burke worked for Wackenhut over multiple periods of time: August 2002 to October 2003, January 2007 to September 2010, and January to August 2011. During the time of Georgia's attack, Burke was the area supervisor for Wackenhut. For the latter period, he acted as a site supervisor. David Wackenhut, the general manager, was Burke's supervisor. According to Burke, the Bloomington Wackenhut office reported to the corporate office in Florida.

¶ 29 Burke testified Wackenhut, through its chain of command, operated and controlled the security officers. Wackenhut provided the uniforms. Millikin "[p]robably *** provided the belt and the keys." Wackenhut paid the salaries of the officers. Directions to the security officers went through the Wackenhut chain of command, which included Burke. In October 2008, David Wackenhut was the general manager, Burke was the area supervisor, Jeff Atteberry was the operations manager, and there was a training officer. Gerling, a lieutenant, was the highest ranking Wackenhut officer at Millikin. Gerling reported to the Bloomington office.

¶ 30 Regarding post orders, Burke testified they were directed to security officers. Depending on the needs of the client, Wackenhut determined which post orders would be included for the particular client. According to the post orders for Millikin, security officers were to "provide protection, assistance, information and miscellaneous related services to the management, employees and visitors." Requests for changes in schedules were to be made through the site supervisor. Scheduling work assignments for security officers was Gerling's job. This task included determining the number of officers assigned at a time and the assignment of vehicles for patrols. According to the orders, if damage to a vehicle was noted by a security officer, it was to be reported to the supervisor.

¶ 31 Burke testified if the battery was having problems, the Gator should not have been used. The site supervisor should have made the decision to take it out of service.

¶ 32 Burke testified if there was a problem needing a work order or a repair, a work order would be sent to Luthy. Work orders included when a vehicle needed repair or a lock was broken and a parking lot light was out. Burke was unaware of any prior incidents of third parties committing sexual assault in the back parking lot. Generally, Wackenhut assigned only one officer to patrol in the evenings.

¶ 33 According to Burke, if Luthy provided a directive, the security officers would abide by that directive. Burke was not aware of any direct order given by Luthy to a security officer. When asked if he would consider Luthy to be part of the chain of command, Burke responded as follows: "The chain of command goes towards Wackenhut as far as that goes. The vehicles goes with Captain Luthy." Work orders for maintenance issues would also go through Luthy. The site supervisor on a day-to-day basis determined who was going on what patrols, not Luthy. Burke testified, "If there was a concern. Mr. Mickler basically went through David Wackenhut, but if it was a concern he would contact us and I would contact my boss." Burke was aware that Wackenhut would only hire someone if Millikin requested personnel, but he testified "with the recommendations of David Wackenhut, too."

¶ 34 The Wackenhut officers for Millikin also underwent some training provided by Millikin: "Mickler was really particular about training on the campus and he provided a schedule of instructors including Captain Luthy to go through the new officers and make sure that what they know as far as with [Millikin]." It was several days during the week.

¶ 35 Burke expected Wackenhut security officers to provide security for Millikin's

employees and students as well as security for fellow officers. Sole control and direction of the officers belonged to Wackenhut. Burke did not attend any of the Mickler classes.

¶ 36 Burke understood boiler-room runs were to occur hourly. The decision to make these runs was made by Millikin.

¶ 37 3. *John Mickler's Deposition*

¶ 38 In October 2008, Mickler was the director of the physical plant. He reported to the vice president of finance and business affairs. Mickler negotiated the Wackenhut contract.

¶ 39 Wackenhut's command determined the officers' daily responsibilities. Those responsibilities would be found in the officers' room next to the dispatch center. Luthy had no role in setting day-to-day operations for the officers. Luthy's role was to ensure the contract was being fulfilled, ensuring compliance with a set of past orders and other documents pursuant to the contract. In addition, Luthy was to coordinate day-to-day planning for events like homecoming with the site supervisor from Wackenhut.

¶ 40 Wackenhut determined the rounds the officers would make and the vehicles to be used. Post orders mandated officers were to examine the equipment used and report unsafe equipment to their supervisors. Mickler was not aware the battery in the Gator needed to be regularly recharged. For repairs, the procedure was that a work order would be submitted to Aramark. Mickler did not see those orders.

¶ 41 According to Mickler, if he had an issue with a Wackenhut employee, he would relay that information to the onsite supervisor. He did not recall that happening. The decision on whom to send on patrol belonged to Wackenhut. Mickler had no input on that decision. Written reports of incidents were sent to Wackenhut. Mickler did not routinely receive copies of

those.

