

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

---

CARL A. SCHNORR,

Plaintiff-Appellee,

v

TMR AMUSEMENTS, INC., d/b/a LONGSHOT  
LANES BAR & GAMES,

Defendant/Cross Plaintiff-  
Appellant,

and

JASON MICHAEL KRAUSE,

Defendant-Cross Defendant.

---

UNPUBLISHED

August 4, 2011

No. 296827

Huron Circuit Court

LC No. 08-004006-NS

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

In this premises liability action, defendant TMR Amusements, Inc., d/b/a Longshot Lanes Bar & Games (Longshot Lanes), appeals as of right the judgment entered in favor of plaintiff. Specifically, Longshot Lanes challenges the trial court's denial of its motions for partial summary disposition and a directed verdict. For the reasons set forth in this opinion, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

On December 16, 2006, plaintiff and a group of friends went to Longshot Lanes. Longshot Lanes is a bowling alley and bar/nightclub located in Bad Axe, Michigan. Plaintiff was accompanied by his then-brother-in-law, Jason Dawidowski, and Paul Bogucki, Joe Demming, Terry Mitchell, and Terry's son Chad Mitchell.

According to plaintiff, he and his party arrived at Longshot Lanes between 8:00 p.m. and 9:00 p.m. Later that night, Tiffany Brown and her husband Nathan Brown joined plaintiff's party. Plaintiff and his party drank throughout the course of the evening; plaintiff consumed five to seven beers and one to two jagerbombs.

Toward the end of the evening an altercation occurred on the dance floor between Jason Dawidowski and Sheila Krause. Some witnesses stated that Dawidowski was dancing with Sheila Krause when he was confronted by her husband, Jason Krause, and that the two men engaged in some pushing and shoving. Other witnesses said that Dawidowski was grabbing Sheila Krause by the arm and trying to force her to the dance floor, that Longshot Lanes' two bouncers intervened, and that Jason Krause was not involved in the initial confrontation.

Dawidowski was escorted out of the bar by the bouncers. Most witnesses agreed that Dawidowski was dragged out by his arms; he faced backwards as his heels dragged across the bar; however, one bouncer stated that Dawidowski left voluntarily and was very cooperative. Jason Krause followed as Dawidowski was being dragged out of the bar.

Plaintiff ran out after Dawidowski and the bouncers. According to plaintiff, when he got outside he saw the bouncers holding Dawidowski for Jason Krause. Dawidowski was face down on the cement, the bouncers had him by the arms, and Krause was getting ready to assault him. Plaintiff yelled "leave him alone" and ran over to intervene. Krause turned and punched plaintiff in the side of the face. Plaintiff was knocked unconscious and fell to the ground. It is alleged that after plaintiff was knocked unconscious Krause and his friends proceeded to punch and kick plaintiff in the face.

Plaintiff suffered severe injuries as a result of the altercation. He underwent extensive surgeries to repair the damage to his face and had a total of seven metal plates, 35 screws, and five pillars/beams installed in his head. Plaintiff sued Longshot Lanes and Jason Krause, alleging that Longshot Lanes was liable under the Dramshop Act, MCL 436.1801, and was negligent because it failed to expedite police involvement.

Longshot Lanes moved for partial summary disposition on plaintiff's premises liability claim, arguing that the claim should be dismissed because it had no duty to anticipate the criminal activity of a third party, and that in any event it discharged its duty by calling the police. Longshot Lanes also argued that plaintiff was unable to show causation because the events were sudden and the police would not have been able to prevent plaintiff's injuries.

The trial court denied the motion from the bench, and the matter proceeded to a jury trial. After plaintiff rested, Longshot Lanes moved for a directed verdict. The trial court denied the motion. The jury returned a verdict for plaintiff. The jury found Longshot Lanes had not violated the Dramshop Act, but found that Longshot Lanes was negligent. The jury found Longshot Lanes 45% at fault, Jason Krause 40% at fault, and plaintiff 15% at fault. The trial court entered a judgment for plaintiff in the amount of \$160,067.91 against Longshot Lanes.

Longshot Lanes appeals the trial court's denial of its motions for partial summary disposition and directed verdict.

## II. SUMMARY DISPOSITION

We review de novo a decision on a motion for summary disposition. *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007). When reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* Our review is

limited to the record available to the trial court at the time it decided the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 367 n 5; 547 NW2d 314 (1996).

