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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-242

Filed 5 November 2024

Mecklenburg County, No. 20 CVS 12959

TAMARA N. CAGLE, Plaintiff,

v.

THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a ATRIUM
HEALTH a/k/a CAROLINAS HEALTHCARE SYSTEM, Defendant.

Appeal by Plaintiff from judgment entered 17 August 2023 by Judge Lisa C.
Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 24
September 2024.

Lanier Law Group, P.A., by Robert O. Jenkins, for Plaintiff-Appellant.

Lincoln Derr, PLLC, by Tricia M. Derr and Heather C. Fuller, for Defendant-Appellee.

GRIFFIN, Judge.

Plaintiff Tamara N. Cagle appeals from the trial court's order granting Defendant the Charlotte Mecklenburg Hospital Authority's Motion for Summary Judgment. Plaintiff contends the trial court erred by entering summary judgment because no genuine issues of material fact exist of whether the incident underlying

the cause of action was foreseeable. We affirm the trial court's order granting summary judgment.

I. Factual and Procedural Background

On 29 September 2020, Plaintiff brought a negligence action against Defendant for an alleged sexual assault that occurred at Defendant's facility on 3 January 2018. In her Initial Complaint, Plaintiff alleged on 1 January 2018, Plaintiff was involuntarily committed to Atrium Health Behavioral Health - Davidson after a suicide attempt. Two days later, Plaintiff was raped by another patient in the same facility. In the Initial Complaint, Plaintiff identified and named an individual, who she believed had sexually assaulted her. On 12 January 2021, Defendant served its Answer and denied that the named individual was a patient at their facility.

In Plaintiff's First Set of Interrogatories and Request for Production of Documents, Plaintiff requested the identity of the male patient who had sexually assaulted her. In Defendant's Response, served 15 January 2021, Defendant objected to Plaintiff's request, basing its objection on HIPPA and other privacy laws. On 9 February 2021, Plaintiff filed a Voluntary Dismissal Without Prejudice as to the named individual.

On 15 March 2021, Plaintiff filed an Amended Complaint and removed the name of the individual originally identified. Plaintiff alleged the following:

11. On January 3, 2018, Plaintiff was taking a shower in her room when she heard a knock on her door. Soon thereafter, another patient of Defendant CMHA d/b/a

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Atrium Health Behavioral Health-Davidson, entered the bathroom where Plaintiff was showering.

12. This patient, a large, African-American male, asked Plaintiff if she wanted to have sex. Plaintiff was naked, heavily medicated, and afraid for her safety. The male patient then proceeded to forcibly have sex with Plaintiff against her will and without her consent.

Defendant filed a Motion to Dismiss Plaintiff's Amended Complaint, and, on 10 March 2022, the Mecklenburg County Superior Court held a hearing on Defendant's Motion. The trial court denied Defendant's Motion and "granted Plaintiff leave to amend to 'assert a foreseeability nexus between what was known to Defendant and the actions on the part of the man who allegedly assaulted Plaintiff.'"

On 11 April 2022, Plaintiff filed her Second Amended Complaint alleging Defendant "knew or should have known that it was reasonably foreseeable that the male patient perpetrator had violent propensities that could pose a threat of harm to other in-patients in its facility, including a threat of harm to Plaintiff." Defendant denied Plaintiff's allegations in its Answer.

On 6 May 2022, the court entered the parties' Consent Discovery and Scheduling Order. The Order required the parties to have all discovery completed thirty days prior to trial. The trial scheduling conference was held on 12 December 2022 and trial was peremptorily set for 28 August 2023.

Plaintiff served her Second Set of Interrogatories on 10 April 2023. Plaintiff did not request any information or records pertaining to the identification of the male

patient who had assaulted Plaintiff. On 8 June 2023, Defendant served its Responses. Defendant filed a Motion for Summary Judgment on 13 June 2023 alleging “Plaintiff has failed to establish the essential elements of a medical malpractice claim including the breach of the standard of care causing any compensable injury to Plaintiff.” On 13 July 2023, the Honorable Lisa C. Bell was designated as the assigned judge on the case. The hearing on Defendant’s Motion for Summary Judgment was calendared for 31 July 2023, but it was continued to 7 August 2023.

