

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

JAMES REDDICK,	:	O P I N I O N
Plaintiff-Appellant,	:	
- VS -	:	CASE NO. 2011-L-067
STEPHANIE SAID, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 09CV001930.

Judgment: Affirmed.

W. Andrew Hoffman, III, Douglas S. Hunter, and Chance G. Douglas, Hoffman Legal Group. LLC, 23230 Chagrin Boulevard, Suite 425, Cleveland, OH 44122 (For Plaintiff-Appellant).

Perrin I. Sah and Ian R. Luschin, Williams, Moliterno & Scully Co., LPA, 2241 Pinnacle Parkway, Twinsburg, OH 44087 (For Defendant-Appellee Stephanie Said).

Joseph G. Ritzler, Ritzler, Coughlin & Paglia, Ltd., 1360 East Ninth Street, 1000 IMG Center, Cleveland, OH 44114 (For Defendants-Appellees Virginia and Nicholas Gates).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, James Reddick, appeals from the Judgment Entry of the Lake County Court of Common Pleas, granting defendants-appellees, Virginia and Nicholas Gates', Motion for Summary Judgment, and defendant-appellee, Stephanie Said's, Motion for Summary Judgment. The issues to be decided by this court are whether there is a duty owed to a social guest to protect him from a third party and

whether an employer is responsible for the intentional acts of his or her employee. For the following reasons, we affirm the decision of the trial court.

{¶2} On June 19, 2008, Reddick was shot four times by Leroy Strickland, in the yard of the home of Virginia and her son, Nicholas, located at 1077 East 347th Street, in Eastlake, Ohio. Present during the time of the shooting were several individuals, including Nicholas' girlfriend, Said. Neither Nicholas nor Virginia were present during the shooting. As a result of this shooting, Strickland was convicted of Attempted Aggravated Murder.

{¶3} On June 19, 2009, Reddick filed a Complaint against Strickland, Said, and Virginia and Nicholas Gates. In Count One, Reddick asserted that Strickland committed several intentional torts, including assault. In Counts Two through Four, Reddick asserted that the remaining defendants were negligent by not protecting Reddick, an African-American male, from Strickland, even though they knew that Strickland posed a danger toward African-American males, as he had exhibited violent tendencies and made threats against African-Americans in the past. He also alleged that the defendants had a duty to safely store a handgun located in the home and to not allow Strickland to have access to the gun. Reddick also argued that the defendants were liable to him under the theory of respondeat superior, as Strickland was an employee of the defendants.

{¶4} Said filed an Answer and Cross-Claim against the other defendants. Virginia and Nicholas also filed an Answer and Cross-Claim.

{¶5} Said subsequently filed a Third Party Complaint against Megan Price, asserting that she was negligent by inviting Reddick onto the property on the date of the shooting. Virginia and Nicholas asserted a cross-claim against Price.

{¶6} On July 12, 2010, Said filed a Motion for Summary Judgment, arguing that she owed no duty to Reddick because they had no special relationship, Strickland's act was intentional, and she did not own the premises where the shooting occurred.

{¶7} Virginia and Nicholas filed a Motion for Summary Judgment on July 13, 2010. They argued that they owed Reddick no duty, they had no special relationship with Reddick or Strickland, and they are not liable for the criminal acts of a third party.

{¶8} On October 13, 2010, Reddick filed a Motion for Default Judgment against Strickland. This Motion was granted on October 18, 2010, and the trial court entered judgment in favor of Reddick against Strickland.

{¶9} The following testimony was presented through depositions.

{¶10} Megan Price, a friend of both Said and Reddick, explained that on June 19, 2008, she went to Virginia's home and was "hanging out" with Said. She later requested, through a phone call, that Reddick give her a ride to work. Reddick and a friend, Aaron Studer, picked her up in Studer's vehicle, make several stops, and then returned to Virginia's house. Price proceeded to get ready, while Reddick and Studer remained on the property, playing basketball and talking to Said and Price. According to Price, Said gave Reddick permission to come over to Virginia's home on the date of the shooting. She witnessed the shooting and saw Strickland shoot Reddick four times.

