2017 IL App (3d) 160304-U

Order filed February 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

BERNARD JOHNSON,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	
	)	Appeal No. 3-16-0304
PACE SUBURBAN BUS, PACE HERITAGE DIVISION of the SUBURBAN BUS DIVISION of the REGIONAL TRANSPORTATION AUTHORITY, a/k/a PACE HERITAGE,	)	Circuit No. 14-L-556
	)	Honorable
	)	John C. Anderson,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err when it granted summary judgment in favor of the defendant.

¶ 2 The trial court entered summary judgment in favor of the defendant, Pace Heritage Division of the Suburban Bus Division of the Regional Transportation Authority, in a negligence

action. The plaintiff, Bernard Johnson, appeals arguing a genuine issue of material fact exists as to the duty the defendant owed to the plaintiff.

¶ 3 FACTS

¶ 4 The plaintiff brought a two-count negligence action against his former employer, the defendant, to recover damages for personal injuries he sustained from an assault by a passenger on the bus he had been driving. The complaint asserted two alternative theories of negligence upon which the defendant should be held liable. The first theory alleged that the defendant, as a common-carrier, owed a duty of care to protect the defendant from criminal acts of third persons. The second theory alleged that the defendant, as his employer, owed a duty of care to protect the plaintiff from criminal acts of third persons. Both counts alleged that the defendant breached its duty in that it: (1) failed to adequately protect the plaintiff despite knowledge of the danger to drivers; (2) failed to provide additional personnel to safeguard its drivers; and (3) prohibited drivers from refusing admittance onto or ejecting from the bus individuals who they believed present a danger to the driver or bus passengers.

¶ 5 In the plaintiff's deposition, he testified that he was employed by the defendant as a bus driver. On February 14, 2014, the plaintiff picked up passengers at a bus stop located at the Louis Joliet Mall. Before leaving the bus stop, the plaintiff noticed two women sitting in the back of the bus having an altercation. The two individuals were loud and boisterous, but not a threat to the plaintiff or other passengers on the bus. It appeared to the plaintiff that one of the women wanted to fight the other woman.

¶ 6 According to the plaintiff, he had been told by the defendant's management personnel that if he noticed a problem on his route, he could either call the defendant's dispatch over the radio or pull the bus over and call the police. The plaintiff called the defendant's dispatch about

the two women arguing in the back of the bus, but did not receive a response. The plaintiff then asked another passenger to call the police and ask the police to meet the bus at an upcoming bus stop located at the Will County courthouse.

¶ 7 When they arrived at the courthouse, the two women exited the bus and began fighting. As the remaining passengers exited the bus, the plaintiff remained in his seat. As he was seated, a passenger approached him and punched him in the face and broke his glasses. The plaintiff noted that the individual who punched him was not one of the two women he had identified as being loud and boisterous. According to the plaintiff, he had no interaction with the individual who punched him prior to the attack. Instead, the plaintiff stated that the individual had "sucker punched" him. After he was hit, the plaintiff grabbed the individual by the arm and the two fell out of the bus onto the pavement. The plaintiff then held the individual down on the ground until the police arrived.

¶ 8 The plaintiff stated that the passengers on the final bus route to the mall were generally loud and boisterous. The plaintiff had previously been threatened by male passengers on the bus route to the mall, but did not report the incident to the defendant. However, prior to the incident on February 14, 2014, the plaintiff had asked Margaret Murry, a division manager for the defendant, if the defendant could provide additional security on the bus. However, Murry's response was that additional security would offend the passengers.

¶ 9 Sonaiya Hall, testified that she had been employed by the defendant as a bus operator for six years. During Hall's employment, she drove the route which included the stop at the mall. On the route, Hall observed crowds of rowdy groups of teenagers outside the mall waiting to ride the bus. On several occasions, Hall encountered problems with riders that required Hall to call the

police or dispatch. Hall recalled one encounter in which she had been verbally assaulted by a passenger riding her bus.

¶ 10 Michael Rooney, another bus driver employed by the defendant testified that he had occasionally driven the bus route which included the stop at the mall. According to Rooney, people at the bus stop at the mall tended to get rambunctious and the passengers would talk loud and push each other around. However, Rooney never felt the need to call the police or report to his supervisor that he needed police assistance with regard to the crowd of teenagers on the route. Rooney noted that he had been physically assaulted while driving a bus, but that incident occurred on a different route than the one running to the mall.

