

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH GREEN and JUDY GREEN,

Plaintiffs-Appellants,

v

RONALD HARRISON and FAY HARRISON,

Defendants-Appellees,

and

VICKY HARRISON and EDWARD HARRISON,

Defendants.

UNPUBLISHED

October 7, 1997

No. 195092

Oakland Circuit Court

LC No. 95-492564-NO

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order granting defendants summary disposition. We affirm.

Defendants Ronald and Fay Harrison owned property adjacent to plaintiffs' residence. Defendants rented this property to their daughter, Vicky Harrison. On the day of this incident, plaintiff Joseph Green went to Vicky's home to request that she turn down the volume of a radio in an automobile located outside her home. While plaintiff was on the property, plaintiff was struck with a beer bottle by defendants' son Edward. Plaintiff fell to the ground, and Edward repeatedly kicked and beat plaintiff to semi-consciousness. Plaintiff sustained severe injuries from this incident while on defendants' rental property.

Plaintiffs filed this lawsuit against defendants claiming negligence, premises liability, and trespass- nuisance. The complaint alleged that defendants owed plaintiffs a legal duty of care to control their premises in a careful manner in order to avoid injury or nuisance to others. Plaintiffs contended that because defendants lived so close to their rental property, they were surely aware of the constant noise and disruptive conduct engaged in by their children, and they had an obligation to terminate it. Plaintiffs

insisted that defendants' failure to control the disturbing and illegal activity on their property caused injury to plaintiffs that would not have occurred had they fulfilled their duty.

On appeal, plaintiffs first argue that the trial court improperly granted summary disposition on the negligence claim because defendants owed them a legal duty to control their premises and maintain it in an orderly and safe condition. We disagree.

Whether a legal duty exists is a question of law for the court. *Schmidt v Youngs*, 215 Mich App 222, 224; 544 NW2d 743 (1996). A landlord generally owes a duty to protect tenants, and their guests, from unreasonable risks resulting from known or foreseeable danger. *Stanley v Town Square Cooperative*, 203 Mich App 143, 148-149; 512 NW2d 51 (1993). This duty includes protection from risks from foreseeable criminal activity. *Id.* However, there is generally no duty to protect others against criminal acts of a third person on the property absent a special relationship between the defendant and the third person or the defendant and the victim. *Babula v Robertson*, 212 Mich App 45, 49; 536 NW2d 834 (1995); *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993). A special relationship exists in several situations including, but not limited to, parent/child, physician/patient, attorney/client, employer/employee, rescuer/victim, landlord/tenant, and owner or occupier of land/invitee. See *Murdock v Higging*, 454 Mich 46, 55 n 11; 559 NW2d 639 (1997); *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995); *Marcelletti, supra*, 198 Mich App 664. A special relationship does not ordinarily exist between a landowner and an unforeseeable trespasser. *Preston v Slezniak*, 383 Mich 442, 447; 175 NW2d 759 (1970).

Michigan courts also contemplate the following policy considerations in determining whether a legal duty exists: the foreseeability of the harm, the degree of certainty of harm, the closeness of connection between the conduct and injury, the moral blame attached to the conduct, the policy of preventing future harm, and the burdens and consequences of imposing a duty and the resulting liability for breach. *Babula, supra* at 49. The rationale behind imposing a duty in special relationship cases is based on control, and courts will impose such a duty only where a person's actions directly influence another. *Marcelletti, supra* at 664-665.

Assuming that Joseph Green was a trespasser,¹ we find that defendants did not owe him a duty to protect him from unknown or unforeseeable criminal acts on their property. Plaintiffs did not offer evidence that defendants had knowledge of previous alleged violence, noise, or illegal partying occurring on their property, giving rise to a duty on behalf of defendants to take sufficient measures to avoid harm or danger to third persons who enter their property. Plaintiffs conceded that defendants were not present at the time this incident occurred. Thus, other than suggesting that because defendants lived nearby, they "should have known" of the excessive noise emanating from the home and the alleged violent, disruptive beer parties their tenants were throwing, plaintiffs have, in fact, not alleged that defendants were in any way involved in or apprised of this alleged misconduct that plaintiffs believe to have caused Mr. Green's injury. In addition, there is no evidence from which we can find that defendants were in a position of control or influence over Edward, or plaintiffs, such that a special relationship should be imposed. Therefore, the trial court did not err in granting summary disposition on plaintiffs' negligence claim.

Plaintiffs' premises liability claim must also fail. Premises liability is conditioned upon the presence of both possession and control over the land. *Orel v Uni-Rak Sales Co Inc*, __ Mich __ (Docket No. 102971, issued June 10, 1997, slip op p 4). Ownership alone is not dispositive, possession and control can be loaned to another, thereby conferring the duty to make the premises safe while simultaneously absolving oneself of responsibility. *Id.* at 5. In this case, there is no evidence that defendants retained control or possession. We have no reason to believe defendants did not loan exclusive control and possession of the premises to their daughter, thereby absolving themselves of liability.

Plaintiffs' next argue that defendants' liability is also premised on the trespass-nuisance theory. Plaintiffs alleged that defendants' tenant created a nuisance per se by allegedly smoking marijuana on the premises and by "blasting loud and raucous music from a boom box" in the early morning hours. Plaintiffs further alleged that defendants created a nuisance in fact by the same conduct, in conjunction with the "constant loud music and constant traffic coming to and from the residence." We again disagree.

Liability under a nuisance theory is premised on "a dangerous, offensive, or hazardous condition of the land or on activities of similar characteristics which are conducted on the land." *Wagner v Regency Inn Corp*, 186 Mich App 158, 163; 463 NW2d 450 (1990). In addition, a landowner must have possession or control of the land to be held liable for a nuisance created on the land. *Id.* In *Wagner*, this Court explained that a possessor of land, upon which a third person's conduct causes a nuisance, is subject to liability if:

(1) he knows or has reason to know that the activity is being conducted and that it causes or involves an unreasonable risk of causing the nuisance, and (2) he consents to the activity or fails to exercise reasonable care to prevent the nuisance. [*Id.* at 163-164.]

Plaintiffs failed to allege or prove specific facts that, if believed, would establish that defendant either created an alleged nuisance, or knew that conditions existed that caused a nuisance likely to harm or interfere with the rights of others. Plaintiffs' only basis for holding defendants responsible for the alleged conduct of their tenant is their unsubstantiated conclusion that they must have known of the alleged misconduct because of their proximity, and they allowed it to continue despite the alleged disturbance to the neighborhood. However, plaintiffs admitted that they never informed defendants of the disruptive and alleged illegal conduct of their tenants, nor were they aware that other neighbors put defendants on notice of the activities. Therefore, we find that absent a suspicious circumstance, or information leading the landowner to suspect activity on their property requiring further inquiry, there is no basis for imputing such knowledge to defendants or imposing liability on them for the alleged misconduct. Therefore, summary disposition in favor of defendants was proper.

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Robert P. Young, Jr.

¹ The lower court did not rule on the legal status of plaintiff Joseph Green while he was on defendants' property. However, during discovery, plaintiff admitted that he was not invited on the property by defendants, or the lessees, nor was he welcome to stay on the property once he arrived. In fact, plaintiff conceded that he was even asked to leave the premises by a guest of Vicky's. Therefore, based on an independent assessment of the facts and circumstances in this case, we determined that plaintiff was a trespasser on defendants' property at the time this incident occurred.