{¶11} Price explained that she was aware Said was staying at Virginia's house around the time of the shooting because she had been kicked out of her father's house. Price also knew that Strickland stayed at Virginia's home, had a key to the home, and had been taking care of Virginia's pets while she was in Colorado for a business trip. Price testified that, prior to the date of the shooting, she and Said had both been inside

of Virginia's home, in Nicholas' room, when Strickland showed them a gun located in that room.

{¶12} James Reddick explained that on the date of the shooting, he went to Virginia's residence to pick up Price and drive her to work. Reddick explained that he was invited to the residence by both Said and Price. While he was in the yard talking to Said, Price, and Studer, Strickland came onto the property, went into the garage, came out with a gun, and shot Reddick four times. As a result of the shooting, Reddick required surgery and suffers with leg spasms and back pain.

{¶13} Donald Freeman, Strickland's friend, testified that he was with him on the date of the shooting and witnessed the shooting. Freeman stated that Strickland had gone to Virginia's house to take care of her pets. He testified that he had seen Strickland with the gun previously, and that he had seen Strickland hand the gun to Virginia on a prior occasion. Freeman also stated that he had heard Strickland make statements about "shooting a black man" if he saw one on Virginia's property.

{¶14} Said testified that she was staying at Virginia's home on a "temporary" basis at the time of the shooting because she was dating Nicholas. She was friends with Strickland, was aware that he was a convicted sex offender who had been to prison, and attended Alcoholics Anonymous meetings with him. She recalled Strickland making racist comments in the past about her boyfriend, an African-American. She explained that Strickland was "in charge" of Virginia's house while she was out of town.

{¶15} Said was with Nicholas when he purchased a gun, which she believed was the gun Strickland used in the shooting of Reddick. She did not believe that Virginia had ever seen the gun in her home. Said stated that she did not talk to Reddick

prior to him coming over on the date of the shooting, but explained that she allowed Price to have Reddick over to Virginia's property.

{¶16} Virginia Gates testified that she lives at 1077 East 347th Street, in Eastlake, with her son, Nicholas, her daughter, and a family friend, Daniel Brooks. She stated that Strickland also stayed at her home several days a week. She knew that Strickland had been in prison prior to the shooting.

{¶17} Virginia explained that Strickland sometimes helped her by doing things around her house such as laying patio stones, painting, and other odd jobs. She did not pay him, but would give him items such as cigarettes and food in return for the work performed.

{¶18} Prior to the shooting, Virginia left on a business trip to Colorado. She requested that Strickland take care of her animals while she was gone, gave him a key, and gave him permission to sleep at the house. Virginia was in Colorado at the time of the shooting. She explained that she was unaware that a gun was in her home, but had been informed by several individuals that Nicholas may own a gun. She did not believe that her son would have a gun.

{¶19} Regarding Said, Virginia believed that she may have started living in her home after the shooting, and did not remember her staying there prior to the shooting.

{¶20} Nicholas Gates lived in Virginia's home but was in jail on the date of the shooting. He testified that he was aware that Strickland had previously had a drug problem and that he had been to prison. Nicholas had driven Strickland to counseling on several occasions and also believed that he had "anger issues."

{¶21} Nicholas explained that Strickland stayed at Virginia's house up to six nights a week, and sometimes helped with jobs such as cleaning the house or building a patio, for which either Virginia or Nicholas would give him cigarettes or other items.

{¶22} Strickland explained that he helped Virginia around the house with minor repairs and she would give him cigarettes or food in return, but did not give him a paycheck. He explained that he was watching the house and Virginia's pets while she was in Colorado. Strickland explained that Said also spent some nights at Virginia's house while she was in Colorado.

