

STATE OF MICHIGAN  
COURT OF APPEALS

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THOMAS A. PURVES,

Plaintiff-Appellant,

v

K & P, INC., d/b/a LEGENDS OF DOWNTOWN,  
and JOHN DOE,

Defendants-Appellees.

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UNPUBLISHED  
December 2, 1997

No. 194209  
Wayne Circuit Court  
LC No. 95-509093-NS

Before: Bandstra, P.J., and Cavanagh and Markman, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court order granting defendant K & P, Inc.'s, motion for summary disposition pursuant to MCR 2.116(C)(10)<sup>1</sup> on his premises liability claim. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997).

Plaintiff alleges that defendant nightclub is liable for injuries he suffered when an unidentified patron of the defendant nightclub hit him in the face during an altercation which broke out suddenly in the allegedly overcrowded nightclub. We disagree. Merchants have a duty to protect their invitees only where the invitee is readily identifiable as being foreseeably endangered. *Mason v Royal Dequindre, Inc*, 455 Mich 391, 398; 566 NW2d 199 (1997). In the present case, there was no prior confrontation between plaintiff and his assailant that would have placed defendant on notice that plaintiff was in danger. That the nightclub may have been overcrowded does not establish that the harm to plaintiff was foreseeable or preventable. Accordingly, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

/s/ Stephen J. Markman

<sup>1</sup> The trial court did not specify the subrule under which it was granting summary disposition. However, at the hearing on defendant's motion, the court stated, "Plaintiff does not even – in my opinion does not even promise to prove a set of circumstances that would allow a jury to reach the conclusion that the proprietor in this case was negligent." We therefore assume that the trial court granted defendant's motion pursuant to MCR 2.116(C)(10), on the basis of a lack of genuine issue of material fact.