

2003

Larry S. Henshaw v. Pine Mountain Mutual Water Association, Lynn Coon, Luann Coon, and Eric Coon : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Henshaw v. Pine Mountain Mutual Water*, No. 20030990 (Utah Court of Appeals, 2003).
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IN THE UTAH COURT OF APPEALS

LARRY S. HENSHAW,

Plaintiff/Appellant,

vs.

District Court No. 990910185

Appellate Court No. 20030990CA

PINE MOUNTAIN MUTUAL WATER
ASSOCIATION, LYNN COON,
LUANN COON, and ERIC COON,

Defendants/Appellees.

BRIEF OF APPELLEES LYNN, LUANN AND ERIC COON

Appeal from the Third Judicial District Court,
Salt Lake County, State of Utah
Judge Ronald E. Nehring Presiding

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FILED
UTAH APPELLATE COURTS
JUL 01 2004

LIST OF PARTIES

All parties involved in this appeal are identified in the caption.

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JURISDICTION

The Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2a-3(2)(j).

STATEMENT OF THE ISSUE

Issue No. 1: Did the district court properly conclude that Appellees Lynn, Luann and Eric Coon (collectively referred to as “Coon Defendants”) owed no duty to Plaintiff to protect him from harm by a third party with whom they had no special relationship?

Standard of Review: An appellate court reviews a trial court’s grant of summary judgment for correctness, affording no special deference to the trial court’s legal conclusions. *Girbick v. Numed, Inc.*, 977 P.2d 1205 (Utah 1999). The reviewing court may affirm a grant of summary judgment on any ground available to the trial court, even if it is one not relied upon below. *See Higgins v. Salt Lake County*, 855 P.2d 231 (Utah 1993).

GOVERNING LAW

There are no determinative statutes or constitutional provisions at issue in this case.

STATEMENT OF THE CASE

A. *Nature of the Case, Course of Proceedings and Disposition Below.*

Appellant Larry Henshaw was injured when he was hit by a four-wheel all terrain vehicle (“ATV”) owned by Lynn and Luann Coon but driven without their knowledge by their son Eric’s adult friend, Dallan Walters. Henshaw filed suit against several

individuals and entities, including the Coon Defendants, claiming they were liable for his injuries. Following discovery, the Coon Defendants moved for summary judgment arguing they had no duty to protect Henshaw from Walters' wrongful conduct. The district court agreed and, after briefing and oral argument, entered summary judgment in the Coon Defendants' favor. Henshaw appeals that ruling.

B. *Statement of Facts.*

Lynn and Luann Coon are the parents of Eric Coon, who was nineteen years old at the time of the incident. (R. at 232, 433.) On May 29, 1999, Eric invited several friends to his grandmother's cabin. (R. at 233.) There is nothing in the record establishing Lynn or Luann knew alcohol would be present at the cabin or that Eric had past parties there involving alcohol. Eric did not bring any alcohol to the cabin. (R. at 431.)

Eric did not invite Dallan Walters to the party. However, he came with a friend of Eric's who had been invited. (R. at 233, 434, 585.) Walters was 18 years old and brought 18 cans of beer. (R. at 432.) From the time he arrived at about 6:30 p.m. until midnight, Walters consumed between 3-5 beers and a shot of liquor. (R. at 431-433.) The accident occurred at about 1:30 a.m. (*Id.*)

Lynn and Luann stored an ATV they owned in the basement of the cabin. (R. at 434.) Unbeknownst to Lynn and Luann, and without their permission, some of Eric's friends removed the ATV from the basement and rode it while it was still light. (R. at 434-35.) Once it grew dark, Eric specifically told his friends not to ride the ATV because the headlight was broken. (R. at 434-35.) Eric made sure before he went to sleep that the

ATV was parked and not being used. (R. at 435.) However, Walters snuck it out while Eric was asleep and, during his ride, hit Plaintiff. (R. at 233, 435.)