{¶23} Strickland explained that Nicholas kept a gun in his room, and that Strickland was "taking care of" the gun, per Nicholas' request. He explained that he removed the gun from Nicholas' room and carried it around with him while Nicholas was in jail, eventually putting the gun in Virginia's garage. He explained that Said had seen him with the gun on the days preceding the shooting.

{¶24} On April 29, 2011, the trial court issued a Judgment Entry, granting both Said's Motion for Summary Judgment and Virginia and Nicholas' Motion for Summary Judgment. The trial court held that Reddick was not a social guest on the property but was instead a licensee, and found that there was no evidence that Said, Nicholas, or Virginia invited Reddick onto the property. The trial court also held that Virginia and Nicholas did not have a special relationship with Strickland under the doctrine of respondeat superior, because the shooting of Reddick did not occur while Strickland "was acting in the course and scope of any employment relationship between himself" and Nicholas or Virginia.

{¶25} On June 30, 2011, this court issued a Judgment Entry, requesting that Reddick show the existence of a final appealable order. On July 15, 2011, the trial court

entered judgment, awarding damages to Reddick against Strickland. On August 23, 2011, this court found that, pursuant to the trial court's entry, there was now a final appealable order, and found that the appeal became mature on July 15, 2011.

{¶26} Reddick timely appeals and raises the following assignments of error:

{¶27} “[1.] The trial court erred in granting defendant-appellee, Stephanie Said's, motion for summary judgment based upon its finding that Said did not breach a duty owed to plaintiff-appellant, James Reddick, as a licensee.

{¶28} “[2.] The trial court erred in granting defendants-appellees Virginia Gates and Nicholas Gates['] motion for summary judgment, by determining that there was no special relationship between Virginia Gates, Nicholas Gates, and Leroy Strickland based upon the doctrine of respondeat superior, which created a duty for Virginia or Nicholas Gates to protect Reddick from the conduct of Strickland.”

{¶29} Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows “that there is no genuine issue as to any material fact” to be litigated, (2) “the moving party is entitled to judgment as a matter of law,” and (3) “it appears from the evidence * * * that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence * * * construed most strongly in the party's favor.”

{¶30} A trial court's decision to grant summary judgment is reviewed by an appellate court under a de novo standard of review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). An appellate court must independently review the record to determine if summary judgment was appropriate. Therefore, an appellate court affords no deference to the trial court's decision while making its own

judgment. *Schwartz v. Bank One, Portsmouth, N.A.*, 84 Ohio App.3d 806, 809, 619 N.E.2d 10 (4th Dist.1992).

{¶31} In the present case, Reddick's claims against all appellees are premised on theories of negligence. Reddick generally asserts that Said, Virginia, and Nicholas had a duty to protect him against the actions of Strickland.

{¶32} "[I]n order to establish a cause of action for negligence, the plaintiff must show (1) the existence of a duty, (2) a breach of duty, and (3) an injury proximately resulting therefrom." *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 8, citing *Meniffee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984).

{¶33} "The existence of a duty is fundamental to establishing actionable negligence, without which there is no legal liability." (Citation omitted.) *Studniarz v. Sears Roebuck & Co.*, 11th Dist. No. 2009-L-159, 2010-Ohio-3049, ¶ 18. "The existence of a duty is 'a question of law for the court to decide on a case-by-case basis.'" (Citation omitted.) *Mack v. Ravenna Men's Civic Club*, 11th Dist. No. 2006-P-0044, 2007-Ohio-2431, ¶ 15.

{¶34} In his first assignment of error, Reddick asserts that the trial court erred by granting summary judgment in favor of Said because Said owed Reddick a duty to protect him from harm, since he was a social guest on Virginia's property.

{¶35} Said argues that there is no special relationship between her and Reddick because, even if she did invite Reddick to the premises on the date of the shooting, he was not a "business invitee" as defined under the law, and she owed no duty to Reddick.