On 2 August 2023, Plaintiff filed a Motion to Compel seeking to compel Defendant to provide the identity of the male patient along with any records related to his commitment. This was filed after the discovery period expired and after Defendant filed its Motion for Summary Judgment.

At the summary judgment hearing, the court granted Defendant’s Motion. The court found no genuine issues of material fact exist because Plaintiff had failed to prove the alleged criminal act of a third party was foreseeable by Defendant. Specially, the court found that Plaintiff failed to present “any evidence that the male patient was violent, had a criminal record, or posed any threat to Plaintiff whatsoever.” The court stated that Plaintiff was “on notice since at least January 2021 that Defendant objected to identifying the male patient,” and Plaintiff’s delay in filing its Motion to Compel “is without good cause or justification.”

On 6 September 2023, Plaintiff filed a Notice of Appeal from the Summary

Judgment Order entered 17 August 2023 by the Honorable Lisa C. Bell. Plaintiff timely appeals.

II. Analysis

Plaintiff contends the trial court erred by granting Defendant's Motion for Summary Judgment. Specifically, Plaintiff contends genuine issues of material fact exist of whether the sexual assault incident that occurred on 3 January 2018 was foreseeable by Defendant.

We review a trial court's ruling on summary judgment *de novo*. *General Fidelity Insurance Company v. WFT, Inc.*, 269 N.C. App. 181, 185, 837 S.E.2d 551, 556 (2020). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2023). "A party moving for summary judgment may prevail if it meets the burden (1) of proving an essential element of the opposing party's claim is nonexistent, or (2) of showing through discovery that the opposing party cannot produce evidence to support an essential element of his or her claim." *Lowe v. Bradford*, 305 N.C. 366, 369, 289 S.E.2d 363, 366 (1982).

"Both before the trial court and on appeal, the evidence must be viewed in the light most favorable to the non-moving party and all inferences from that evidence must be drawn against the moving party and in favor of the non-moving party." *White v. Consol. Planning, Inc.*, 166 N.C. App. 283, 296, 603 S.E.2d 147, 157 (2004). A trial

court's decision should be affirmed on appeal "if there is *any* ground to support the decision." *Nifong v. C.C. Mangum, Inc.*, 121 N.C. App. 767, 768, 468 S.E.2d 463, 465, *aff'd*, 344 N.C. 730, 477 S.E.2d 150 (1996) (emphasis added).

Under North Carolina law, to prevail on a negligence claim, a "plaintiff must show that: (1) the defendant failed to exercise due care in the performance of some legal duty owed to the plaintiff under the circumstances; and (2) the negligent breach of such duty was the proximate cause of the injury." *Cedarbrook Residential Ctr., Inc. v. N.C. Dep't. of Health and Hum. Serv.'s*, 383 N.C. 31, 61, 881 S.E.2d 558, 580 (2022) (cleaned up) (quoting *Bolkhir v. N.C. State Univ.*, 321 N.C. 706, 709, 365 S.E.2d 898, 900 (1988)).

We recognize a defendant's conduct or lack thereof may give rise to a negligence claim. *See Hairston v. Alexander Tank & Equip. Co.*, 310 N.C. 227, 234, 311 S.E.2d 559, 565 (1984). However, for claims seeking to hold a defendant liable for criminal actions of a third party, the requirements for liability are generally stringent and narrow. *See King v. Durham County Mental Health Authority*, 113 N.C. App. 341, 346, 439 S.E.2d 771, 774 (1994).

In general, there "is no duty to protect others against harm from third persons." *King*, 113 N.C. App. at 345, 439 S.E.2d at 774 (quoting W. Page Keeton, et al., *Prosser and Keeton on the Law of Torts* § 56, at 385 (5th ed. 1984)). However, there is an exception to this rule if there is a special relationship between the parties. *Id.* When a special relationship exists, "there is a duty upon the actor to control the

third person's conduct, and to guard other persons against his dangerous propensities." *Id.* at 346, 439 S.E.2d at 774 (citations and internal quotations omitted).