SUMMARY OF THE ARGUMENT

Henshaw was injured when Dallan Walters hit him while driving the ATV without permission in the dark without a headlight while drunk. Henshaw seeks to impose liability on the Coon Defendants arguing they were negligent in failing to prevent Walters from injuring him. The Coon Defendants did not have a duty to protect Henshaw from Walters. They did not cause the injury and none of them had a special relationship with either Henshaw or Walters sufficient to impose a duty. Even if they did, they were not the cause of Henshaw's injuries. Moreover, it was not reasonably foreseeable that Walters would negligently operate the ATV and cause harm to Henshaw. Therefore, summary judgment in favor of the Coon defendants was appropriate and should be affirmed.

ARGUMENT

I. THE COON DEFENDANTS OWED NO DUTY TO HENSHAW TO PROTECT HIM FROM HARM BY WALTERS

Henshaw alleged in his complaint that the Coon Defendants were negligent in failing to prevent Walters from injuring him. "In order to recover under a negligence claim, a plaintiff must establish that 'the defendant owed the plaintiff a duty'"

Drysdale v. Rogers, 869 P.2d 1, 2 (Utah Ct. App. 1994) (quoting *Lamarr v. Utah State Dep't of Transp.*, 828 P.2d 535, 537 (Utah App. 1992)). Absent a showing of duty, a

plaintiff cannot recover. *Id.* (citing *Rollins v. Petersen*, 813 P.2d 1156, 1159 (Utah 1991); *Lamarr*, 828 P.2d at 537-38).

The law in Utah is well-established that “a person has no affirmative duty to control the conduct of another, to protect another from harm, or to render aid to someone already injured through no act or fault of the person.” *Gilger v. Hernandez*, 200 UT 23, ¶ 15, 997 P.2d 305 (citing *Higgins v. Salt Lake County*, 855 P.2d 231, 235 (Utah 1993); *Beach v. University of Utah*, 726 P.2d 413, 415 (Utah 1986)). Under this general rule, Henshaw’s claims against the Coon Defendants necessarily fail as a matter of law for lack of duty without further analysis because the Coon Defendants did not injure Henshaw; Walters, who was 18 at the time, was the one who hit him. There is a narrow exception to the general rule where the person upon whom a duty is sought to be imposed has a “special relationship” with either the person causing the harm or the injured person. *Id.* at ¶ 15 (citing *Higgins*, 855 P.2d at 236; RESTATEMENT (SECOND) OF TORTS § 315 (1964)). “The ‘*essence*’ of a special relationship creating the duty to protect or aid another is ‘*dependency by one party upon the other* or mutual dependence between the parties.’” *Id.* (citing *Beach*, 726 P.2d at 416, RESTATEMENT § 314A cmt. b) (emphases added).

A. There Is No Special Relationship Requiring Lynn or Luann to Protect Henshaw From Walters.

Henshaw claims Lynn and Luann had a duty to protect him from Walters. The Utah Court of Appeals declined to find such a special relationship in *Drysdale v. Rogers*, 869 P.2d 1 (Utah Ct. App. 1994), under facts remarkably similar to those involved here. The plaintiff in *Drysdale* was a passenger in a car driven by the defendants' 19-year-old son. He was injured when the son, who had been drinking that night, hit a tree. *Id.* at 1-2. The plaintiff filed suit against the parents claiming they were negligent in leaving their son alone at home where alcohol was present, knowing he had previously used drugs and alcohol in direct disregard of their orders. *Id.* at 2. The parents filed a motion for summary judgment arguing they owed no duty of care to the plaintiff and, therefore, could not be held liable for his injuries. The trial court granted the motion and the plaintiff appealed. *Id.*

This Court affirmed. It explained, “[I]n determining the existence of the duty, we examine such factors as the identity and character of the actor, the victim, and the victimizer, the relationship of the actor to the victim and the victimizer, and the practical impact that finding a special relationship would have.” *Drysdale*, 869 P.2d at 3 (quoting *Higgins*, 855 P.2d at 237). It declined to find the parents had a special relationship with the plaintiff in that case because:

1. Their son was an adult when he injured the plaintiff;
2. Knowing of his past, they forbade their son to have any friends over while they were gone or to drink;
3. Imposition of a duty on parents to control an adult child was unprecedented;
4. The parents took no affirmative actions that led to the plaintiff's injuries;
5. The accident was not reasonably foreseeable.