{¶36} Under Ohio law, the existence of a duty generally depends on the injury's foreseeability. *Menifee*, 15 Ohio St.3d at 77, 472 N.E.2d 707. However, foreseeability alone does not always impose a duty to act. *Estates of Morgan v. Fairfield Family Counseling Ctr.*, 77 Ohio St.3d 284, 293, 673 N.E.2d 1311 (1997). "Even if an injury is foreseeable, a defendant has no duty to protect a plaintiff from or to control the conduct of a third person." *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, 861 N.E.2d 920, ¶ 16 (10th Dist.); *Mack* at ¶ 17.

{¶37} "In such situations, a duty only arises if the defendant shares a 'special relation' with the plaintiff or the third person that justifies the imposition of the duty." *Id.*, citing *Morgan* at 293-294; *Simpson v. Big Bear Stores Co.*, 73 Ohio St.3d 130, 134, 652 N.E.2d 702 ("[t]here is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives to the other a right to protection") (citation omitted); *Mack* at ¶ 17 ("[g]enerally, under Ohio law, there is no duty to prevent a third person from causing harm to another absent a special relation between the parties").

{¶38} "Relationships which result in a duty to protect others include: 1) common carrier and its passengers; 2) innkeeper and guests; 3) possessor of land and invitee; 4) custodian and individual taken into custody; and 5) employer and employee." *Jackson v. Forest City Ents.*, 111 Ohio App.3d 283, 285, 675 N.E.2d 1356 (8th Dist. 1996), citing 2 *Restatement of the Law 2d*, Torts (1965), 116, at Section 314(A). "Relationships that may give rise to a duty to control a third person's conduct include the following: (1) parent and child; (2) master and servant; and (3) custodian and person

with dangerous propensities.” *Hall v. Watson*, 7th Dist. No. 01 CA 55, 2002-Ohio-3176, ¶ 16.

{¶39} In the present case, Reddick does not assert a special relationship that falls into the classes outlined above as it relates to Said, but instead asserts that she owed him certain duties under premises liability, since he was a social guest on the property on the date of the shooting. He argues that because Said invited him onto the property, she had a duty to protect him against harm caused by Strickland.

{¶40} “In cases of premises liability, the scope of the duty owed by the landowner is dependent on the status of the person, i.e., trespasser, licensee, or invitee, who enters upon the land. In other words, the duty owed is predicated on the ‘nature of the relationship’ between the decedent or injured party and the property owner ‘at the time of the accident.’” (Emphasis deleted.) *Bodnar v. Hawthorn of Aurora L.P.*, 11th Dist. No. 2006-P-0002, 2006-Ohio-6874, ¶ 37, citing *Mitchell v. Cleveland Elec. Illum. Co.*, 30 Ohio St.3d 92, 94, 507 N.E.2d 352 (1987).

{¶41} In the present case, there is a dispute regarding whether Reddick was a social guest or a licensee. In order to be considered a social guest, “there must be evidence of an actual invitation the host extended to the guest, express or implied.” *Ard v. Fawley*, 135 Ohio App.3d 566, 571, 735 N.E.2d 14 (3rd Dist.1999). “On the basis of that invitation, a social guest is thought to be on the premises presumably giving the possessor some personal benefit, intangible though it may be.” *Id.* In contrast, a licensee “is one who enters upon the premises of another, by permission or acquiescence, but not by invitation, for his own convenience,” to whom a host owes only the duty “to refrain from wantonly or willfully causing injury, and to warn the licensee of any known hidden dangers, pitfalls, and obstructions.” *Bodnar*, 2006-Ohio-6874, at ¶

39 and ¶ 40, citing *Light v. Ohio University*, 28 Ohio St.3d 66, 68, 502 N.E.2d 611 (1986).