¶ 42 Mickler testified part of the reason Wackenhut was hired was to take advantage of their expertise. If Wackenhut noted a problem with lighting, Wackenhut could have made suggestions. The officers did not carry firearms, but they were armed with pepper spray. Mickler hired Wackenhut and reviewed their contract and the post orders. Mickler set the guidelines for what Millikin wanted in the security department. Wackenhut prepared the post orders. Mickler had no involvement in drafting them, nor was he involved in drafting the security officer handbook. When Mickler determined more security was needed, he contacted Wackenhut, specifically David Wackenhut. Sometimes Mickler would speak to the onsite supervisor, who would work up the Wackenhut chain of command.

¶ 43 4. *Jennifer Goveia's Deposition*

¶ 44 Goveia worked as a dispatcher for Wackenhut from May 2007 until December 2009. Goveia was part of the first group hired by Wackenhut for Millikin. This first group received about 25 days of training. Approximately one week of the training occurred in Bloomington. The rest of the time, the training occurred at Millikin. Luthy and Mickler were involved with this part of the training. In this training, tours were given to show the officers where alarms were located. Parking tickets, emergency blue lights, report writing, heating-plant checks, and safe rides were covered. Keys were discussed. Mickler conducted a class on "verbal judo, how to talk people out of situations." The training in Bloomington covered more of how the officer or dispatcher was to perform their jobs.

¶ 45 Goveia testified the sergeant on duty made all the decisions for the night, such as who was going to be in what car. "The officers were allowed to kind of just randomly go

through buildings, pick a path and go," as long as they completed necessary steps like checking the boiler room. There were times when officers accompanied each other on patrol: "They looked out for each other. If one person felt uncomfortable going up there alone, they kind of just would say wait for me and I'll go with you." The lieutenant, Gerling, would determine work hours and schedules.

¶ 46 At times, Luthy asked Goveia about the location of certain officers and asked the reason officers were in more than one vehicle. Luthy would say she wanted someone on foot patrol. Luthy, during third shift, would on occasion set off a blue light, which was an emergency light, to see how the officers responded.

¶ 47 Regarding vehicles, sergeants could allow use of those vehicles, but may be disciplined for doing so. There were consequences if you took out one of those cars. Goveia did not recall any specific discipline for taking out a car.

¶ 48 One of Goveia's responsibilities was submitting work orders. Officers could submit the orders themselves, but oftentimes they would call dispatch and she would complete the orders. To submit a work order, Goveia clicked a link on the Millikin website. She did not know where the website directed the work order or who received it.

¶ 49 Goveia testified she understood she was to take directions from Luthy and Mickler if they were given to her. Wackenhut lieutenants had authority to take out a vehicle without asking someone from Millikin. As part of her job, Goveia was required to submit daily logs to Luthy. Daily logs would cross-reference or include work orders.

¶ 50 The students were on vacation when the incident occurred. On the night of Georgia's attack, Goveia and two women officers were working the third shift. Usually, two

men and Goveia worked that shift. Goveia reported four problems with the Gator battery in the three months before October 2008 on the phone log and radio log.

¶ 51 5. *Deania Luthy's Deposition*

¶ 52 When Luthy began working at Millikin, the university provided its own security. At that time, Luthy served as a lieutenant. Her title changed to captain after security services were contracted. At the time of the deposition, Luthy served as assistant director.

¶ 53 In 2008, Luthy's duties included helping with the fleet vehicles, ensuring Wackenhut fulfilled the contract, and parking. In fulfilling her responsibilities regarding Wackenhut, Luthy ensured Wackenhut was "doing what they were supposed to do." The dispatcher was a Wackenhut employee. Luthy did not make recommendations about where patrols should occur. She did not recall complaints about the Gator. Luthy did not remember hearing any complaints regarding the Gator's need to be recharged.

¶ 54 The site supervisor from Wackenhut was responsible for taking care of issues involving a shortage in staff. Luthy did not recall hearing any complaints about females being sent out alone at night or having patrols performed in pairs. No officer complained to Luthy about performing patrols without a male.

¶ 55 For special events, when extra security was needed, Luthy would work with the site supervisor to fill those needs. Luthy did not speak to Georgia regarding the Gator or lighting issues.