Id. at 3-4.

The facts in this case are even more compelling against finding a special relationship than in *Drysdale*. Lynn and Luann's son, Eric, was, like the son in *Drysdale*, an adult at the time of the accident. Knowing of prior parties at their house involving alcohol, the parents in *Drysdale* specifically forbade their son from drinking while they were gone. Here, there is nothing in the record establishing Lynn or Luann knew about prior drinking at the cabin by Eric and his friends and Eric did not himself bring any alcohol to the cabin. The party in *Drysdale* took place at the parents' house. Here, the party took place at a cabin not even owned by Lynn or Luann. The tortfeasor in *Drysdale* was the parents' son. Here, it was not Lynn and Luann's son; it was Walters with whom Lynn and Luann had no relationship and no idea he would be at the cabin. They did not do anything affirmative to cause the accident. Moreover, it was not reasonably foreseeable that Walters would drive the ATV drunk in the dark without a functioning headlight, particularly where family rules dictated no one was to operate the ATV past dark, as evidenced by Eric's instructions to his friends. Finally, there are no facts in the

record establishing the very “‘*essence*’ of a special relationship creating the duty to protect or aid another” *Gilger v. Hernandez*, 200 UT 23 at ¶ 15 (citing *Beach*, 726 P.2d at 416, Restatement § 314A cmt. b) (emphases added). That is “*dependency by one party upon the other*” *Id.* There is nothing showing either Henshaw or Walters were dependent upon Lynn or Luann for protection.

Henshaw cites *White v. Pinney*, 108 P.2d 249, in support of his argument that Lynn and Luann had a duty, as owners of the ATV, to either fix the broken headlight or disable the ATV so it could not be driven. Henshaw fails, however, to explain how *White* applies. *White* is inapplicable here. It involved the doctrine of *res ipsa loquitur*. *Res ipsa* applies only:

when a thing which causes injury is shown to be under the exclusive control of the defendant, and the injury is such as in the ordinary course of things does not occur if the one having such control uses proper care the happening of the accident is evidence sufficient to justify or sustain an inference that defendant did not exercise due and proper care.

Id. at 251. Lynn and Luann did not have exclusive control of the ATV. Walters took it from the cabin without their knowledge and drove it negligently. It was that intervening act which caused the accident, not the broken headlight. Therefore, *res ipsa* does not apply to infer any negligence by Lynn or Luann.

Even if it did, Henshaw’s claims against them still fail. The Utah Supreme Court has ruled:

Res ipsa loquitur . . . has no bearing on the issue of causation, which must be separately and independently established . . . *Res ipsa loquitur* does not relieve plaintiff of [the obligation of proving causation]; rather, it permits him, in lieu of linking his injury to a specific act on defendant's part, to causally connect it with an agency or instrumentality, under the exclusive control of the defendant, functioning in a manner which, under the circumstances, would produce no injury absent [that defendant's] negligence.

Dalley v. Utah Valley Regional Medical Ctr., 791 P.2d 193, 196 (Utah 1990) (alterations in original) (footnote omitted). It explained:

A plaintiff may prove causation [through *res ipsa*] by showing "that the defendant was responsible for all reasonably probable causes to which the accident could be attributed."