{¶42} The trial court found that Reddick was not a social guest but a licensee because “there is no evidence that [Said] invited [Reddick] onto the property owned by” Virginia. However, a review of the depositions reveals that there is at least a genuine issue of material fact as to whether Reddick was invited onto the property by Said. Reddick testified that he was told by Said that “it was okay for [him] to be at the Gates’ house” on the date of the incident. Price further explained that her understanding was that Said personally invited Reddick to come to the Gates’ home. Said herself, when asked whether she allowed Reddick to come over to the house stated “yes” and explained that she said “we could be outside.” Although Said made some statements about Reddick coming only for the purpose of picking up Price, the conflicting testimony at the very least creates an issue of fact regarding whether Said invited Reddick onto the property.

{¶43} A licensee comes onto the property “for his own convenience,” but the testimony in this case creates an issue as to whether Reddick was coming onto the property for at least some benefit to Said, since he was picking up her friend and the testimony showed that Reddick and Said, who were previously friends, spent time interacting upon Reddick’s arrival on the property, providing “some personal benefit” to Said, as required to be a social guest. Since there is a genuine issue of material fact as to whether Reddick was more than a licensee and may have been a social guest, we will consider whether Said owed him a duty as a social guest.

{¶44} Even presuming that Reddick was a social guest on the property, to which a higher duty would be owed than to a licensee, we cannot find that Said breached a

duty owed to Reddick, such that the grant of summary judgment must be reversed. As noted previously, an individual has no duty to protect against the acts of a third person, unless a special relationship exists. The duties that have been outlined by the courts have included a property owner's duty to an invitee, but not to a social guest. Therefore, we cannot consider the duty that may have been owed to protect against the acts of a third person, but instead only the duty as stated under the social guest case law. That duty requires the host to "exercise ordinary care not to cause injury to his guest by any act of the host or by any activities carried on by the host while the guest is on the premises, and * * * to warn the guest of any condition on the premises which is known to the host and which one of ordinary prudence and foresight in the position of the host should reasonably consider dangerous, if the host has reason to believe that the guest does not know and will not discover such dangerous condition." *Karlovich v. Nicholson*, 11th Dist. No. 98-L-097, 1999 Ohio App. LEXIS 4653, *13 (Sept. 30, 1999), citing *Scheibel v. Lipton*, 156 Ohio St. 308, 102 N.E.2d 453 (1951), paragraphs two and three of the syllabus. In the present case, neither of the above is applicable.

{¶45} Regarding the first element, we cannot find that Said failed to exercise "ordinary care not to cause injury" to Reddick, since the act in question, the shooting, was not caused by her acts or by "activities carried on by" her. There is no evidence that Said was involved in the shooting, assisted in the act in any way, or encouraged the attack to occur.

{¶46} As to the second element, we cannot find that there was a known, dangerous condition on the property of which Said was required to warn Reddick. There was no evidence that Said "knew" of the danger, i.e., the shooting, that was going to occur. This makes the present case distinguishable from *Re v. Kessinger*, 12th Dist.

No. CA2007-02-044, 2008-Ohio-167, cited by Reddick, another case involving a third party who shot an individual on a defendant's property. In *Re*, the defendant was not only the owner of the property but also was aware of a specific threat made against the victim, knew that the shooter had been looking for the victim, and was instructed by the shooter to keep the victim on the property. Essentially, in *Re*, the defendant had knowledge that a shooting or assault was going to occur. No such knowledge existed in the present case. Although Reddick asserts that Strickland had made threats against African-American individuals in the past, there was no allegation that a specific threat was made against Reddick, that Said knew Strickland wanted to injure Reddick, or that Strickland was coming to the property at that time. There was no evidence that Said knew Strickland was coming to the property to shoot Reddick or to harm Reddick in any way.

