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LIMITED LIABILITY FOR CRIMINAL ASSAULTS IN PARK FACILITIES

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Organizations and communities considering providing areas in which physical activity can occur (such as designated multi-use trails for walking, jogging, biking or open playing fields) are often hesitant to do so because of security concerns related to their possible liability for criminal assaults occurring on the premises. For this particular issue and recreational injuries in general, the fear of liability is much worse than the reality. As indicated by the following description of reported court opinions, as a general rule of law, landowners are not held liable for the criminal acts of others. A very limited exception may exist where the landowner has clear notice that a particular type of criminal activity is foreseeable, usually involving a specific individual on the premises with known dangerous propensities. Under such limited circumstances, the landowner may have duty to provide security, particularly where the clear threat of criminal activity is limited to a rather circumscribed area, like a zoo or amusement park. Conversely, as illustrated by the cases described herein, a multi-use trail is not the type of facility which would typically impose a legal duty on the public or private landowner to provide security or police protection against criminal assaults.

NOTICE OF SIMILAR CRIMINAL ACTS?

In the case of *Ameijeras v. Metropolitan Dade County*, 534 So.2d 812 (Fla.App. 1988), plaintiff was shot and rendered paraplegic in a robbery attempt while jogging along a nature trail in defendant's park. Plaintiff alleged that the county had facilitated the criminal attack by allowing foliage along the trail to become overgrown. Specifically, plaintiff alleged the county knew that homosexual activity, illicit drug activity, and arson attempts had occurred in the park, but had failed to provide adequate protection. The county responded that the attack on plaintiff was not foreseeable. As a result, the county contended that it owed no legal duty to warn or protect plaintiff.

According to the court, a landowner owes a legal duty to those authorized to use the premises (i.e., invitees) to prevent criminal attacks that are foreseeable. Within this context, the court emphasized that the landowner's legal duty only arises when there is actual knowledge or notice, or should know, of *similar* criminal acts committed on the premises. Applying these principles to the facts of the case, the court found no evidence that the county actually knew or should have known of criminal activity in this particular public park. Specifically, the court noted that no violent crimes had been reported in the park during the two year period preceding the attack on plaintiff. As a result, the court found no evidence that the county had sufficient notice of similar criminal activity in the park to impose a duty to provide increased security. Having found the attack was not foreseeable, the court concluded that the county

could not be held liable for plaintiff's injuries.

OPEN AND OBVIOUS DANGER

Similarly, the court in *Davis v. City of Miami,* 568 So.2d 1301 (Fla.App. 1990) found that the city did not violate any legal duty when it failed to warn plaintiff about the danger of criminal assaults in a city park. In this particular instance, the assault on plaintiff occurred at night after the park was closed. According to the court, the city owed no duty to warn plaintiff of the risk of criminal assault in the park after it was closed. Specifically, the court found that the danger in question (i.e, risk of criminal assault) was an open and obvious danger in the "indisputably high-crime area in which the park was located." As noted by the court, any duty to warn would have required proof of dangerous condition which was not "open to ordinary observation."

NOTICE OF ASSAILANT'S DANGEROUS PROPENSITIES?

In contrast, the court in *Hill v. City of North Miami Beach,* 613 So.2d 1356 (Fla.App. 1993) found evidence that the attack on plaintiff was foreseeable. Plaintiff worked as a lifeguard at a pool in defendant's park. After work, plaintiff went to a recreational facility located on the park grounds to play ping pong. Plaintiff's jaw was broken after he was struck in the face by another player after requesting return of the ping pong paddle. In his complaint, plaintiff alleged that the city, as owner of the park, owed a legal duty to invitees to keep the park reasonably safe from known dangerous conditions (i.e., the individual who assaulted him). Specifically, plaintiff claimed the city officials were on notice that his assailant was dangerous and had "failed to adequately protect the safety of people in the park."

According to the court, the city, like a private landowner, had a legal duty to protect invitees on the premises from criminal attacks that were reasonably foreseeable. Further, the court found that foreseeability may be established by proving that a proprietor had actual knowledge or constructive knowledge (i.e., should have known) of a particular assailant's inclination toward violence.

Under the circumstances of this case, the city had argued that it did not have such notice of the assailant's dangerous propensities and, therefore, the assault on plaintiff was not foreseeable. The court, however, found evidence that two months before the incident plaintiff's assailant had struck a park employee who was trying to close the same recreation room. In response, the employee had called police to eject this individual. Further, there was evidence that the city's summer supervisor of the facility was warned by a staff member, as well as children in the park, to stay away from the assailant "because he caused trouble and got into fights."