Id. at 197. The undisputed material facts establish Walters was the cause of the accident. His decision to drive the ATV in the dark while drunk without a working headlight triggered the accident. As stated aptly by the district court, "It was not reasonably foreseeable that a guest at a party hosted by Eric Coon would negligently operate the ATV at night without a workable headlight." (R. at 829.) Therefore, Henshaw cannot prove causation even if *White* applied and summary judgment in Lynn and Luann's favor was still appropriate.

Henshaw mentions in passing but fails to establish that the rules of Pine Mountain Mutual Water Association ("PMMWA") may have imposed a duty on Lynn and Luann to fix or disable the ATV. The facts in the record prove the rules and regulations do not apply to Lynn and Luann. Lynn and Luann are not members of PMMWA. (R. at 233-324, 829.) They do not own property covered by PMMWA. (*Id.*) Therefore, they are not bound by PMMWA's rules and regulations. Consequently, the rules and regulations

cannot form the basis of a duty by Lynn or Luann.

Henshaw has failed to establish that Lynn or Luann owed any duty to protect him from harm by Walters. Therefore, there is no basis for imposition of liability against them and the Court should affirm summary judgment in their favor.

B. There Is No Special Relationship Requiring Eric to Protect Henshaw From Walters.

Henshaw claims Eric Coon had a duty to protect him from Walters because he was the host of the party Walters was attending. It is undisputed that Walters was not invited to the cabin. (R. at 233.) Therefore, he was not Eric's guest. Even if he were, the Utah Supreme Court expressly held in *Gilger* that "no special relationship exists between a host and a guest that imposes on a social host a duty either to control one guest or to protect another when one threatens to injure the other." *Gilger*, 2000 UT 23 at ¶ 17. The court's reasoning was sound:

Requiring a social host either to control a belligerent guest or to protect her guests from the threat of injury by another guest would impose a duty 'that is realistically incapable of performance' in the usual circumstances. For example, it is unrealistic to expect a social host to accurately anticipate when a guest poses a risk of serious injury to another guest.

* * * * *

Moreover, wholly apart from the question of whether the proposed duty is feasible, there remains the key point that a special relationship ordinarily is found only when there is an element of dependency of the one claiming the duty upon the one owing the duty that is created by the nature of the relationship between the parties. But there is nothing inherent in the host-guest relationship that makes a guest particularly dependent upon the host for protection when threatened by another guest . . . We therefore conclude that the host-guest relationship does not give rise to a special relationship imposing on a social host an affirmative duty either to

control or to protect her guests where it is foreseeable that one may injure another. *Gilger*, 2000 UT 23 at ¶¶ 17-18 (internal citations omitted).

The Utah Supreme Court has declared, “[W]e are loath to recognize a duty that is realistically incapable of performance or fundamentally at odds with the nature of the parties’ relationship.” *Higgins*, 855 P.2d at 237. It ruled in *Gilger* that imposing a duty on a host of a party to control his or her guests is “realistically incapable of performance....” *Gilger* 2000 UT 23 at ¶17. It is equally unrealistic in this case to assign Eric the responsibility of controlling Walters’ behavior. The plaintiff in *Gilger* was a guest at the party where there was drinking, making it more foreseeable that the defendant might come into contact and potentially harm him. Here, Henshaw was not a guest and there was no reason for Eric to foresee Walters would come into contact with Henshaw. Moreover, the plaintiff in *Gilger* was injured on the host’s property. Here, Henshaw was injured away from the cabin where the party occurred.

Moreover, the Utah Supreme Court ruled in *Gilger* that the focal point of imposing liability under a special relationship is whether the person injured or the person causing the injury is dependent on the party against whom the duty is sought to be imposed. There are no facts in the record establishing either Henshaw or Walters were dependent on Eric in any way. Therefore, there is no basis for imposing a duty on Eric to prevent Walters from harming Henshaw based solely on the fact Walters was Eric’s social guest.