Our state has recognized a special relationship existing in a variety of scenarios including: (1) parent-child; (2) master-servant; (3) landowner-licensee; (4) custodian-prisoner; and, (5) institution-involuntarily committed mental patient. *Id.* A special relationship exists, and liability may be imposed, when the defendant has "(1) the ability to control the person and (2) knowledge of the person's propensity for violence." *Id.* (citation and internal quotations omitted); *see also Stein v. Asheville City Bd. Of Educ.*, 360 N.C. 321, 330–32, 626 S.E.2d 263, 269–70 (2006).

If either element is not met, a defendant cannot not be held liable for the criminal acts of a third party. *See Stein*, 360 N.C. at 332, 626 S.E.2d at 270 (holding a shooting as "regrettable, but ultimately unforeseeable" because the plaintiff "offer[ed] no basis for believing defendant [school] had the ability or the opportunity to control J.B. and C.N. during the attack on Stein"); *Moore v. Crumpton*, 306 N.C. 618, 627, 295 S.E.2d 436, 441–43 (1982) (upholding summary judgment for parents of a child who raped the plaintiff, because the parents had "no recent information to indicate that another assault might occur" and because neither parent had the ability to control their seventeen-year-old child at the time of the rape); *and Pangburn v. Saad*, 73 N.C. App. 336, 348, 326 S.E.2d 365, 373 (1985) (reversing a trial court's dismissal of a plaintiff's Rule 12(b)(6) motion where a hospital had control over an

involuntary commitment patient and knew of the patient's dangerous propensities yet released him anyway).

A. Defendant's Control

Our Supreme Court has recognized a distinction between a facility's control over an involuntary commitment patient and a voluntary commitment patient, pointing to two different cases from this Court. *Stein*, 360 N.C. at 330 n.6, 626 S.E.2d at 269 n.6. Compare *Pangburn*, 73 N.C. App. at 337-39, 347-48, 326 S.E.2d at 366-67, 372-73 (holding the defendant had control over an *involuntary* commitment patient who was wrongfully released from the hospital and subsequently stabbed a family member); *with King*, 113 N.C. App. at 346-47, 439 S.E.2d at 775 (holding a defendant did not have control over a *voluntary* commitment patient who left the mental health facility and engaged in a shooting).

Here, we acknowledge Plaintiff was involuntarily committed to Defendant's facility, and she was allegedly sexually assaulted by a patient in the same facility. The record is unclear whether the patient who allegedly sexually assaulted Plaintiff was also involuntarily committed. However, without conceding Plaintiff sufficiently proved Defendant had the ability to control the third party, Defendant nonetheless does not dispute this element.

We turn our attention to the second prong of the analysis, which is whether Defendant had knowledge of the patient's propensity for violence at the time the patient sexually assaulted Plaintiff. This issue is dispositive.

B. Defendant's Knowledge

“A ‘hospital, much like the proprietor of any public facility, owes a duty to its invitees to protect the patient against foreseeable assaults by another patient.’” *Thornton v. F.J. Cherry Hosp.*, 183 N.C. App. 177, 182, 644 S.E.2d 369, 374 (2007) (quoting *Sumblin v. Craven County Hospital Corp.*, 86 N.C. App. 358, 361, 357 S.E.2d 376, 378–79 (1987)). To determine the question of foreseeability, the plaintiff is required to prove “in the exercise of reasonable care, the defendant might have foreseen some injury would result from his act or omission, or that consequences of a generally injurious nature might have been expected.” *Hart v. Curry*, 238 N.C. 448, 449, 78 S.E.2d 170, 170 (1953) (citations and internal quotations omitted).