¶ 56 Wackenhut created the post orders and set the guidelines for their officers. Millikin had no say in how the daily patrols were set. Luthy did not make any recommendations regarding the post orders. When Millikin provided its own security, Millikin officers performed

boiler checks. The facilities department requested boiler checks. That information was communicated to Wackenhut. Luthy had no input in the hiring and firing of officers. Luthy could not recall a time where she made a direct request of a Wackenhut employee. Wackenhut had expertise on how to provide security to universities and other institutions.

¶ 57 Luthy did not have meetings with the site supervisor to discuss marching orders for the Wackenhut employees. Wackenhut employees did not report to Luthy during the day. Luthy provided no orders for a particular day. The site supervisor or sergeant made those determinations.

¶ *58* 6. *Shanai Enoch's Deposition*

¶ 59 The only testimony from Enoch in the record appears in excerpts. Enoch was a security officer for Wackenhut. She worked for Wackenhut for approximately 1 1/2 years. As a security officer, Enoch performed boiler-room checks at the heating plant. These checks were to be performed hourly, beginning at 5 p.m. Enoch was on duty the night Georgia was attacked.

¶ 60 When Enoch was hired by Wackenhut, she received on-the-job training at Millikin. This training essentially explained the facilities, the Safe Ride program, fire-extinguisher checks, and fire-alarm response. Mickler and Luthy provided fire-extinguisher training. The company that manufactured the fire extinguishers demonstrated the procedures.

¶ 61 Scheduling was handled by Gerling. The policy was to have only one vehicle out at a time. Enoch learned that policy from her sergeant, stating "everything was done chain of command." When Enoch was asked if she had been told to follow directions from Mickler or Luthy, Enoch testified "[c]hain of command was because we were contracted through Millikin all of our orders would come from Ron Burke who in turn got them from either Mickler or

Luthy."

¶ 62 At the end of every shift, the telephone and radio log sheets were to be e-mailed to Mickler, Luthy, Wackenhut, and the lieutenant. Enoch did not see Luthy examine work orders.

¶ 63 7. *Prior Offenses on Millikin's Campus*

¶ 64 From 2006 through 2008, 6 aggravated assaults and 10 sexual assaults occurred at Millikin; 45 burglaries and 7 robberies also occurred. There is no evidence in the record of any crime committed at the boiler room or its parking lot.

¶ 65 E. Trial Court's Order

¶ 66 In November 2014, the trial court granted summary judgment to Millikin. The court reviewed the extensive discovery and concluded "while Millikin determined the nature of services provided by Wackenhut, it was Wackenhut that made staffing decisions. In other words, Millikin wanted its heating plant patrolled and Wackenhut sent the Plaintiff to do that." The court found Millikin owed no duty to Georgia to protect her from the criminal attack of third persons.

¶ 67 This appeal followed.

¶ 68 II. ANALYSIS

¶ 69 A. Summary Judgment

¶ 70 Summary judgment is proper only when the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmovant, show no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Pontiac National Bank v. Vales*, 2013 IL App (4th) 111088, ¶ 29, 993 N.E.2d 463 (quoting 735 ILCS 5/2-1005(c)

(West 2008)). A triable issue precludes summary judgment when material facts are disputed or when the material facts are undisputed but reasonable persons may draw differing inferences from those facts. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 162-63, 862 N.E.2d 985, 991 (2007). Summary judgment is a drastic means to resolve litigation, meaning it should be permitted only when the right of the moving party is clear and free from doubt. *Williams v. Manchester*, 228 Ill. 2d 404, 417, 888 N.E.2d 1, 9 (2008). Our review of an order granting summary judgment is *de novo*. *Id*.

¶ 71 B. Section 414 of the Restatement Does Not Give Rise to a Duty

¶ 72 Georgia, citing section 414 of the Restatement (Restatement Second of Torts § 414 (1965)), argues defendants owed her a duty of care to protect her from third persons because defendants retained control over the manner in which she was to fulfill her job responsibilities. Georgia contends, despite the language in the contract, defendants' actions show they controlled all operative details and incidental aspects of her job. She contends defendants decided on the number of Wackenhut officers to be hired and how many were available for patrols, trained the security officers, provided the equipment used, set the routes and timing for the patrols, owned and retained responsibility for the repairs of the vehicles, and failed to repair the Gator. She further maintains Wackenhut officers knew to follow the orders of Mickler and Luthy. Georgia contends the issue of whether a contractor retains such control over a subcontractor's work as to give rise to liability is an issue reserved for a trier of fact.