As noted by the court, the city had a procedure for temporarily or permanently suspending individuals

from using the park in cases where there was serious misbehavior, e.g., bringing a firearm into the park. Accordingly, plaintiff argued that the city should have issued a suspension or taken other steps in response to his assailant's foreseeable dangerous propensities. Under the circumstances of this case, the court agreed that the evidence of the assailant's dangerous propensities were known to park personnel and his assaultive behavior was close in time and similar in type to his attack on plaintiff to require protective measures.

ABERRANT, UNEXPECTED BEHAVIOR

In the case of *Thornburg v. Crystal Lake Park District*, 525 N.E.2d 191 (Ill.App. 1988), plaintiff was injured after he was struck by a hockey stick while ice skating at defendant's recreation facility. In his complaint, plaintiff alleged that defendant had assumed a legal duty to supervise the skating area and was negligent in performing this duty to supervise. The park district contended that it owed no legal duty of care to protect plaintiff from the criminal acts of a third person.

Citing Section 315 of the *Restatement (Second) of Torts*, an authoritative legal treatise, the court found there is no legal duty to control the conduct of a third person so as to prevent him from causing harm to another, unless a special relationship existed between the park district and the plaintiff, or the park district and the assailant. As noted by the court, a special relationship would exist between landowner and an individual with known or foreseeable dangerous propensities.

Under the circumstances of this case, the court acknowledged that roughhousing by minors at the skating risk might be foreseeable. However, in the opinion of the court, it was not reasonably foreseeable that this particular minor would intentionally strike plaintiff with a hockey stick. Specifically, the court found that the assailant's conduct was "aberrant, unexpected, and not the type of behavior usually encountered at a skating rink." As a result, the court found that had no legal duty to protect against this type of misconduct. According to the court, to ensure that no skater had an opportunity to injury other skaters, the park district would have had to provide a supervisor for nearly every skater. In the opinion of the court, to impose such a legal burden on the park district to guard against this type of injury would be very cumbersome and unreasonable.

RANDOM, UNFORESEEABLE CRIMINAL ATTACK

In the case of *Sutter v. Audubon Park Commission*, 533 So.2d 1226 (La.App. 1988), plaintiff was shot by an unknown assailant in a restroom facility in defendant's public park. The issue before the court was whether defendant's legal duty to maintain the park in a reasonably safe condition included the duty to provide special protection against the type of criminal assault suffered by plaintiff. According to the court, the operator of a public park does not have the same legal duty with regard to third party

criminal conduct as does the proprietor of a business. Specifically, the court found that operator of a large open public park may owe a lesser legal duty to protect against criminal activity than would a proprietor of a business which is conducted in a confined space and from which the proprietor derives revenue. Conversely, the court noted that the legal duty for a park operator might well be analogous to that of an ordinary business proprietor in a confined space to which admission is charged, e.g., a zoo.

Plaintiff's security expert testified that an increase in overall crime statistics in the area, in combination with high park usage and a relatively low level of park security, increased the risk of crime to park patrons and, thus, made the attack on plaintiff reasonably foreseeable. In addition, plaintiff offered evidence of known homosexual activity at the park shelter where the attack occurred.

In response, a park security guard testified that only five violent crimes had occurred at the park in the preceding ten years. He further testified that all of these violent crimes has occurred at night and none had happened at the park shelter where plaintiff was assaulted. As a result, the court found no significant history of violent crime in or around the park shelter. Accordingly, the court concluded that there was no basis to conclude that this particular park shelter presented an unreasonable risk to park patrons.

In the opinion of the court, the mainly nighttime homosexual activity at the shelter did not make it predictable, or reasonably foreseeable, that a violent daytime assault would occur at this particular restroom facility. In so doing, the court rejected plaintiff's argument that defendant was negligent for failing to take one or more of the following precautions: employ a mounted foot patrol; place a permanent security guard in the area; tear down or relocate the shelter.

Under the circumstances of this case, the court found the risk of crime on the premises was not sufficiently foreseeable to require special protection. On the contrary, the court found that plaintiff's shooting was a random, unforeseeable criminal attack which could not have been easily prevented. The court, therefore, determined that defendant had no legal duty to anticipate the attack on plaintiff. Further, the court stated that it was irrelevant the park security was inadequate for other purposes. Plaintiff had offered evidence indicating that the park security staff was both untrained and unqualified to effectively deal with violent crime.

