



Jones v. Lyon Stores

82 N.C. App. 438 (1986) | Cited 4 times | Court of Appeals of North Carolina | August 5, 1986

The only issue before this Court is whether the entry of summary judgment was appropriate. To be entitled to summary judgment, the moving party must establish that there are no triable issues of material fact, with all factual inferences arising from the

evidence being drawn against the movant. *King v. Allred*, 309 N.C. 113, 305 S.E.2d 554 (1983).

A store owner's duty to invitees to maintain the premises in a reasonably safe condition extends to the manner in which the store owner deals with the criminal acts of third persons. *Foster v. Winston-Salem Joint Venture*, 303 N.C. 636, 281 S.E.2d 36 (1981). The issue then is whether in the case sub judice defendant breached that duty.

Foreseeability is the test for determining a business owner's duty to safeguard his business invitees from the acts of third persons. *Id.* As stated in *Foster*,

If an invitee, such as the plaintiff in this case, alleges in a complaint that he or she was on the premises of a store owner, during business hours for the purpose of transacting business thereon, and that while he or she was on the premises injuries were sustained from the criminal acts of a third person, which acts were reasonably foreseeable by the store owner, and which could have been prevented by the exercise of ordinary care, then the plaintiff has set forth a cause of action in negligence which, if proved, would entitle that plaintiff to recover damages from the store owner.

Id. at 640, 281 S.E.2d at 39 (emphasis added).

The instant case differs from *Foster* in that the third party conduct causing injury is not an intentional criminal act such as an assault, but rather conduct incident to a nonviolent criminal act. In the process of fleeing, the apprehended shoplifting suspect knocked plaintiff down. The questions raised by these facts are whether it was reasonably foreseeable that the suspect would bolt and whether it was reasonably foreseeable that by locking the "Out" door, the defendant's employees increased the risk of harm to invitees on the premises, including plaintiff. In other words, under the circumstances was injury to someone more likely to occur if the suspect could only exit through the "In" door? "An act is negligent if the actor intentionally creates a situation which he knows, or should realize, is likely to cause a third person to act in such a manner as to create an unreasonable risk of harm to another." *Toone v. Adams*, 262 N.C. 403, 409, 137 S.E.2d 132, 136 (1964).

The evidence that the policy of locking the "Out" door had been followed for over a year and that no



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one previously apprehended had tried to run is evidence to be considered in determining whether the consequences were foreseeable, but we are not prepared to say as a matter of law under the circumstances that defendant satisfied its duty of care to plaintiff. The very fact defendant locked the "Out" door is some indication that defendant anticipated an apprehended shoplifter might try to escape.

As in *Helms v. Church's Fried Chicken, Inc.*, 81 N.C. App. , 344 S.E.2d 349 (1986), the foreseeability of increased risk of injury to plaintiff as a consequence of defendant's employees' acts or failure to act is the issue. The fact that the store owner is dealing with a criminal suspect is an additional factor to be considered in determining the reasonableness of defendant's employees' actions under the circumstances.

This Court is not unmindful of the competing policy considerations ably expressed by Justice Carlton in his dissent in *Foster*, 303 N.C. at 643-647, 281 S.E.2d at 41-43. The store owner unquestionably has the right to apprehend a shoplifter to retrieve his goods; but in our view, the facts herein require the question of foreseeability of harm to plaintiff, which could have been prevented by the exercise of ordinary care, to be answered by a jury.

Reversed and remanded.

Disposition

Reversed and remanded.