¶ 73 The question of whether a duty exists is a question of law that hinges on the nature of the relationship between the plaintiff and the defendant. See *Brooks v. McLean County Unit District No. 5*, 2014 IL App (4th) 130503, ¶ 27, 8 N.E.3d 1203. The question is thus one

for the court to decide. *Lucasey v. Plattner*, 2015 IL App (4th) 140512, ¶ 27, 28 N.E.3d 1046. A plaintiff cannot succeed on an action for negligence without establishing the defendant owed the plaintiff a duty. *Id.*

¶ 74 As a general rule, one who hires an independent contractor is not liable for the acts and omissions of that contractor. See *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 13, 816 N.E.2d 272, 279 (2004). Section 414 provides an exception to this general rule when the one who hires an independent contractor retains control of the work performed: "One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care." Restatement (Second) of Torts § 414 (1965). This exception, however, has limits. Comment c to section 414 states the following:

> "[T]he employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work, or as to operative detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in

his own way." Restatement (Second) of Torts § 414, cmt. c (1965).

¶ 75 We begin with Georgia's contention the question of whether a contractor retains sufficient control over a subcontractor's work to create a duty is an issue for the fact finder at trial. Georgia's cases do not, however, show her case advances beyond a summary-judgment challenge simply when control is an issue. In fact, in one of Georgia's cases, *Joyce v. Mastri*, 371 Ill. App. 3d 64, 76, 861 N.E.2d 1102, 1111 (2007), the First District affirmed an order granting summary judgment upon finding neither the contract nor the conduct of the contractor established control sufficient to trigger a duty under section 414. See *O'Gorman v. F.H. Paschen, S.N. Nielsen, Inc.*, 2015 IL App (1st) 133472, ¶ 89, 29 N.E.3d 1150 (quoting *Joyce*, 371 Ill. App. 3d at 74, 861 N.E.2d at 1109-10) (" 'Whether a contractor retained such control over a subcontractor's work so as to give rise to liability is an issue reserved for a trier of fact, unless the evidence presented is insufficient to create a factual question.' "). Thus, if the evidence is insufficient to create a factual question on control, summary judgment is proper.

¶ 76 Like the First District in the *Joyce* case, we begin our analysis by examining the terms of the contract. The terms of the service contract between Millikin and Wackenhut show control of the security officers remained with Wackenhut. According to the terms, when Millikin and Wackenhut entered into this contract, they agreed to a specific number of security officers, with their rank and salary requirements. These officers, under the express terms of the contract, remained under Wackenhut's control: "[Wackenhut's] security officers assigned to the Premises will perform the Services set forth in the Contract. The security officers will perform the duties assigned to them in accordance with applicable written post orders or guidelines, but

shall be under the sole control and direction of [Wackenhut]."

¶ 77 Despite this contractual mandate, Georgia points repeatedly to the hiring requirements listed in "Schedule A" and argues it is proof Millikin maintained control of the security officers. This argument, however, ignores the nature of the contract itself. This is not a one-sided mandate. It is an agreement where one party, Millikin, stated what it wanted, and the other, a global provider of security services, agreed it could perform the services Millikin sought. To be able to request necessary services and establish an amount to be paid to employees for such services "does not mean that the contractor [was] controlled as to his methods of work, or as to operative detail." Restatement (Second) of Torts § 414, cmt. c (1965). These are matters properly within the right of an employer. By the terms of the contract, Wackenhut maintained control over its employees.

¶ 78 Georgia argues the terms of the contract are contradicted by the conduct of Millikin and Wackenhut. We disagree. The evidence in this case is insufficient to create a factual question on the issue of control. Wackenhut maintained control over its security employees. Wackenhut hired its own employees and trained them how to do their jobs. Wackenhut paid its employees. Wackenhut handled all employee scheduling matters. Those employees patrolled the routes as they saw fit, and, as Goveia's testimony shows, would at times work together on patrol. When a Millikin defendant recognized a need, the undisputed testimony shows they worked through the "chain of command" of Wackenhut to see the need was met. While Millikin specified boiler checks were needed hourly, Wackenhut agreed to provide that service and sent its employees to do so.

¶ 79 A number of Georgia's factual contentions, even when viewed in the light most

favorable to her, are at times exaggerated, misguided, or simply wrong. For example, Georgia maintains Millikin determined the numbers of persons who would conduct safety patrols and set the routes. The evidence contradicts these conclusions. Wackenhut agreed it would provide security services at the level Millikin requested. The testimony of Wackenhut employees Burke, Enoch, and Goveia, as well as the testimony of Mickler and Luthy, show Wackenhut developed the schedule for its security officers. Georgia's testimony and affidavit provided the only evidence to the contrary. Given the testimony of the other witnesses, the fact the statement is self-serving, and the fact Georgia did not work during the same shift as Luthy, is not sufficient to create a triable fact. As for the routes, the testimony shows the security officers would perform certain tasks but choose their own routes.