In order to make out a prima facie case of negligence, a plaintiff must prove four elements: (1) duty, (2) breach of that duty, (3) causation, and (4) damages. *Brown*, 478 Mich at 552. In general, there is no duty to aide or protect an individual against the criminal activity of another. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). However, because of the special relationship a merchant has with it invitees, a narrow duty to protect against criminal activity can arise. *Id.* The precise scope of that duty has been the subject of debate; however, in *MacDonald v PKT, Inc*, 464 Mich 322; 628 NW2d 33 (2001), our Supreme Court explained:

To summarize, under *Mason [v Royal Dequindre, Inc*, 455 Mich 391; 566 NW2d 199 (1997)], generally merchants “have a duty to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties.” *Id.* at 405. The duty is triggered by specific acts occurring on the premises that pose a risk of imminent and foreseeable harm to an identifiable invitee. Whether an invitee is readily identifiable as being foreseeably endangered is a question for the factfinder if reasonable minds could differ on this point. See *id.* at 404-405. While a merchant is required to take reasonable measures in response to an ongoing situation that is taking place on the premises, there is no obligation to otherwise anticipate the criminal acts of third parties. Consistent with *Williams*, a merchant is not obligated to do anything more than reasonably expedite the involvement of the police. We also reaffirm that a merchant is not required to provide security guards or otherwise resort to self help in order to deter or quell such occurrences. *Williams, supra.* [*MacDonald*, 464 Mich at 338.]

Longshot Lanes argues that under *MacDonald*, it owed plaintiff no duty until plaintiff was assaulted by Krause.<sup>1</sup> We hold that the evidence, viewed in the light most favorable to plaintiff, created a question of fact regarding when Longshot Lanes owed plaintiff a duty and whether Longshot Lanes satisfied its duty by reasonably expediting police involvement.

Although the existence of a duty is for the courts to decide as a matter of law, *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002), “where there are factual circumstances which give rise to a duty, the existence or nonexistence of those facts must be decided by a jury.” *Aisner v Lafayette Towers*, 129 Mich App 642, 645; 341 NW2d 852 (1983) (citations omitted). In this case, it is undisputed that a duty arose at some point; however, the precise time the duty arose is debated. Various witnesses, including Longshot Lanes’ bouncers, stated in their depositions that the initial altercation between Dawidowski and Sheila Krause occurred around the time last call was announced. Gary Bailey, a bouncer, stated that it occurred

---

<sup>1</sup> Longshot Lanes concedes in its brief on appeal that it owed plaintiff a duty, but asserts that such duty did not arise until plaintiff was assaulted by Krause.

before last call. Erick Heleski, an owner of Longshot Lanes, testified that last call occurred at 1:45 a.m.

The accounts of what happened on the dance floor varied dramatically. Bailey stated in his deposition that Dawidowski exited the bar peacefully and voluntarily, and that the incident only escalated after plaintiff attacked Jason Krause. The other bouncer, Heath Lautenschlager, testified that he and Bailey dragged Dawidowski out of the bar and that a crowd followed, including Jason Krause. Tiffany Brown testified that Jason Krause confronted Dawidowski on the dance floor, that some bumping and shoving occurred, and that the bouncers dragged Dawidowski out of the bar. Dawidowski testified that Krause confronted him on the dance floor and that the bouncers dragged him out of the bar.

Longshot Lanes' duty in this case was triggered when specific acts on the premises posed a risk of imminent and foreseeable harm to plaintiff. See *MacDonald*, 464 Mich at 338. As noted above, "[w]hether an invitee is readily identifiable as being foreseeably endangered is a question for the factfinder if reasonable minds could differ on this point." *Id.* We believe that based on the above testimony, reasonable minds could differ regarding when the incident escalated to the point that it posed a risk of imminent and foreseeable harm to plaintiff. Viewing the evidence in a light most favorable to plaintiff, a reasonable jury could have found that the risk of imminent and foreseeable harm to plaintiff arose at approximately 1:45 a.m.