A hospital has a heightened duty “to warn patients of hidden unsafe conditions” and “to discover unsafe conditions by reasonable inspection and supervision.” *Thornton*, 183 N.C. App. at 183, 644 S.E.2d at 374. However, “[t]hese duties are limited to unsafe conditions of which the hospital has *notice*.” *Id.* (emphasis added). “It is only when the dangerous condition is known or should have been known to a hospital that recovery is permitted.” *Id.* Therefore, for an incident to be considered foreseeable to a hospital, the plaintiff must prove the hospital *knew* or *should have known* about the dangerous condition. *Id.*

This Court has previously held that an assault committed by a patient against an involuntary commitment patient was unforeseeable because the defendant was not on notice of the unsafe condition. *Id.* at 179–80, 644 S.E.2d at 372. In *Thornton*,

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an injured plaintiff brought a negligence action in the Industrial Commission against F.J. Cherry Hospital and the North Carolina Department of Health and Human Services. *Id.* The plaintiff claimed the hospital staff “deviated from the standard of medical care for his treatment and their deviation proximately caused his injury.” *Id.* The Deputy Commissioner denied the plaintiff’s claim, and the plaintiff appealed to Full Commission, which affirmed the decision of the Deputy Commissioner. *Id.* The plaintiff then appealed to this Court. *Id.*

On appeal, in addition to challenging several conclusions of law, the plaintiff argued the Industrial Commission erred when it concluded he failed to prove the hospital had notice of the alleged threats. *Id.* at 181–82, 644 S.E.2d at 373. Specifically, the plaintiff claimed he gave the hospital sufficient notice because he informed it he was being threatened by other patients. *Id.*

This Court recognized a hospital has a duty to warn patients of unsafe conditions but maintained that “[i]t is only when the dangerous condition is known or should have been known to a hospital that recovery is permitted.” *Id.* at 183, 644 S.E.2d at 374. The plaintiff failed to present any evidence the hospital or its staff received notice of the alleged threats, and although the plaintiff testified at trial several people threatened him and that he told the hospital staff about these threats, he “could not identify any source or person making the threats.” *Id.* A hospital nurse and nurse manager testified and stated that no threats were reported by the plaintiff

and “nothing showed the hospital received any notice of the threats to the plaintiff.” *Id.*

This Court affirmed the Industrial Commission’s order and held that the plaintiff “failed to prove he was threatened and presented no competent evidence to show any particular patients had threatened him, or that the hospital received notice of these alleged threats.” *Id.* at 184, 644 S.E.2d at 374.

Here, the trial court granted Defendant’s Motion for Summary Judgment because Plaintiff failed to present any evidence the incident was foreseeable by Defendant. The trial court specifically stated Plaintiff had failed to forecast any evidence to prove that the hospital knew the male patient was “violent, had a criminal record, or posed any threat to Plaintiff whatsoever.” Similar to the facts of *Thornton*, here, Plaintiff did not present any evidence to the court to show that Defendant had knowledge or was on notice of the patient’s violent propensities. There were no medical records, or any other evidence, presented to the court to prove that the hospital knew or should have known about the danger the third party posed.

We do note, however, even if Plaintiff would have offered medical records to the court, Plaintiff would need to prove that the medical records were sufficient to put Defendant on notice of the patient’s violent propensities. *See Burns v. Forsyth Co. Hospital Authority*, 81 N.C. App. 556, 564, 344 S.E.2d 839, 845–46 (1986) (holding the plaintiffs did not meet their burden in proving the trial court’s decision to exclude certain medical records was erroneous). The Court in *Burns* stated, “plaintiffs [did]

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not provide this Court with any medical definition of the allegedly ‘major mental defect,’ [did] not provide other medical information . . . to assess the probable prejudicial effect of the excluded Code Sheet, nor indicate *when* . . . this information came within [the] defendant’s knowledge, either actually or constructively.” *Id.*

Even more extreme than the facts in *Burns*, here, Plaintiff did not present any medical information to the trial court to prove that Defendant had knowledge, much less explain to the trial court or this Court how certain medical records were sufficient to put Defendant on notice of the patient’s dangerous condition.

Because Plaintiff did not present any evidence to the court to prove that Defendant knew or should have known of the patient’s violent propensities, Plaintiff did not satisfy the element of proximate cause in her negligence action. Therefore, we affirm the trial court’s decision to grant Defendant’s Motion for Summary Judgment.

III. Conclusion

We hold that the trial court did not err in granting Defendant’s Motion for Summary Judgment.

AFFIRMED.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).