Circuit Court for Frederick County
Case No. C-10-CV-18-000634

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1230

September Term, 2019

AE SUK KO, ET AL.

v.

ANNA PRAYER
COUNSELING, INC., ET AL.

Leahy,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

Opinion by Shaw Geter, J.

Filed: November 23, 2020

This is an appeal from a judgment by the Circuit Court for Frederick County, in which the court granted summary judgment in favor of appellees. Appellant, Ae Suk Ko, individually, and as personal representative of the Estate of Chung Hwan Park, her late husband's estate, filed a negligence claim against appellees, Seok Ho Moon, Kyungsook Lee, and Anna Prayer Counseling, Inc. Appellant alleged appellees had a duty to protect her and her husband from a guest who fatally assaulted Park, and injured Ko, at one of its facilities. Appellant timely filed this appeal and presents two questions, which we have consolidated:[1]

1. Did the circuit court err in granting summary judgment?

For the reasons discussed below, we affirm.

BACKGROUND

In July 2015, appellant and her late husband moved to Frederick, Maryland to work for appellees at Anna Prayer, a Korean non-denominational Christian church facility where church groups are invited to hold retreats and to conduct worship services. The facility was operated by Rev. Seok Ho Moon, who also oversaw several other churches in the United States. Appellant and her husband initially worked at one of Rev. Moon's churches in Flushing, New York, and were asked by Moon to relocate to the Frederick location. Appellant worked in the kitchen as a cook and her husband worked as a landscaper. Both

[1] Appellant presents the following questions:

1. Did the circuit court err by finding that Defendants did not owe a duty to Plaintiffs and there was no foreseeable harm?
2. Did the circuit court err by finding that there was no foreseeable risk?

reported to Pastor E Sang Man, who managed Anna Prayer on Rev. Seok Ho Moon's behalf.[2] Appellant provided differing accounts of her earnings while at Anna Prayer. According to appellant, "[w]hen [she] came to the U.S. [she] was sponsored by [appellee] Moon's organization, Anna Prayer, for a green card and [she] worked for no pay." She also stated that they were employees of Flushing Church and "Pastor Moon [gave her and her husband] money but [they] never received anything from working at Anna Retreat."

Song Su Kim was brought to Anna Prayer by his mother in July, 2015 to stay at the retreat.[3] According to appellant, Kim's mother expressed to her that she wanted her son to stay for about a month, that she was concerned for him because she did not know if "the devil has got into him," "he hears voices and he fears things," and "something is mentally wrong with him." Kim's mother also stated that he had been physically abusive to her. Pastor Kyungsook Lee, a retired pastor, was present when Kim's mother told appellant that Kim had physically abused her. Appellant contacted Pastor E Sang Man about the request and expressed her concern: "[Kim] looks scary, he smokes, . . . we shouldn't accept him to

[2] Appellant named two individuals as having authority to determine who was permitted to stay at Anna Prayer. In her complaint, appellant named Kyungsook Lee as a defendant, and indicated that he was "a Pastor for [Anna Prayer] at the time of the incident" and had been "running [Anna Prayer] for the past 33 years and at the time of the incident he was living at [Anna Prayer]." Appellant also referenced Kyungsook Lee in her complaint, as the individual whom she told "not to admit Mr. Kim to [Anna Prayer]." However, in her deposition, Appellant stated that Kyungsook Lee resided at Anna Prayer at the time of the incident, but was retired and that "E Sang Man is the person you have to go talk to and he's the one that decides whether a person or a group can stay there or not."

[3] The exact date of Kim's arrival to Anna Prayer is unclear. According to appellant, Kim stayed at Anna Prayer for several days prior to the incident.

our establishment." Appellant also informed Pastor E Sang Man that Kim's mother stated that Kim had been physically abusive towards her. Pastor E Sang Man spoke to Kim and his mother and agreed that he could stay at the facility. Absent from the record is any evidence that Anna Prayer received any payment for Kim's stay.[4] While residing there, Kim did not have any verbal incidents or altercations with others. On July 25, police arrived at the facility in response to a call placed by Kim, telling them that he did not like the food and the weather was hot. The officers soon left without further action. Appellant stated that she told Pastor E Sang Man about the incident and that she was afraid of Kim.