Additionally, although the police were called, there is a question of fact regarding whether Longshot Lanes reasonably expedited police involvement. The incident on the dance floor occurred around 1:45 a.m.; however, the first 911 call was not made until 1:56 a.m., after plaintiff was already unconscious. Also, none of Longshot Lanes' employees testified that they called the police when this incident occurred. Cathy Heleski, an owner, testified that she called the police or that she directed someone else to do so. Heleski, however, could not recall if the transcript of the 911 call that was made represented the conversation she had with the dispatcher. Plaintiff's friend, Paul Bogucki, testified that he called 911, and that he recognized the transcript as being the conversation that he had with the dispatcher. Finally, Erick Heleski stated that one reason he decided to engage bouncers was to minimize police involvement, and he was aware that recurrent fights could have consequences for the bar with the Liquor Control Commission.

Based on these facts, we find that questions of fact existed regarding when the duty to call the police arose and whether Longshot Lanes reasonably expedited police involvement. Viewing the evidence in a light most favorable to plaintiff, a reasonable jury could find that Longshot Lanes unreasonably delayed in calling the police or that Longshot Lanes failed to call the police altogether.

Longshot Lanes also argues that summary disposition should have been granted because plaintiff failed to demonstrate that its alleged negligence was the cause of his injuries. Longshot Lanes asserts that plaintiff was not an identifiable invitee until he ran outside, and that even if it had called the police at that point the police could not have responded in time to prevent the attack.

Causation is generally a question for the jury to decide unless reasonable minds could not differ regarding the issue. *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002).

The altercation on the dance floor occurred around 1:45 a.m. Plaintiff was not involved in this initial altercation, but that does not preclude plaintiff from being an identifiable invitee at this point. Plaintiff was an identifiable invitee at the moment the situation escalated to the point that it posed an imminent risk of harm, which as discussed above, was a question of fact for the jury to decide.

The police report shows the police were called at 1:56 a.m. and arrived on the scene at 1:58 a.m. These facts, viewed in the light most favorable to plaintiff, support the conclusion that if the police had been called when the altercation initially began, they would have arrived in time to prevent plaintiff's injuries. Thus, the conflicting nature of the testimony of the various witnesses created a question of fact regarding causation and the trial court properly denied Longshot Lanes' motion for summary disposition.

Furthermore, summary disposition was inappropriate because a question of fact existed regarding whether Longshot Lanes' use of self-help, its bouncers, increased the risk of harm in this situation. "In determining standards of conduct in the area of negligence, the courts have made a distinction between misfeasance, or active misconduct causing personal injury, and nonfeasance, which is passive inaction or the failure to actively protect others from harm." *Williams*, 429 Mich at 499. To this end, our Supreme Court clearly defined the limits of imposing liability on the theory of nonfeasance in *MacDonald*, 464 Mich at 338. *MacDonald* makes it clear that a merchant's only duty to prevent the criminal activity of a third party is to "reasonably expedite the involvement of the police." *MacDonald*, 464 Mich at 338. However, we do not view *MacDonald* as an abrogation of misfeasance principles in this context. If a merchant voluntarily undertakes to prevent the criminal activity of a third party and thereby enhances the risk of harm to identifiable invitees, it can be liable for the resulting harm. See generally *Fultz v Union-Commerce Assocs*, 470 Mich 460, 465-468; 683 NW2d 587 (2004), clarified in *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, \_\_\_ Mich \_\_\_ ; \_\_\_ NW2d \_\_\_ (2011) (2011 Mich LEXIS 954).

In this case, a question of fact existed as to whether Longshot Lanes increased the risk of harm through the acts of its bouncers. The deposition testimony established that the bouncers received no training. Bailey stated that if someone refused to leave and had to be dragged out, the police should be called at that time. Lautenschlager stated that the proper way to resolve an incident between two people was to remove one person and wait until that person left, and then remove the other person. However, in this case, the police were not called initially, and both Jason Krause and Dawidowski left the bar at the same time. Once the bouncers got Dawidowski to the door they never tried to prevent Krause or anyone else from leaving the bar. Additionally, the majority of Longshot Lanes' employees knew Krause. Based on this evidence, the trial court correctly determined that questions of fact existed as to whether the bouncers acted negligently and thereby increased the risk of harm to others.