Henshaw cites *Cruz v. Middlekauff Lincoln-Mercury, Inc.*, 909 P.2d 1252 (Utah 1996), as support for his argument that Eric had a duty to prevent Walters from using the

ATV. *Cruz* is inapplicable here. The plaintiff in *Cruz* was struck by a car stolen from the defendant's lot in which the defendant had left the keys. The plaintiff filed suit against the car lot alleging it was negligent in leaving the keys in the ignition. *Id.* at 1253. The Utah Supreme Court ruled:

[U]nder '*special*' or '*unusual*' circumstances, a duty may exist where a defendant should *reasonably anticipate* that its conduct will create an *unreasonably enhanced danger* to one in the position of the injured plaintiff. *If such danger is foreseeable*, then a duty arises to exercise reasonable care toward the safety of others.

Id. at 1255 (emphases added). The touchstone of *Cruz* is foreseeability.

There are no facts in the record that establish it was reasonably foreseeable that Walters would drive the ATV at a high rate of speed in the dark while drunk without a headlight. It defies common sense. Moreover, it is undisputed that Eric specifically told his friends not to ride the ATV after dark because the headlight was broken and he made sure before he went to sleep that the ATV was parked and not being used. It was not foreseeable under these facts that Walters would sneak it out without Eric's permission. Therefore, there is no basis for imposing liability on Eric for failure to protect Henshaw from Walters and the Court should affirm summary judgment in his favor.

II. JOINDER IN ARGUMENTS ASSERTED BY PINE MOUNTAIN WATER MUTUAL ASSOCIATION.

The Coon Defendants join in the arguments made by Pine Mountain Mutual Association in their brief, to the extent they apply to the Coon Defendants, and assert them as a basis for affirming summary judgment in their favor.

CONCLUSION

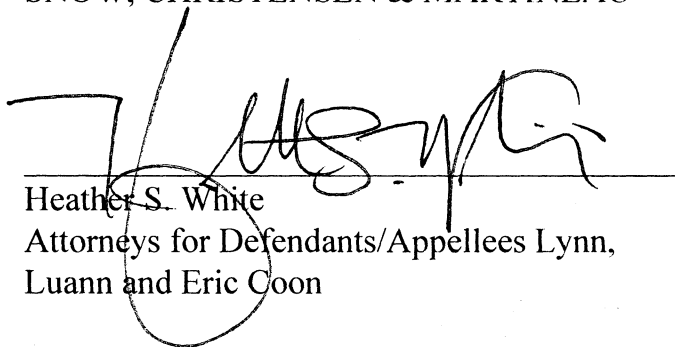
The district court properly concluded that the Coon Defendants owed no duty to Henshaw to protect him from harm by Walters. Therefore, there is no basis for the imposition of liability against the Coon Defendants and the Court should affirm the trial court's entry of summary judgment in their favor and award them their costs.

REQUEST FOR ORAL ARGUMENT

The Coon Defendants join in the request of Henshaw and Pine Mountain Water Mutual Association for oral argument.

DATED this 1ST day of July, 2004.

SNOW, CHRISTENSEN & MARTINEAU



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CERTIFICATE OF SERVICE

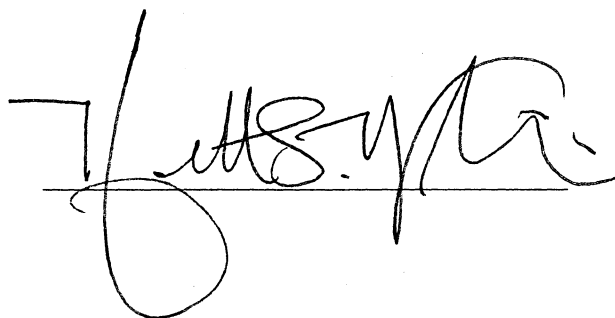
I hereby certify that I caused two true and correct copies of the foregoing **BRIEF**
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This 1ST day of July, 2004.

A handwritten signature in black ink, appearing to read "J. Henshaw", is written over a horizontal line.