The next evening, appellant and Park were attending a prayer service, when Kim, who arrived late, sat next to them. After a few minutes, Kim began stabbing Park. Appellant attempted to defend herself and Park by using a chair as a shield, but he was stabbed multiple times and she was also stabbed. Park died from the injuries he sustained. Kim was later charged and found guilty of the first-degree murder of Park and attempted first-degree murder of appellant and was found "not criminally responsible."

On July 24, 2018, appellant filed a civil complaint in the Circuit Court for Frederick County, alleging appellees failed to provide appellant with proper safety measures on the premises, failed to supervise guests, and failed to take proper steps to ensure that invitees or employees of the retreat did not present any danger to others. Appellees filed a motion for summary judgment, arguing the attack on appellant and her husband was not foreseeable. Following the arguments of counsel at a motions hearing on August 7, 2017,

[4] At oral argument, Appellants' counsel asserted that Anna Prayer was paid a daily rate for Kim's stay at the retreat.

the circuit court granted the motion for summary judgment, holding that Anna Prayer had no legal duty to control the actions of a third-party, nor was it foreseeable that the third party, Kim, would violently attack Park and Ko.

STANDARD OF REVIEW

"[W]hether a trial court's grant of summary judgment [is] proper is a question of law subject to *de novo* review on appeal." *Castruccio v. Estate of Castruccio*, 456 Md. 1, 16 (2017). "We review the record in the light most favorable to the non-moving party and construe any reasonable inferences which may be drawn from the facts against the movant." *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 14 (2004). "'On appeal from an order entering summary judgment, we review only the legal grounds relied upon by the trial court in granting summary judgment.'" *Gourdine v. Crews*, 177 Md. App. 471, 478 (2007), *aff'd*, 405 Md. 722 (2008) (quoting *Cochran v. Norkunas*, 398 Md. 1, 12 (2007)).

DISCUSSION

I. The circuit court did not err in granting summary judgment.

To establish negligence, "a plaintiff must prove that the defendant owed him . . . a duty of care; that the duty was breached; that the breach was a proximate cause of the harm suffered; and damages." *Cash & Carry Am., Inc. v. Roof Sols., Inc.*, 223 Md. App. 451, 461 (2015) (internal quotation omitted). "Absent a duty owed to the plaintiff . . . there can be no liability in negligence and the defendant is entitled to judgment as a matter of law." *Rhaney v. Univ. Of Maryland E. Shore*, 388 Md. 585, 597 (2005). Property owners have a "duty to 'use reasonable and ordinary care to keep their premises safe for [business invitees] and to protect the invitee from injury caused by an unreasonable risk which the

invitee, by exercising ordinary care for the invitee's own safety will not discover.'" *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 317 (2019) (quoting *Deboy v. City of Crisfield*, 167 Md. App. 548, 555 (2006)). "Business invitees are visitors invited to enter the premises in connection with some business dealings with the possessor." *Rhaney*, 388 Md. at 602 (citations omitted). The principal determinant of duty is foreseeability. *Doe v. Pharmacia & Upjohn Co.*, 388 Md. 407, 416 (2005) (quoting *Jacques v. First Nat'l Bank*, 307 Md. 527, 535 (1986)).

Appellant argues "[appellees] were armed with knowledge that the [t]hird [p]arty had violent tendencies towards his mother, and displayed behavior that [appellant] felt was indicative of being possessed or mentally disturbed." Appellant contends it was foreseeable that Kim would be violent again, that appellant and her husband were foreseeable victims, and appellees had a duty to protect them. Conversely, appellees assert they had no knowledge of Kim's purported propensity for violence, nor could they have reasonably foreseen that Kim would commit an assault.