### III. DIRECTED VERDICT

We review de novo a trial court's decision on a motion for a directed verdict. *Sniecinski v BCBSM*, 469 Mich 124, 131; 666 NW2d 186 (2003). When reviewing a decision on a motion for a directed verdict, we review all the evidence presented up to the time of the motion. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 455; 750 NW2d 615 (2008). We

view the evidence in the light most favorable to the nonmoving party, grant the nonmoving party every reasonable inference, and resolve any conflict in the evidence in that party's favor. *Ververis v Hartfield Lanes*, 271 Mich App 61, 63-64; 718 NW2d 382 (2006). Directed verdicts are generally viewed with disfavor, particularly in negligence cases. *Berryman v K Mart Corp*, 193 Mich App 88, 91; 483 NW2d 642 (1992). However, a trial court may grant a directed verdict if no factual questions exist. *Mich Mut Ins Co v CNA Ins Cos*, 181 Mich App 376, 380; 448 NW2d 854 (1989).

Longshot Lanes argues that the trial erred in denying its motion for a directed verdict because it owed no duty to protect plaintiff until he was assaulted by Krause, and it discharged its duty by calling the police to the scene after the incident.<sup>2</sup>

As noted previously, Longshot Lanes concedes that it owed plaintiff a duty, but asserts that the duty did not arise until plaintiff was assaulted by Krause. Viewing the evidence in a light most favorable to plaintiff, there was a question of fact regarding when the duty arose because there was a genuine issue of material fact regarding when the risk of imminent and foreseeable harm arose. The testimony of the witnesses tends to support a finding that the incident between Sheila Krause and Dawidowski occurred at approximately 1:45 a.m. Tiffany Brown's testimony indicated that plaintiff was close by, that Jason Krause confronted Dawidowski on the dance floor and that some pushing and shoving occurred. Krause said that he was not involved in the initial confrontation. Viewing the evidence in the light most favorable to plaintiff, and drawing all reasonable inferences in his favor, we find that there was a question of fact regarding when the risk of imminent and foreseeable harm to plaintiff arose and, therefore, when the duty arose.

Longshot Lanes further argues that even if plaintiff were able to establish duty and breach of duty, its motion for directed verdict should have been granted because plaintiff failed to establish causation. In this regard, we find that there was a question of fact regarding whether Longshot Lanes reasonably expedited police involvement. Erick Heleski testified that he did not call the police when the incident on the dance floor occurred. Lautenschlager never testified that he called 911. Bailey stated that he yelled for someone to call 911 but could not remember to whom he spoke. In light of this evidence, there was a question of fact regarding whether any of Longshot Lanes' employees ever called the police, and, if they did, when the call was made.<sup>3</sup>

---

<sup>2</sup> In addressing this issue, we have reviewed all the evidence presented up until the time Longshot Lanes moved for directed verdict. Longshot Lanes concedes that the trial testimony is not significantly different than that of the deposition testimony. Our analysis of this issue is therefore similar, but not identical, to our analysis of whether the trial court erred in denying Longshot Lanes' motion for partial summary disposition.

<sup>3</sup> Cathy Heleski testified after the motion for a directed verdict was made. Therefore, her testimony stating that she was certain that she called the police or told someone else to call the police cannot be considered in reviewing the issue. *Silberstein*, 278 Mich App at 455.

Causation is generally a question for the jury to decide unless reasonable minds could not differ on the issue. *Nichols*, 253 Mich App at 532. Longshot Lanes argues that plaintiff failed to establish cause in fact because the incident happened suddenly and the police could not have prevented it. This argument is premised on duty arising only when plaintiff ran outside. When the duty arose is a question of fact for the jury. *Aisner*, 129 Mich App at 645. For the reasons stated previously, we find that a reasonable jury could have concluded that a duty arose around 1:45 a.m. If the duty arose at 1:45 a.m., then the evidence produced at trial created a question of fact regarding whether Longshot Lanes' breach of that duty was the cause of plaintiff's injuries. Bailey testified that the incident occurred over the course of about five minutes. Lautenschlager testified that the incident occurred over a period of five to ten minutes. Erick Heleski testified that three police agencies were located within one and one-half miles of the bar. Joe Demming testified that the police arrived within five to seven minutes, maybe sooner. This evidence created a question of fact for the jury to determine whether the police could have prevented plaintiff's injuries if they had been called when the incident began.

#### IV. CONCLUSION

In sum, we affirm the trial court's denial of Longshot Lane's motions for partial summary disposition and directed verdict. Questions of fact existed as to whether Longshot Lanes owed plaintiff a duty of care and whether it violated that duty by failing to reasonably expedite police involvement, and whether Longshot Lanes' failure to expedite police involvement was the cause of plaintiff's injuries.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Stephen L. Borrello  
/s/ Jane M. Beckering