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IN THE COMMON PLEAS COURT OF OTTAWA COUNTY, OHIO

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| Jane Doe |) | Case No. 18CV233 |
| Plaintiffs, |) | Judge Bruce Winters |
| v. |) | |
| Professional Protective Services |) | DECISION AND JUDGMENT ENTRY |
| Defendant. |) | |

This cause comes before this Court upon a Motion for Summary Judgment filed by Defendant Robert Shannon (“Shannon”).

Facts

On July 7, 2017, Plaintiff Jane Doe (“Doe”) traveled to Put-in-Bay, Ohio where she stayed with her boyfriend in a rented cabin at Defendant Island Club Rentals (“Island Club”). On July 8, 2017, Doe was asleep in her cabin when she was awakened by Defendant Reuben Triplett (“Triplett”) who was sexually assaulting her. When Doe and her boyfriend awoke, Triplett attempted to flee; however, Doe’s boyfriend caught and detained Triplett until police arrived and arrested him.

On July 7, 2017, Triplett had been working for Defendant Professional Protective to provide security to Island Club and Put-in-Bay Condos. Defendant Robert Shannon, (“Shannon”) is the homeowner of Island Club Lot 1, the property where the sexual assault took place.

Doe filed the Complaint against Shannon alleging negligent hiring/supervision/retention, negligence, negligent infliction of emotion distress and respondeat superior. The claim for negligent hiring/supervision/retention and respondeat superior were dismissed by Doe on January 31, 2019.

Analysis

Civ.R. 56(C) provides that before summary judgment may be granted, the court must determine that (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. Osborne v. Lyles (1992), 63 Ohio St. 3d 326.

In reviewing a motion for summary judgment, the court must construe the evidence and all reasonable inferences drawn therefrom in a light most favorable to the party opposing the motion. Morris v. Ohio Cas. Ins. Co. (1988), 35 Ohio St. 3d 45; Harless v. Willis Day Warehousing (1978), 54 Ohio St. 2d 64.

The burden of establishing that no genuine issues to any material fact remain to be litigated is on the party moving for summary judgment. Turner v. Turner (1993), 67 Ohio St. 3d 337; Fyffe v. Jenos Inc. (1991), 59 Ohio St. 3d 115, 120.

Once a party moves for summary judgment and has supported his or her motion by sufficient and acceptable evidence, the party opposing the motion has a reciprocal burden to respond by affidavit or as provided in Civ.R. 56(C), setting forth specific facts explaining that a genuine issue of material fact exists for trial. Jackson v. Alert Fire & Safety Equip., Inc. (1991), 58 Ohio St. 3d 48,52; Mitseff v. Wheeler (1988), 38 Ohio St. 3d 112.

A negligence claim requires proof of the following elements: duty, breach of duty, causation, and damages. Menifee v. Ohio Welding Products, Inc. (1984), 15 Ohio St.3d 75. Usually, a duty exists when the injury to one in the plaintiff's position is foreseeable; this occurs when the injured person comes within the circle of those to whom injury may reasonably be anticipated. Byers v. Hubbard (1995), 107 Ohio App.3d 677. A person is not liable for proximately causing an injury if, under all the circumstances, he did not foresee and, acting as a reasonably prudent person, could not have foreseen the consequences of his alleged negligent acts. Jeffers v. Olexo (1989), 43 Ohio St.3d 140.

In tort law, "there is no duty to control the conduct of a third person by preventing him or her from causing harm to another, except in cases where there exists a special relationship between the actor and the third party, which gives rise to a duty to control, or between the actor and another which gives the other the right to protection." Wheatley v. Marietta College, 2016 Ohio 949. A duty exists if the injury is foreseeable. Menifee v. Ohio Welding Products, Inc. (1984), 15 Ohio St.3d 75.

This Court has adopted the "totality of the circumstances" test to determine whether a criminal act by a third party is foreseeable. McLaughlin v. Speedway, Inc., 2016 Ohio 3280. The totality of the circumstances test considers evidence of other

criminal activity at or near the location of the business. Id. The test includes reviewing the occurrence of previous similar crimes and the specifics of the incident itself, to determine whether the criminal act was foreseeable. Id. Three main factors contribute to a court's finding the evidence insufficient to demonstrate the foreseeability of a crime as a matter of law: (1) spatial separation between previous crimes and the crime at issue; (2) difference in degree and form between previous crimes and the crime at issue; and (3) lack of evidence revealing the defendant's actual knowledge of violence. Id. Because crime is so unpredictable, the totality of the circumstances must be "somewhat overwhelming" before a court will impose a duty to warn or protect upon a business owner. Id.

A cognizable claim for negligent infliction of emotional distress arises when a person suffers serious and foreseeable injuries as the result of witnessing or experiencing a physical peril, such as an accident. Criswell v. Brentwood Hosp. (1989), 49 Ohio App.3d 163. The factors to be considered in order to determine whether a negligently inflicted emotional injury was reasonably foreseeable include: (1) whether the plaintiff was located near the scene of the accident, as contrasted with one who was a distance away; (2) whether the shock resulted from a direct emotional impact upon the plaintiff from sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence; and, (3) whether the plaintiff and victim (if any) were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship. Paugh v. Hanks (1983), 6 Ohio St. 3d 72.

In the present case, the Court finds that there is no evidence that the injuries sustained by Plaintiff were foreseeable. Thus, there is no issue of material fact and Defendant Shannon is entitled to judgment as a matter of law on all claims against him.

Clerk of Court shall send a copy of this Order to all counsel of record and all pro se parties, forthwith.


Judge