Appellees argue the Court of Appeals' decision in *Rhaney* is dispositive of this issue. Anthony Rhaney, a student at the University of Maryland Eastern Shore, (UMES) brought a negligence action against the university after he was assaulted by his assigned roommate in a dormitory. *Rhaney*, 388 Md. at 588–89. The roommate, Clark, had previously been suspended by UMES for his involvement in two physical altercations with other students. *Id.* at 589. He completed a counseling requirement and was readmitted. *Id.* A few weeks after the beginning of the semester, the roommates had an argument in their dorm room and Clark assaulted Rhaney. *Id.*

The Court of Appeals first explained that "[a] landlord's duty to a tenant within the common areas generally is one of reasonable care to protect against known, or reasonably foreseeable risks." *Id.* at 598. The Court further explained "a landlord has a duty to take reasonable measures, in view of the existing circumstances, to eliminate those conditions contributing to the criminal activity." *Id.* 599–600 (internal quotations omitted) (emphasis removed). The Court stated that such conditions are "physical ones . . . not the tortious acts themselves or the tortfeasors." *Id.* at 600. The Court then concluded that its analysis is "consistent with the general rule that there is no duty to control the tortious acts of a third person." *Id.* The Court ultimately held that the university, as appellant's landlord, owed no duty because it did not have knowledge of Clark's propensity for violence or reason to believe "Clark was more than a one-time youthful offender of the student disciplinary system." *Id.* at 600–01.

The Court then reiterated the general rule that a business owner has "a duty to use reasonable and ordinary care to keep the premises safe and to protect the invitee from injury caused by an unreasonable risk." *Id.* at 601. The Court stated that even if a business owner/invitee relationship existed with UMES, "[Rhaney] would not prevail . . . There being no pattern of sufficient prior violence on Clark's part in circumstances similar to what ultimately happened to Rhaney, UMES could not be said to be responsible for reasonably foreseeing what happened, and therefore, to have a duty to forestall its occurrence or stand liable for the consequences." *Id.* at 603.

Likewise, we conclude in the case at bar, that Kim's actions were not reasonably foreseeable. In our review of the record, we determine that both appellant and Kim were

business invitees and that neither had a landlord/tenant relationship with Anna Prayer. We note there was no evidence of Kim's purported propensity for violence other than a hearsay statement offered by appellant that Kim's mother told her that he had been "abusive physically towards her." At oral argument, appellant argued it was an excited utterance, an exception to the hearsay rule. However, there is no basis in the record to support this assertion or the otherwise admissibility of the statement. We note that even if the statement was admissible, no details about the altercations between them were offered, nor any information regarding when such incidents occurred. During his stay at the retreat, Kim had no verbal incidents or physical altercations with other residents or staff. His call to police the day before the stabbing was not because of any allegations of threatening behavior or conduct. Comparing the facts and the holding in *Rhaney*, where the Court of Appeals found that UMES did not have a duty where there was a prior assault, and the facts here, where there was no prior assault or threat of assault, we conclude that appellees had no duty under a business owner/invitee theory as Kim's actions were not reasonably foreseeable.

We note that there may be duty to protect another from the criminal acts of a third person where there is a special relationship.[5] *Scott v. Watson*, 278 Md. 160, 166 (1976). The special relationship exception requires: (a) a special relationship between the actor and

[5] At oral argument, appellants' counsel argued that Ko and Park had a special relationship with Anna Prayer because: (1) Anna Prayer brought them from South Korea to work in the U.S. to obtain a green card, "practically for free" and "often without pay;" (2) appellants were physically and financially unable to leave Anna Prayer's premises and had no transportation; and (3) appellants made no managerial decisions. However, there was no evidence that appellants were unable to leave Anna Prayer's premises.

the third person, which imposes a duty upon the actor to control the third person's conduct; or (b) a special relationship between the actor and the person injured, which creates a duty on the actor to protect the third party. *Warr v. JMGM Group, LLC*, 433 Md. 170, 184 (2013). A special relationship may be established: "(1) by statute or rule; (2) by contractual or other private relationship; or (3) indirectly or impliedly by virtue of the relationship between the tortfeasor and a third party." *Remsburg v. Montgomery*, 376 Md. 568, 583–84 (2003) (citation omitted).