¶ 11 Murry testified that she had been employed by the defendant and was involved in hiring the plaintiff. Murry recalled a conversation with the plaintiff prior to the incident on February 14, 2014, in which the plaintiff expressed his concern about the mall route. Murry recalled that the plaintiff was concerned about the large groups of teenagers riding the bus. The plaintiff was concerned because the teenagers were loud and rowdy.

¶ 12 Murry recalled an incident prior to February 14, 2014, in which Rooney had been assaulted while driving one of the defendant's buses. The incident with Rooney occurred on a different route than the one driven by the plaintiff. Murry was also aware of the verbal altercation that occurred while Hall drove one of the defendant's buses.

¶ 13 According to Murry, at the time the plaintiff was attacked, only one of the defendant's employees would be on the bus (the driver). Murry did not recall there ever being a discussion concerning providing additional security on buses, beyond the driver and the cameras on the vehicle. According to Murry, the defendant never had any problems or concerns that called for additional security on its buses.

¶ 14 Following the February 14, 2014, incident, Murry informed the plaintiff of his termination for violations of the defendant's employee rule book. Specifically, the plaintiff's termination was the result of his decision to leave the driver's seat of the bus, pursue his attacker, and restrain the individual on the ground.

¶ 15 Jacquieline Gerasch, a safety training administrator for the defendant, testified that she provided safety training for the bus drivers. Gerasch was aware of the large groups of teenagers from the mall that occasionally rode the bus. Gerasch explained that if the defendant's employee was assaulted, he may defend himself, but cannot restrain someone. Additionally, drivers were not allowed to eject unruly passengers from the bus, but were required to call the police or dispatch for assistance. Gerasch did not believe that the plaintiff's actions on February 14, 2014, constituted defending himself.

¶ 16 Ultimately, the defendant moved to dismiss the plaintiff's complaint pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2014)). The motion argued that as a matter of law no genuine issue of material fact existed as to the duty owed to the plaintiff by the defendant. Specifically, the motion asserted that the defendant did not owe the plaintiff a duty to protect him from the criminal acts of the third-party passenger. The trial court granted the motion and entered summary judgment in favor of the defendant.

¶ 17 ANALYSIS

¶ 18 On appeal, the plaintiff argues that the trial court erred in granting summary judgment as a matter of law because a genuine issue of material fact exists as to the duty owed to the plaintiff by the defendant. The grant of summary judgment will be affirmed if the pleadings, depositions, affidavits, and admissions show that there are no genuine issues of material fact and if judgment

is proper as a matter of law. *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 284 (2002). Our review is *de novo*. *Id.*

¶ 19 In order to be held liable for negligence, a party must first owe a duty of care to the injured party. *Pippin v. Chicago Housing Authority*, 78 Ill. 2d 204, 208 (1979). Ordinarily, a party owes no duty of care to protect another from the harmful or criminal acts of third persons. *Petersen v. U.S. Reduction Co.*, 267 Ill. App. 3d 775, 779 (1994). However, the law recognizes four exceptions to this rule when: (1) the parties are in a special relationship and the harm is foreseeable; (2) an employee is in imminent danger and this is known to the employer; (3) a principal fails to warn his agent of an unreasonable risk of harm involved in the agency; and (4) any party voluntarily or contractually assumes a duty to protect another from the harmful acts of a third party. *Id* at 779. Whether a duty of care exists is a question of law to be determined by the court. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 391 (2004).

¶ 20 The plaintiff contends that the defendant owed him a duty of care for the criminal acts of a third person under the first exception (when the parties are in a special relationship). Alternatively, the plaintiff asserts that the defendant owed him a duty of care under the second exception (when an employee is in imminent danger and this is known to the employer).[1] We discuss each exception in turn.