¶ 80 C. Georgia Failed To Establish Defendants Owed Her a Duty Under Section 314A of the Restatement.

¶ 81 Georgia next argues defendants owed her a duty under section 314A(4) of the Restatement. She contends "though the contractor/subcontractor relationship between Defendants and [Wackenhut] is outside the parameters of Section 314A ***, by depriving [her] of the normal opportunities for protection under the circumstances[,] Defendants created a special relationship giving rise to a duty to protect." Georgia argues, by sending her out alone at night, unarmed, and without proper transportation, defendants put her in a position where she could not defend herself.

¶ 82 Georgia's argument suffers fatal flaws. First, the underlying premise fails. As this court found above, Wackenhut maintained control over Georgia. Wackenhut hired Georgia, trained her to be a security officer, placed her on third shift, and sent her out on a Gator Wackenhut employees knew to be unreliable and on a Gator the Wackenhut site supervisor,

according to Burke, should have taken out of commission. Wackenhut, not Millikin, sent Georgia out in these circumstances. Second, Georgia cites no case law or develops any argument to support this contention. Georgia simply states the above and copies comment b to Section 314A. This approach is troubling given section 314A applies to common carriers, innkeepers, possessors of land open to the public, and individuals who voluntarily takes custody of another (Restatement (Second) of Torts § 314A (1965)), and because Georgia makes little effort to explain how defendants fall within any of these categories. She simply states the Millikin campus was open to the public and "[t]here was no question Plaintiff was an invitee." This court is not a depository upon which an appellant may leave its burden of argument and research. *In re Estate of Lasley*, 2015 IL App (4th) 140690, ¶ 14. Georgia has forfeited this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. *** Points not argued are waived ***.").

¶ 83 D. Georgia Failed To Establish a Duty Under Section 324A of the Restatement

¶ 84 Georgia next argues defendants are responsible for her injuries because they voluntarily undertook to provide security measures but performed the undertaking negligently by sending her to a dark, dangerous, and remote part of the campus without appropriate equipment. In addition to citing to section 342A (Restatement (Second) of Torts §342A (1965)), Georgia cites three cases, *Kolodziejzak v. Melvin Simon & Associates*, 292 Ill. App. 3d 490, 685 N.E.2d 985 (1997); *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 531 N.E.2d 1358 (1988); and *Cross v. Wells Fargo Alarm Services*, 82 Ill. 2d 313, 412 N.E.2d 472 (1980), without citation to specific pages in those cases or without any argument showing why these cases support her

claim. In fact, at least one of the cases supports defendants' case. In *Kolodziejzak*, for example, a mall operator was found not to owe a duty to a security-firm employee who was shot while providing security services at the mall. *Kolodziejzak*, 292 Ill. App. 3d at 496, 685 N.E.2d at 989-90. Georgia also points to an expert witness's opinion, S. Ronald Hauri, who opined defendants' actions were negligent.

¶ 85 Georgia's claim fails. We have already rejected Georgia's contention defendants had control over her route and sent her to the boiler plant. That alleged undertaking cannot, therefore, be the basis of a duty. The only undertaking that is arguably voluntary is the undertaking of hiring a security firm. Even accepting the premise Millikin hired Wackenhut to protect Wackenhut employees, which we do for the sake of argument, the only duty potentially owed is to the duty to act with reasonable care in hiring Wackenhut. See *id* at 492, 685 N.E.2d at 987 ("When a landlord hires a security firm to provide security services, he may be liable for negligent hiring."). Millikin's decision to contract with Wackenhut is not at issue in this case. Georgia has not established defendants owed her a duty based on a voluntary undertaking.

¶ 86 E. Defendants Did Not Direct the Acts That Caused Harm.

¶ 87 Georgia last argues a duty arose by virtue of defendants ordering her to go to the boiler plant on the date of her attack. Georgia again emphasizes the "dark, remote area of the heating plant" and she was alone and on a Gator that routinely broke down. This argument fails, as do the others, because Wackenhut, not defendants, sent Georgia to the boiler plant.

¶ 88 Having found Georgia cannot prove defendants owed her a duty, her claims of negligence fail. The trial court properly granted defendants summary judgment.

¶ 89 III. CONCLUSION

¶ 90 We affirm the trial court's judgment.

¶ 91 Affirmed.