IN THE COURT OF APPEALS OF IOWA

No. 0-281 / 09-1196
Filed July 28, 2010

JAMES M. GUMMERT,
Plaintiff-Appellant,

vs.

ANTHONY PAGLIA,
Defendant-Appellee.

Appeal from the Iowa District Court for Marshall County, Michael J. Moon, Judge.

Injured social guest appeals summary judgment in favor of homeowner. **AFFIRMED.**

Joanie L. Grife of Steffens & Grife P.C., and Theodore R. Hoglan of Condon & Hoglan Law Firm, Marshalltown, for appellant.

Sharon Soorholtz Greer of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

James Gummert was injured at a party at the home of Anthony Paglia. He sued Paglia. Paglia's motion for summary judgment was granted and Gummert appeals. We affirm.

The parties stipulated to the facts. On June 3, 2006, Paglia's son Greg hosted a party at his father's home and Gummert attended the party. Paglia was home during the party and spent the evening sitting at the dining room table looking out glass doors to the backyard where the invited guests were located.

Mr. Quigley had not been invited to the party but arrived with a group. When Quigley's group arrived, Greg immediately told them to leave. Greg told Quigley it was a private party and Quigley and his group had to leave because they were not invited. As Quigley and his group were leaving, Gummert confronted Quigley about leaving and physically threw him to the ground. After Quigley got up, he and his group appeared to leave. They walked to their vehicle at the end of the driveway. Instead of leaving, Quigley and his group got objects/weapons out of their car and walked back up the driveway. While neither Greg nor Gummert saw Quigley hit Gummert, it is believed Quigley hit Gummert in the face with either a baseball bat or a metal bar. Paglia did not learn of the incident until after it was over and Gummert was taken to the hospital.

The district court considered Paglia's duty as a possessor of land:

> If the actor [Paglia] permits a third person [Quigley] to use land or chattels in his possession . . . he is, if present under a duty to exercise reasonable care so to control the conduct of a third person [Quigley] as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor [Paglia] (a) knows or has reason to

> know that he has the ability to control the third person [Quigley], and (b) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts § 318, at 126-27 (1965); *see also Morgan v. Perlowski*, 508 N.W.2d 724, 728 (1993) (adopting section 318 because "it is reasonable to impose a limited duty upon a possessor of land, who is present on the land, to control the conduct of social guests"). The district court ruled:

> [Gummert] has asserted no fact which would provide a basis for this court to find any failure on the part of [Paglia] to act in a reasonable manner under the circumstances. There is no showing that [Paglia] or his son knew Quigley or any of his associates and no showing that there was any opportunity whatsoever to dispatch Quigley and his friends or from warning invited guests about danger posed by Quigley.

On appeal, Gummert argues summary judgment was inappropriate because "reasonableness and forseeability are fact issues to be determined by a jury."

We review the district court's summary judgment ruling for the correction of errors at law. *Van Essen v. McCormick Enters. Co*., 599 N.W.2d 716, 718 (Iowa 1999). Summary judgment will be upheld where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* While negligence actions are seldom capable of summary adjudication, the threshold question in any tort case is whether the defendant owed the plaintiff a duty of care. *Sankey v. Richenberger*, 456 N.W.2d 206, 207 (Iowa 1990). "Whether such a duty arises out of the parties' relationship is always a matter of law for the court." *Hoffnagle v. McDonald's Corp*., 522 N.W.2d 808, 811 (Iowa 1994).

We view the duties described in Restatement section 318 "quite narrowly" and are "guided by the principle that the scope of the duty turns on the foreseeability of harm to the injured person." *Morgan*, 508 N.W.2d at 727. Under these facts no jury issues were generated as to: (1) whether Paglia knew or should have known he had the ability to control Quigley; (2) whether Paglia knew of the necessity and opportunity to exercise such control; and (3) whether Quigley was on the property with consent. *See Pierce v. Staley*, 587 N.W.2d 484, 488 (Iowa 1998) (holding no jury question exists because section 318 duty to control third persons is directed at third persons "coming on the property with consent" and no evidence indicates homeowner had information suggesting the necessity of immediate action to quell a disturbance); *Fiala v. Rains*, 519 N.W.2d 386, 389 (Iowa 1994) (holding no jury question exists where plaintiff was physically beaten by third party in defendant's home, but no evidence of any known actions by third party immediately preceding the assault that would alert defendant homeowner to a pending danger). We agree with and adopt the conclusions of the district court.

AFFIRMED.