

Mississippi



DUNBAR MONROE
ATTORNEYS AT LAW

No Duty Owed to Control Third-Party Assailants



David Dunbar



Chris Dunnells

In this negligence case*, the Mississippi trial court granted summary judgment in favor of the defendant, finding that, as a landowner who owned land near the scene of an assault, it did not owe any legal duty to the injured party. The Supreme Court of Mississippi affirmed the trial court's summary judgment because the landowner did not owe any legal duty to the Plaintiff.

FACTS AND PROCEDURAL HISTORY

In 2016, Plaintiff parked his vehicle at a food market and walked to a nearby lounge. Upon returning to his vehicle after patronizing the lounge, Plaintiff was shot and robbed in the parking lot of the food market. Plaintiff alleges that the assailant came from a vacant lot across the street from the food market, and Plaintiff pursued a claim for his serious injuries against the owner of the vacant lot, the lounge, and the food market.

Dunbar|Monroe, Mississippi law firm member of The Gavel, defended the owner of the vacant lot. Attorneys David Dunbar and Chris Dunnells of Dunbar|Monroe filed a motion for summary judgment, arguing the owner of the lot owed no legal duty to Plaintiff.

Plaintiff responded, arguing that Section 54 of the Restatement (Third) of Torts provides that landowners owe certain duties to persons off their premises. Also, Plaintiff filed a request for time to conduct discovery under Mississippi Rule of Civil Procedure 56(f).

The trial court granted Dunbar|Monroe's motion for summary judgment, finding that the owner of the vacant lot did not owe any legal duty to Plaintiff. The trial court found that the Defendant did not control the assailant and noted that this Court has not adopted Section 54 of the Restatement (Third) of 2 Torts; it then found Section 54 inconsistent with Mississippi law.

Plaintiff appealed to the Supreme Court of Mississippi, arguing that Section 54 should be adopted and applied to this case and that the trial court erred by failing to grant his request for discovery.

ANALYSIS

The Supreme Court of Mississippi reviews the trial court's grant of summary judgment de novo. **Crosthwait v. Southern Health Corp. of Houston, Inc.**, 94 So. 3d 1070, 1073 (Miss. 2012). 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[.]" Miss. R. Civ. P. 56(c). This Court reviews the evidence in the light most favorable to the opposing party. **Duckworth v. Warren**, 10 So. 3d 433, 436-37 (Miss. 2009).

Plaintiff in this case urges this Court to adopt Section 54 of the Restatement (Third) of Torts. However, Section 54 is not applicable to the facts of this case, and it is thus inappropriate for this Court to address adopting it; we consequently decline to address the trial court's finding that Section 54 is inconsistent with Mississippi law. Section 54 provides in pertinent part that

(a) The possessor of land has a duty of reasonable care for artificial conditions or conduct on the land that poses a risk of physical harm to persons or property not on the land.

(b) For natural conditions on land that pose a risk of physical harm to persons or property not on the land, the possessor of the land

(1) has a duty of reasonable care if the land is commercial; otherwise

(2) has a duty of reasonable care only if the possessor knows of the risk or if the risk is obvious.

Restatement (Third) of Torts § 54 (Am. Law Inst. 2012), Westlaw (database updated Oct.

2019). Section 54(a) applies to conduct by the possessor of the land, such as mining coal,

that may cause injury to persons or property off the land. Restatement (Third) of Torts § 54 cmt. b (Am. Law Inst. 2012),

Westlaw (database updated Oct. 2019). Section 54(a) applies to artificial conditions such as a "deteriorated awning"

that "overhang[s] a public walkway" and may therefore have reach outside the property. *Id.* Section 54(b) applies to

natural conditions such as a dead tree that may fall and land partially off the property. Restatement (Third) of Torts §

54 cmt. c (Am. Law Inst. 2012), Westlaw (database updated Oct. 2019). The duty of reasonable care is an affirmative

duty, in that "the land possessor has not acted in any way to create the risks posed by natural conditions." *Id.* None

of these situations apply to a third party who left a property and assaulted someone off that property. Section 54 is

therefore inapplicable.¹

Turning to Defendant's duty to Plaintiff, the central issue is whether the Defendant, an owner of a vacant lot had a duty to protect the Plaintiff, a party injured by a third-party assailant. The duty to control the conduct of others is a

narrow one. **Doe v. Hunter Oaks Apartments, L.P.**,¹ Plaintiff appears to argue that the "overgrown" natural condition

of the property provides a place for criminals to "lay in wait." But as far as any duty regarding natural conditions, the

landowner would only have the duty not to create the risks posed by those natural conditions. Having bushes that

people may be able to hide behind does not rise to the level of creating the risk—if we were to so hold, anyone with

a bush or a tree on their property may be liable for the actions of a third party hiding behind it. 4105 So. 3d 422, 426

(Miss. Ct. App. 2013). Generally, no such duty exists absent a special relationship between the actor and the third party

that imposes a duty for the actor to control the third party or absent a special relationship between the actor and the

injured party that gives the injured party a right to protection. *Id.* (quoting Restatement (Second) of Torts § 315 (Am.

Law Inst. 1965)).

No special relationship of control existed between the landowner and the assailant. The duty of control only exists for those who "take charge" of a third party. **Hunter Oaks**, 105 So. 3d at 426. To take charge of a third party, the actor

must have the ability to control that person's conduct. *Id.* Defendant did not in any manner take charge of the assailant.

No special relationship spawning a right to protection existed between Defendant and Plaintiff. The Court of Appeals

has noted that, generally, four special relationships may give a right to protection. *Id.* Those relationships are: "(1) a

common carrier and its passengers, (2) an innkeeper and his guests, (3) a landowner and his invitees, (4) a custodian .

. and a person who is deprived 'of his normal opportunities for protection.'" *Id.* (quoting Restatement (Second) of Torts

§ 314A (Am. Law Inst. 1965)). None of those relationships exist between the landowner-Defendant and the Plaintiff.

Consequently, no legal duty from Defendant to Plaintiff exists.² Duty is essential to a negligence claim. **Strantz v.**

Pinion, 652 So. 2d 738, 742 (Miss. 1995). The trial court did nothing in Plaintiff's request for time to conduct discovery

would change this; the trial court therefore did not err by failing to grant the request and did not err by finding that

Plaintiff failed to demonstrate a duty owed by Defendant-landowner.

CONCLUSION

Because no legal duty exists on the part of Defendant under the facts of this case, this Court affirms the trial court's grant of Defendant's motion for summary judgment.

AFFIRMED.

***the majority of this article is a copy of the Order of the Supreme Court of Mississippi with minor modifications to redact the party's names**