As a general rule of law, the court noted that there is no legal duty to protect others from the criminal activities of third persons. On the other hand, the court acknowledged that negligence liability may be imposed where the landowner had assumed a duty to provide security and special protection to certain individuals against such criminal misconduct. According to the court, it might have been proper to find that defendant had breached an assumed duty if the park had a security guard stationed in the vicinity of shelter at the time of the shooting, and the guard had acted negligently. However, under the

circumstances of this case, the court found defendant had not assumed a legal duty to protect plaintiff and other park patrons against this type of assault.

In addition, the court held that defendant had not assumed a legal duty to protect against the type of violent restroom assault experienced by plaintiff by merely having a park security patrol. To impose such a legal duty, the court found would make the operator of any public park with any type of security force a virtual insurer against random criminal attacks against park visitors. The court refused to impose such an unreasonable legal burden on defendant.

NO CONTROL, NO LIABILITY

In the case of *Wolsk v. State* (711 P.2d 1300 (Hawaii 1986), one individual was killed and another seriously injured following a brutal early morning attack by unknown assailants in a state park campground. Other campers in the area heard nothing and the criminals were never identified or apprehended. This particular state park had a history of violent crimes, but no security patrol. A notice to that effect was printed on the state park camping permit. The victims of the attack had not obtained a camping permit, although they knew one was required. Given the history of crime in the state park, plaintiffs had argued the State had a legal duty to warn or provide protection to campers. The State responded that it was not liable for the criminal conduct of unknown third persons. In addition, the State argued that, even if there was a security patrol, there was no assurance that the attack would not have occurred.

According to the court, the State, as owner of the state park, owed a legal duty to exercise reasonable care and "warn users about dangerous conditions which are not known or reasonably discoverable by persons of ordinary intelligence." On the other hand, the court noted that the State was an insurer of the safety of park users. Specifically, the court found that the State was not liable for conditions not under its control. Applying these principles to the facts of the case, the court found that the State was not liable to park users harmed by criminal conduct of unknown third persons on state property because the assailants were never under the State's control.

As a general rule of law, the court also noted that "the failure to provide police protection is not generally actionable." Accordingly, the court held the State had no legal duty to warn park patrons about criminal activity in the state park simply because this particular state park may have had a tendency to attract dangerous persons.

FAILURE TO PROVIDE POLICE PROTECTION

Similarly, in the case of *Casey v. Geiger*, 499 A.2d 606 (Pa. Super. 1985), the court found that a

municipality had no legal duty to protect a child from the intentional criminal acts of a third person. In this case, plaintiff, age 10, was walking through a public park after swimming lessons when she was raped. In her complaint, plaintiff alleged that the defendant borough was negligent in failing to provide adequate protection in the form of police or security to protect park users from such criminal acts. Specifically, plaintiff argued that the defendant knew, or should have known, that this type of crime was likely because another young girl had been raped in the park several months before the attack on plaintiff.

According to the court, landowner liability for the deliberate criminal acts of unknown third persons is limited to exceptional circumstances, rather than the general rule of law. As noted by the court, the criminal can be expected anywhere, any time, and has been a "risk of life for a long time." As characterized by the court, plaintiff was challenging the government's discretion to allocate police and other security resources, rather than articulating any specific legal duty. As described by the court, the duty to provide police protection is a public one which may not be claimed by an individual, unless a special relationship exists between the government and the individual. According to the court, a special relationship is generally found to exist only in cases in which an individual is exposed to a special danger and the authorities have under taken the responsibility to provide adequate protection to that particular individual. Within this context, the court found that a special relationship could not be based solely on plaintiff's legal status as an invitee in the public park. Further, the court stated that a special relationship would not arise simply because the borough may have been aware of a particularly dangerous area in the park and did nothing to prevent plaintiff's being assaulted.

In the opinion of the court, it was questionable how long any municipality could maintain its parks, playgrounds, and swimming pools if the law imposed a legal standard of care and supervision necessary to protect invitees against criminal acts. Due to the cost of increased insurance premiums and added police protection, the court opined that most municipalities would lack the necessary funds to provide recreational services. The end result, in the opinion of the court, would be that "the welfare of the public at large will suffer." Accordingly, the court refused to "stretch the concept of duty beyond its limits to reach an unreasonable and illogical result. While the court expressed its sympathy for plaintiff, who was "subjected to a horrible experience," the court found that it must "refrain from judicial innovation" regarding landowner liability for the deliberate criminal acts of unknown third persons