

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TERRANCE WADE and ANTHONY GRAY,  
Plaintiffs-Appellants,

UNPUBLISHED  
May 19, 2015

v

H & L MULTI-PURPOSE, INC.,  
Defendant-Appellee,

No. 320516  
Wayne Circuit Court  
LC No. 12-005712-NO

and

CHARLES SUMBRY and ROBERT WALLACE,  
Defendants.

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Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition to defendant H & L Multi-Purpose, Inc. (H&L), in this premises liability action. We affirm.

**I. FACTUAL BACKGROUND**

This premises liability action arises out of a firearm incident at a party in Detroit, Michigan, during the early morning hours of June 5, 2011. The incident occurred at a rental hall owned by H&L and leased at that time to Charles Sumbry and Robert Wallace (codefendants). Codefendants used the leased premises to host a paid-entry party.

The party was relatively uneventful until around 2:00 a.m., when an armed security guard that had been hired and supervised exclusively by codefendants suddenly became agitated; he began screaming profanely, waving around a handgun, and ordering the partygoers to leave the premises immediately. Within moments, the security guard threatened to shoot the partygoers, and then he opened fire. Several people, including plaintiffs, were shot by the security guard.

**II. ANALYSIS**

The sole issue raised on appeal is whether the trial court erred in granting summary disposition to H&L pursuant to MCR 2.116(C)(10) on the basis that H&L owed no legally

cognizable duty to plaintiffs. Plaintiffs argue that the trial court erred because plaintiffs were business invitees of H&L and, as such, H&L owed plaintiffs a common-law duty to exercise ordinary care in maintaining a safe premises. Alternatively, plaintiffs argue that, because an agent of H&L remained on the premises during the party to enforce safety rules in the lease agreement, H&L assumed a duty to enforce such rules in a reasonable manner. We disagree.

This Court reviews de novo “[a] trial court’s decision on a motion for summary disposition.” *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366; 817 NW2d 504 (2012). “A motion for summary disposition under MCR 2.116(C)(10) challenges the factual sufficiency of the complaint, with the trial court considering the entire record in a light most favorable to the nonmoving party.” *LaFontaine Saline, Inc v Chrysler Group, LLC*, 496 Mich 26, 34; 852 NW2d 78 (2014). Judgment as a matter of law is appropriate where the evidence demonstrates that no genuine question of material fact remains. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001). Circumstantial evidence can be sufficient to establish a genuine question of material fact, but mere conjecture or speculation is insufficient. *Id.* at 97-98 (quoting *Libralter Plastics v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993)). In a negligence analysis, the question whether a duty exists is a question of law reviewed de novo. See *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011) (citations omitted).

“To establish a prima facie case of negligence, a plaintiff must prove that ‘(1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant’s breach was a proximate cause of the plaintiff’s damages.’ ” *Hill v Sears, Roebuck & Co*, 492 Mich 651, 660; 822 NW2d 190 (2012) (quoting *Loweke*, 489 Mich at 162). Regarding the duty element, “[t]he duty owed to a visitor by a landowner depends on whether the visitor was a trespasser, licensee, or invitee at the time of the injury.” *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013) (citing *Hoffner v Lanctoe*, 492 Mich 450, 460 n 8; 821 NW2d 88 (2012)).

For the purposes of our analysis, we will assume that plaintiffs are correct in their assertion that they should be considered invitees of H&L. Although a business or property owner does owe several legally cognizable duties to invitees on the premises, see, e.g., *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000), it is well-settled law that a business or property owner has no duty to provide security for the benefit of invitees because the duty of protecting the public from criminal acts is vested in law enforcement agencies. See, e.g., *MacDonald v PKT, Inc*, 464 Mich 322, 343; 628 NW2d 33 (2001) (“A merchant should not be expected to anticipate *any* type of criminal activity, whether ‘random’ or otherwise, *before* there is some specific activity on the premises creating a foreseeable risk of imminent harm to an identifiable invitee. The merchant then must make efforts to notify those deputized to deal with such circumstances: the police.”); see also *Goldsworthy v McCausland*, 187 Mich App 253, 254; 466 NW2d 286 (1990) (“[W]e agree with the trial court that on the basis of *Williams v Detroit*, 127 Mich App 464; 339 NW2d 215 (1983), the [property owners], as landlords, had no duty to provide security services . . . on the leased premises.”).