Section 314A of the Restatement (Second) of Torts, "Special Relations Giving Rise to a Duty to Aid or Protect," explicitly adopted in Maryland, provides:

> (1) [a] common carrier is under a duty to its passengers to take reasonable action
>
> (a) to protect them against unreasonable risk of physical harm....
>
> (2) An innkeeper is under a similar duty to his guests.
>
> (3) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation.
>
> (4) One who is required by law to take or who voluntarily takes the custody of another under circumstance[s] such as to deprive the other of his normal opportunities for protection is under a similar duty to the other.

Remsburg v. Montgomery, 376 Md. 568, 593 (2003) (citations omitted). The *Remsburg* Court expressed that the "list was not intended to provide an exhaustive or inclusive description of the relationships between two parties such that it might give rise to a duty. . . the type of relationships where we have found such a duty require an element of dependence." *Id.* at 594. Courts "examine whether such a relationship exists on a case-by-case basis, looking especially for the existence of conduct by one party that *ordinarily induces reliance* by the injured party upon the acting party." *Id.* at 599 (emphasis added). In *Remsburg*, the Court found no special relationship existed between the leader of a

hunting party and a property owner where the parties had a history of interactions regarding hunting rights on the property, the property owner permitted the leader of the party to hunt on their land, and a hunting party member accidentally shot and injured the property owner. *Id.* at 574–76, 594.

Section 319 of the Restatement (Second) of Torts, "Duty of Those in Charge of Person Having Dangerous Propensities," expressly adopted by the Court of Appeals in *Lamb v. Hopkins*, provides:

> One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.

303 Md. 236, 245 (1985). The Court explained that "[t]he comments and illustrations accompanying § 319 suggest that an actor typically takes charge of a third person by placing him in some form of custody." *Id.* at 246. In *Lamb*, the Court of Appeals stated that:

> [t]he operative words of this section, such as "takes charge" and "control," are obviously vague, and the Restatement makes no formal attempt to define them. The comment to §§ 319, however, indicates that the rule stated in that section applies to two situations. First, §§ 319 applies to those situations where the actor has charge of one or more of a class of persons to whom the tendency to act injuriously is normal. Second, §§ 319 applies to those situations where the actor has charge of a third person who does not belong to such a class but who has a peculiar tendency so to act of which the actor from personal experience or otherwise knows or should know.
>
> Illustrations appended to §§ 319, which concern the negligent release of an infectious patient from a private hospital for contagious diseases and the escape of a homicidal maniac patient through the negligence of guards employed by a private sanitarium for the insane, provide further guidance

> regarding the scope of §§ 319. Because there are degrees of being "in charge" and having "control," these illustrations are obviously not by way of limitation. *See McIntosh v. Milano,* 168 N.J.Super. 466, 483 n. 11 (1979). These illustrations suggest, however, that *§§ 319 has peculiar application to custodial situations.* See Prosser and Keeton, supra, §§ 56 & n. 16, at 383 (indicating that the relationships discussed in §§ 319 "are custodial by nature").

303 Md. at 243–44 (emphasis added).

Here, the trial court found no "special relationship" existed. We agree that the record does not support such a finding. In its opinion, the court stated:

> There was no knowledge from which the Defendants could have known that Mr. Kim would cause bodily harm. More importantly, there was no evidence that Rev. Moon, nor the prayer center "took charge" of him. He was simply allowed to stay there at the request of his mother. There is no evidence that the Defendants recognized a threat, affirmatively agreed to protect others from that threat, and that others relied on this protection . . . No facts were presented to establish any sufficient pattern of behavior that would put the Defendants on notice of the potential for a violent attack. Mr. Kim had no criminal history or history of issues at Anna Prayer. There was no knowledge on the part of the Plaintiffs or the Defendants that Mr. Kim had a history or pattern of violent behavior other than his mother's representation that he had been physically violent with her. There was no description of that harm, however, nor its frequency. Ms. Ko testified that she was afraid of him because of his size, the appearance of his eyes, and that he smoked. She testified that Kim was not violent prior to the attack. There was no information known to any of the Defendants from which a fatal assault could have been foreseen.

Viewing this record, we hold that Kim was not under the control of Anna Prayer, nor did Anna Prayer induce appellants to rely on them for protection from Kim. In sum, no duty can be imposed under these circumstances and the court did not err in granting the motion for summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.