

STATE OF MICHIGAN
COURT OF APPEALS

DAVID SCHOENROCK,

Plaintiff-Appellant,

v

UNO-VEN CO. and ARMADA OIL & GAS CO.,

Defendants,

and

FAIR'S MINI MART, INC.,

Defendant-Appellee.

UNPUBLISHED

October 1, 1999

No. 202122

Wayne Circuit Court

LC No. 95-533427 NI

Before: Bandstra, P.J., and Whitbeck and Talbot, JJ

PER CURIAM.

In this premises liability action, plaintiff appeals as of right from the trial court's order granting defendant Fair Mini Mart, Inc.'s motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On September 9, 1993, at approximately 10:30 p.m., plaintiff stopped at a gas station owned and operated by defendant. As he opened his car door, two men pulled him from his car and assaulted him. After noticing that one of the assailants had a gun, plaintiff ran toward the mini-mart. When plaintiff pounded on the locked doors, the cashier looked at him from the bullet-proof window inside the store. Plaintiff then turned around and one of the assailants shot him in the stomach. Plaintiff filed suit, alleging that defendant breached its duty to use reasonable care to protect him from foreseeable criminal activity. The trial court granted defendant's motion for summary disposition, finding that defendant owed no duty to plaintiff to protect him from the unforeseeable criminal acts.

We review a trial court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), the trial court must consider the affidavits, pleadings, depositions, admissions and documentary evidence in the light

most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Generally, merchants have no obligation to protect their patrons against the criminal acts of others. *Scott v Harper Recreation, Inc*, 444 Mich 441, 450-451; 506 NW2d 857 (1993); *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 504; 418 NW2d 381 (1988); *Krass v Tri-County Security, Inc*, 233 Mich App 661, 683; 593 NW2d 578 (1999). However, a merchant has “a duty to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties.” *Mason v Royal Dequindre, Inc*, 455 Mich 391, 405; 566 NW2d 199 (1997); see also *Jackson v White Castle System, Inc*, 205 Mich App 137; 517 NW2d 286 (1994); *Green v Shell Oil Co*, 181 Mich App 439; 450 NW2d 50 (1989); *Diomedi v Total Petroleum, Inc*, 181 Mich App 789; 450 NW2d 91 (1989) (merchants have a duty to act where they knew or should have known that their patrons are in danger).

Here, unlike *Jackson, supra*, and *Mills v White Castle System, Inc*, 167 Mich App 202; 421 NW2d 631 (1988), where there was evidence of an ongoing, prolonged disturbance before the assault, plaintiff presented no evidence that defendant had reasonable notice that he was in danger prior to or during the assault. To the contrary, plaintiff was attacked immediately after he arrived at the gas station and plaintiff has failed to show that the cashier had knowledge of the assault or plaintiff’s attackers in time to take measures to protect him. See *Scott, supra*, and *Williams, supra* (a merchant has no duty to protect its invitees from random, unforeseeable acts of violence). Therefore, we hold that the trial court did not err in granting defendant’s motion for summary disposition on the basis that defendant had no duty to protect plaintiff against the unforeseeable criminal attack.

Affirmed.

/s/ Richard A. Bandstra

/s/ William C. Whitbeck

/s/ Michael J. Talbot