Indeed, the seminal case in this area of the law, *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495; 418 NW2d 381 (1988), explained in detail why such a duty does not exist and would contravene the public policy of the State of Michigan:

“[A] merchant’s duty of reasonable care does not include providing armed, visible security guards to deter criminal acts of third parties. We decline to extend defendant’s duty that far in light of the degree of control in a merchant’s relationship with invitees, the nature of the harm involved, and the public interest in imposing such a duty.”

“The duty advanced by plaintiffs is essentially a duty to provide police protection. That duty, however, is vested in the government by constitution and statute. We agree with the Court of Appeals in this case that neither the Legislature nor the constitution has established a policy requiring that the responsibility to provide police protection be extended to commercial businesses.”

“Furthermore, although defendant can control the condition of its premises by correcting physical defects that may result in injuries to its invitees, it cannot control the incidence of crime in the community. Today a crime may be committed anywhere and at any time. To require defendant to provide armed, visible security guards to protect invitees from criminal acts in a place of business open to the general public would require defendant to provide a safer environment on its premises than its invitees would encounter in the community at large. Defendant simply does not have that degree of control and is not an insurer of the safety of its invitees.”

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“Finally, we note that imposing the duty advanced by plaintiffs is against the public interest. The inability of government and law enforcement officials to prevent criminal attacks does not justify transferring the responsibility to a business owner such as defendant. To shift the duty of police protection from the government to the private sector would amount to advocating that members of the public resort to self-help. Such a proposition contravenes public policy.” [*Id.* at 501-504 (footnotes omitted).]

Additionally, because one may assume that others will refrain from committing criminal acts, “[a] premises owner’s duty is limited to responding reasonably to situations occurring on the premises” *presently*; no such duty arises “until a specific situation occurs on the premises that would cause a reasonable person to recognize a risk of imminent harm to an identifiable invitee.” *MacDonald*, 464 Mich at 335. Accordingly, “any past incidents” of criminal activity on the premises are not considered in determining the foreseeability or risk of future criminal activity on the premises. *Id.* Crimes are inherently “irrational and unpredictable,” so imposing a duty to protect invitees from criminal acts would make business owners “effectively vicariously liable for the criminal acts of third parties.” *Id.* Instead, the duty of a merchant to respond to a recognized risk of imminent harm to an identifiable invitee from criminal acts “is limited to reasonably expediting the involvement of the police.” *Id.* at 345.

*MacDonald* demonstrates that summary disposition was appropriately granted to H&L because, even if plaintiffs were invitees of H&L, H&L still had no legal duty to provide security or to protect plaintiffs from the random, criminal acts of the security guard *except* by taking steps

to reasonably expedite police involvement after the threat became apparent. H&L was entitled to presume that codefendants, the partygoers, and the security guards would act lawfully, and H&L's agent on the premises had no duty to attempt to enforce laws or safety regulations, or to resort to self-help enforcement. *Id.* Even if H&L assumed such a duty, as plaintiffs contend, plaintiffs cannot maintain a premises liability suit against H&L on the basis that the safety measures taken by an H&L agent were less effective than they could or should have been. *Id.* at 337-338 (“[W]here a merchant voluntarily takes safety precautions in an effort to prevent criminal activity, ‘suit may not be maintained on the theory that the safety measures are less effective than they could or should have been.’”) (quoting *Scott v Harper Recreation, Inc*, 444 Mich 441, 452; 506 NW2d 857 (1993)). H&L offered uncontroverted evidence that its agent neither witnessed the shooting incident nor heard the gunshots. Indeed, by the time H&L's agent learned of the shooting, the incident was over and the police had already arrived. Thus, the agent never witnessed “a specific situation . . . that would cause a reasonable person to recognize a risk of imminent harm to an identifiable invitee,” and had no opportunity to summon the police. *MacDonald*, 464 Mich at 335.

### III. CONCLUSION

Summary disposition was properly granted to H&L under MCR 2.116(C)(10); H&L owed no legally cognizable duty to support plaintiffs' premises liability claim.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ David H. Sawyer  
/s/ Stephen L. Borrello