[Cite as *Smallwood v. MCL, Inc.*, 2015-Ohio-1235.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Dan A. Smallwood et al.,	:	
Plaintiffs-Appellants,	:	
		No. 14AP-664
v.	:	(C.P.C. No. 13CV-9469)
MCL, Inc.,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 31, 2015

Richard C. Slavin, for appellants.

Cornelius J. O'Sullivan, Jr., for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiffs-appellants, Dan A. and Pauline Smallwood, appeal a judgment of the Franklin County Court of Common Pleas that granted summary judgment to defendant-appellee, MCL, Inc. For the following reasons, we affirm that judgment.

{¶ 2} On September 2, 2011, the Smallwoods went to MCL, a cafeteria-style restaurant, for dinner. After choosing their food and drinks, the Smallwoods joined the line for the cash register. While in line, Dan Smallwood ("Smallwood") heard the cashier say, "He robbed me. He robbed me." Smallwood looked up and saw a man running toward the door. Smallwood said, "He what?" And the cashier replied, "He robbed me." (Smallwood deposition, at 15.) Smallwood then ran out the door after the thief. As Smallwood pushed open the door, he hurt his right hand. The restaurant manager and two other individuals, who also ran after the thief, caught him.

{¶ 3} The Smallwoods filed suit against MCL, alleging claims for negligence and loss of consortium. MCL moved for summary judgment. MCL pointed out that Smallwood's injury did not result from any defect in the door, but instead, from pushing—apparently with too much force—against the door. MCL argued that it had no duty to protect Smallwood from that injury because the robbery and Smallwood's pursuit of the thief were not foreseeable. In response, plaintiffs argued that MCL owed a duty to Smallwood because he was a business invitee. Plaintiffs contended that this duty included the obligation to stop Smallwood or warn him not to chase the thief.

{¶ 4} The trial court agreed with MCL's argument. In a judgment entered July 25, 2014, the trial court granted MCL summary judgment.

{¶ 5} Plaintiffs appeal the July 25, 2014 judgment, and they assign the following error:

> THE TRIAL COURT ERRED IN ITS APPLICATION OF CIVIL RULE 56 AND IN ITS INTERPRETATION OF COMPELLING CASE LAW CONCERNING NEGLIGENCE OF THE APPELLEE MCL, INC.

{¶ 6} A trial court will grant summary judgment under Civ.R. 56 when the moving party demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion when viewing the evidence most strongly in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party. *Hudson v. Petrosurance, Inc.*, 127 Ohio St.3d 54, 2010-Ohio-4505, ¶ 29; *Sinnott v. Aqua-Chem, Inc.*, 116 Ohio St.3d 158, 2007-Ohio-5584, ¶ 29. Appellate review of a trial court's ruling on a motion for summary judgment is de novo. *Hudson* at ¶ 29. This means that an appellate court conducts an independent review, without deference to the trial court's determination. *Zurz v. 770 W. Broad AGA, L.L.C.*, 192 Ohio App.3d 521, 2011-Ohio-832, ¶ 5 (10th Dist.); *White v. Westfall*, 183 Ohio App.3d 807, 2009-Ohio-4490, ¶ 6 (10th Dist.).

{¶ 7} To establish a claim for negligence, a plaintiff must prove: (1) the existence of a duty requiring the defendant to conform to a certain standard of conduct, (2) breach of that duty, (3) a causal connection between the breach and injury, and (4) damages. *Cromer v. Children's Hosp. Med. Ctr.*, __ Ohio St.3d __, 2015-Ohio-229, ¶ 23. The

existence of a duty is essential to establishing actionable negligence because, in the absence of a duty, no legal liability for negligence can arise. *Jeffers v. Olexo*, 43 Ohio St.3d 140, 142 (1989). Whether or not a duty exists presents a question of law for a court to determine. *Mussivand v. David*, 45 Ohio St.3d 314, 318 (1989).

{¶ 8} Generally, the existence of a duty depends upon the foreseeability of injury to someone in the plaintiff's general situation. *Cromer* at ¶ 25. Injury is foreseeable if a reasonably prudent person would have anticipated that injury was likely to result from the performance or nonperformance of an act. *Estates of Morgan v. Fairfield Family Counseling Ctr.*, 77 Ohio St.3d 284, 293 (1997).

{¶ 9} In certain cases, foreseeability, by itself, is not enough to establish a duty. *Id.* For a defendant to owe a plaintiff a duty to act affirmatively for the plaintiff's aid or protection, the parties must also share a special relationship that justifies the imposition such of a duty. *Id.* One type of special relationship is that between a business owner and invitee. *Simpson v. Big Bear Stores Co.*, 73 Ohio St.3d 130, 134 (1995).

{¶ 10} When a special relationship establishes one's duty to a particular person, the foreseeability of the risk of harm determines the parameters of the duty. *Cromer* at ¶ 26. "As a society, we expect people to exercise reasonable precautions against the risks that a reasonably prudent person would anticipate. Conversely, we do not expect people to guard against risks that the reasonable person would not foresee." (Citation omitted.) *Id.* at ¶ 24. Therefore, if a risk is not foreseeable, then the duty imposed by the special relationship does not extend to protecting or warning against it.

{¶ 11} Here, plaintiffs rely on the business owner/invitee relationship between MCL and Smallwood to establish the existence of a duty to warn Smallwood not to pursue a fleeing thief. However, such duty could only arise if a reasonably prudent person would foresee that a robbery would occur, an employee would proclaim the robbery, a customer would decide to chase the robber, and the customer would injure himself during the chase. The trial court concluded that no reasonably prudent person would foresee these events, and, thus, it found that MCL had no duty to warn its customers about the risk inherent in chasing a robber.

{¶ 12} In arguing to the contrary, plaintiffs assert that MCL owed Smallwood a duty because, "[o]bviously, it is foreseeable that a customer of any restaurant who pursues a robber may be injured." (Appellant's brief, at 5.) This argument is too narrowly

focused. If a reasonably prudent person would not anticipate the precipitating event, then that person would not foresee the events that causally follow. In this case, that means that, in the absence of foreseeability that a robbery would occur, a reasonably prudent person would not foresee that a customer would learn of the robbery and chase after the robber. Given this lack of foreseeability, MCL had no obligation to warn its customers not to chase after a robber.

{¶ 13} Additionally, plaintiffs' argument fails for another reason. A business owner "owes its business invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition and has the duty to warn its invitees of latent or hidden dangers." *Armstrong v. Best Buy Co. Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶ 5. If the danger of running after a thief is obvious—as plaintiffs assert—then it is not a latent or hidden danger that a business owner must warn its invitees about. No duty exists to inform invitees of obvious dangers. *Id.*

{¶ 14} Plaintiffs also argue that MCL had a duty to physically prevent Smallwood from chasing after the thief. We reject that argument on foreseeability grounds. Additionally, we conclude that such a duty, if it existed, would have more potential to cause harm than prevent it. Requiring a business' employees to grab or tackle a customer to stop him from pursuing a thief creates the foreseeable risk that the employees would actually injure, not protect, the customer. Thus, sheer practicality precludes us from recognizing such a duty.

{¶ 15} Having rejected plaintiffs' arguments, we conclude that the trial court did not err in granting MCL summary judgment. While we commend Smallwood's bravery, we find that MCL is not legally liable for the damages Smallwood incurred in chasing after the thief.

{¶ 16} For the foregoing reasons, we overrule plaintiffs' assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and BRUNNER, JJ., concur.