¶ 21 Under the first exception, if the plaintiff and the defendant are in a special relationship, the defendant owes a duty to protect the plaintiff from unreasonable risks of physical harm. *Fancil v. Q.S.E. Foods, Inc.*, 60 Ill. 2d 552, 559-60 (1975). One such special relationship is that of the common carrier-passenger. *Id*. The plaintiff calls our attention to the defendant's response

[1] The defendant does not argue that the third and fourth exceptions apply to his cause of action.

to a separate workers' compensation claim he filed for the injuries he sustained from the attack. Specifically, the plaintiff notes that the defendant challenged his claim on the basis that the plaintiff had exceeded the scope of his employment when restraining his attacker. As a result, the plaintiff asserts that he should be considered a passenger (not an employee) and the defendant owed him a duty as a common-carrier to protect him against the criminal acts of third persons. We disagree.

¶ 22 There is no question that the plaintiff was employed by the defendant as a bus driver at the time of the attack: the plaintiff was operating the defendant's bus on his scheduled route. When the attack occurred, the plaintiff was sitting in the driver's seat of the bus as the passengers exited the vehicle. He therefore, was not, as the plaintiff suggests, a passenger on the bus. Although the defendant challenged the plaintiff's workers' compensation claim on the basis that the plaintiff exceeded the scope of his employment, the defendant had challenged the plaintiff's injuries that occurred when he violated the defendant's regulations by leaving the bus to restrain his attacker. Therefore, he was an employee who exceeded his authority by leaving the bus; not merely a passenger who left the bus. Further, even assuming the plaintiff acted outside the scope of his employment; it does not follow that the plaintiff then became classified as a passenger on the bus. The plaintiff did not purchase a ticket to ride the bus and was not on the bus for the purpose of traveling. Consequently, the common carrier-passenger exception has no application to the instant case.

¶ 23 We now turn to the plaintiff's alternative argument, that the defendant owed him a duty under the second exception to the rule against tort liability for the criminal activities of third persons. The second exception imposes a duty upon employers to exercise reasonable care to protect an employee who comes into a position of imminent danger or serious harm and this is

known to the employer. *Petersen*, 267 Ill. App. 3d at 781. This duty is applicable when the nature of the enterprise renders the dangers is reasonably foreseeable. *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 224 (1988). The plaintiff asserts that the bus route was an environment in which harm to the driver could be expected, and the defendant owed him a duty to protect him against the criminal acts of third persons.

¶ 24 Here, the plaintiff has failed to present any evidence that the rowdy and unruly crowds of teenagers that occasionally rode the bus from the mall presented an imminent threat to the plaintiff. The plaintiff testified that the only problematic passengers on the bus on the night in question were two individuals arguing. However, the plaintiff testified that he did not consider these two individuals to be a threat. Although the plaintiff contends that the groups of rowdy teenagers created an environment in which harm to the driver could be expected, the plaintiff's deposition testimony revealed that the individual who "sucker punched" him had not been rowdy, unruly or problematic prior to the assault. Stated another way, there is no evidence that the individual who abruptly struck the plaintiff was related to the rowdy crowds of teenagers of which the plaintiff expressed his concerns to the defendant. Accordingly, we find there are no facts from which it can be reasonably inferred that the defendant knew that the plaintiff was in a position of *imminent* danger. Thus, the defendant had no duty to protect the plaintiff against the criminal acts of the individual who assaulted the plaintiff.

¶ 25 In reaching this conclusion, we reject the plaintiff's argument that the defendant's knowledge of two other drivers who had been either physically or verbally assaulted while driving a bus created an environment in which violence occurring to the driver could be expected. Neither of the two incidents referenced by the plaintiff are factually consistent with the assault on the plaintiff. First, the incident with Hall merely amounted to a verbal altercation and

does not make it foreseeable that one of the defendant's drivers might be struck by a passenger who had not otherwise created a problem on the bus. Second, the physical altercation involving Rooney occurred on a different bus route and did not involve the presence of rowdy teenagers. In addition, Rooney testified that he never thought he needed to call the police or report his concerns to the defendant regarding the teens that rode the bus on the route to the mall. In sum, there is nothing about these isolated incidents that suggests the defendant would have foreseen that the plaintiff was in a position of imminent danger.

¶ 26 CONCLUSION

¶ 27 The judgment of the trial court of Will County is affirmed.

¶ 28 Affirmed.