{¶47} Reddick also asserts that this court must evaluate whether Strickland's acts were foreseeable. However, as discussed above, there is no special relationship between a social guest and a host. See *Slabaugh v. Kukta*, 9th Dist. No 05CA0022, 2005-Ohio-6454, ¶ 10 (where the party was a social guest on the property, no special relationship with the host was found to exist); *Mullens v. Binsky*, 130 Ohio App.3d 64, 71, 719 N.E.2d 599 (10th Dist.1998) (a social guest and a host do not have a special relationship). Therefore, it is unnecessary to determine whether the acts of Strickland were foreseeable to Said.

{¶48} The first assignment of error is without merit.

{¶49} In his second assignment of error, Reddick argues that, under the doctrine of respondeat superior, Virginia and Nicholas owed a duty to him and are responsible for Strickland's actions, since Strickland was their employee.

{¶50} Virginia and Nicholas argue that Strickland was not their employee and that even if he was, he was not acting within the scope of his employment relationship when he shot Reddick.

{¶51} The doctrine of respondeat superior “provides an employer may be liable for the tortious act of its employee if that employee was acting within the scope of her employment when she committed the tortious act.” *Smith v. Evaline’s Bridal*, 11th Dist. No. 2009-T-0014, 2009-Ohio-6520, ¶ 15, citing *Groob v. KeyBank*, 108 Ohio St.3d 348, 2006-Ohio-1189, 843 N.E.2d 1170, paragraph two of the syllabus. An individual is acting within the scope of her employment when: “(a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; [and] (c) it is actuated, at least in part, by a purpose to serve the master.” *Akron v. Holland Oil Co.*, 102 Ohio St.3d 1228, 1231, 2004-Ohio-2834, 809 N.E.2d 666.

{¶52} The conflicting testimony given during the depositions demonstrated that Strickland performed certain household tasks for Virginia, such as making repairs and watching the pets, and that he was compensated by either Nicholas or Virginia, through cigarettes, housing, or money, such that he may be considered Virginia’s employee. However, regardless of whether there is a genuine issue of material fact as to Strickland being an employee of Virginia, we find that no duty arose out of this relationship, as Strickland’s actions fell outside the scope of any such employment relationship.

{¶53} “Under the doctrine of *respondeat superior*, an employer is not liable for the intentional, malicious acts of an employee performed while the employee is acting outside the scope of his or her employment.” *Smith v. L.J. Lewis Ents.*, 11th Dist. 2000-T-0052, 2001-Ohio-4291, ¶ 24. “Where an act has no relation to the conduct of the master’s business, it may not be argued that the servant was acting upon the scope of

his authority.” *Paugh v. P.J. Snappers*, 11th Dist. No. 2004-T-0029, 2005-Ohio-701, ¶ 23, citing *Finley v. Schuett* (1982), 8 Ohio App.3d 38, 39, 455 N.E.2d 1324 (1st Dist.1982) (citations omitted).

{¶54} “[A]n intentional and wilful [sic] attack committed by an agent or employee, to vent his own spleen or malevolence against the injured person, is a clear departure from his employment and his principal or employer is not responsible therefore.” *Schulman v. Cleveland*, 30 Ohio St.2d 196, 198, 283 N.E.2d 175 (1972) (citation omitted); *Little Miami RR. Co. v. Wetmore*, 19 Ohio St. 110, 132 (1869) (an intentional act such as an assault must be “calculated to facilitate or promote the business for which the servant was employed by the master” in order for the employer to be responsible for such an act).

{¶55} In the present case, there is no dispute that Strickland intentionally shot Reddick, without any request from Virginia or Nicholas. Strickland was not acting in any way related to his asserted employment of taking care of pets or doing odd jobs and no duty arose under the doctrine of respondeat superior. See *Perry v. David*, 12th Dist. No. CA94-09-073, 1995 Ohio App. LEXIS 1348, *5-6 (Apr. 3, 1995) (appellant’s intentional, malicious, and unprovoked assault on a patron, even when it occurred while appellant was at work, was not within the scope of his employment or in furtherance of his employer’s business). Strickland himself testified that he shot Reddick because Reddick “decided to act like he was jumping [Strickland]” and because Reddick “wanted to be a tough guy,” although Strickland admitted that Reddick did not confront him or attack him in any way. Based on the record, there is simply no evidence that Strickland’s intentional act was calculated to facilitate or promote the business for which he was employed.

{¶56} Although Reddick asserts that the determination as to whether an employee is acting within the scope of his employment is a factual question, such a determination can be made at the summary judgment stage when the act was intentional and there was no evidence that it furthered his employment. See *Kaliszewski v. Stevens Towing*, 11th Dist. No. 89-L-14-144, 1990 Ohio App. LEXIS 4876, *9-10 (Nov. 9, 1990) (upholding the grant of summary judgment in favor of the defendant as to the issue of respondeat superior where there was no evidence that the employee's intentional act furthered his employment); *Paugh*, 2005-Ohio-701, at ¶ 26 (affirming the trial court's grant of summary judgment on the issue of respondeat superior when employee committed several intentional torts). Even when viewing the evidence most strongly in Reddick's favor, we cannot find that granting summary judgment as to the applicability of the doctrine of respondeat superior was improper.

{¶57} Reddick also argues that Virginia and Nicholas owe him a statutory duty pursuant to R.C. 2923.19(A), due to their possession of a gun and by allowing Strickland to access that gun.

{¶58} R.C. 2923.19(A)(1) states that "[n]o person, in acquiring, possessing, carrying, or using any dangerous ordnance, shall negligently fail to take proper precautions * * * [t]o secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person." We note that this statute raises separate concerns related to the duty owed by Nicholas and Virginia to Reddick, outside of the special relationship discussed above, since a legislative enactment can impose a separate duty to protect against the actions of a third party. See *Taylor v. Webster*, 12 Ohio St.2d 53, 56, 231 N.E.2d 870 (1967) (allowing a minor

to have access to air guns or other weapons is statutorily prohibited and gives rise to a duty to protect others).

{¶59} As used in section 2923.19, a “dangerous ordinance” is defined as including, in pertinent part “[a]ny automatic or sawed-off firearm, * * * [a]ny firearm * * * or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon.” R.C. 2923.11(K)(1) and (4). An “automatic firearm” is defined as a “firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger.” R.C. 2923.11(E). “Automatic firearm” also means any semi-automatic firearm designed or specially adapted to fire more than thirty-one cartridges without reloading, other than a firearm chambering only .22 caliber short, long, or long-rifle cartridges.” *Id.*

{¶60} In the present case, we cannot find that this statute is applicable or creates a duty. There was no evidence presented by Reddick that the gun used qualifies as a “dangerous ordinance” as defined above. There is no evidence that the gun was either an automatic weapon or a semi-automatic weapon adapted to fire more than thirty-one cartridges without reloading. The only evidence introduced about the type of gun that was used was Price’s testimony that Strickland fired approximately four or five shots at Reddick before going to the garage to reload. She also testified that the gun had a “6 to 8 [bullet] chamber.” Based on this evidence, we cannot find that there is an issue of material fact as to whether the firearm fit the definition of being automatic such that it would be a “dangerous ordinance” under R.C. 2923.19(A). Moreover, Reddick’s argument that Strickland was “unauthorized or incompetent” to use the gun because he was under a weapons disability, pursuant to R.C. 2923.13, is not supported by any case law that “unauthorized or incompetent” under R.C. 2923.19(A) is defined as

including such a class of people. Therefore, this statute cannot be applied to create a statutory duty to protect Reddick from Strickland.

{¶61} The second assignment of error is without merit.

{¶62} Based on the foregoing, the judgment of the Lake County Court of Common Pleas, granting Virginia and Nicholas Gates' Motion for Summary Judgment, and Stephanie Said's Motion for Summary Judgment, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.