

GEORGIA ROCK CONCERT DANCER ASSAULTED BY INTOXICATED PATRON

LEVANGIE v. DUNN
356 S.E.2d 88 (Ga. App. 1987)
Court of Appeals of Georgia
March 19, 1987

In this case, plaintiff Michael Levangie, a 16-year-old eleventh grader, suffered a disabling spinal injury on January 12, 1985, while attending a rock concert and dance at a sports pavilion in Spalding County, Georgia owned by defendant Robert Dunn, doing business as The Math Field. The circumstances surrounding the incident were as follows:

During the first two nights of the concert, one or more fights erupted and on both nights there was evidence of alcoholic beverages being consumed on the premises even though many of the concert-goers were minors. Music was furnished by the rock group, Phylon, and as part of the dance ritual Levangie donned a wolf's head mask and simulated banging his head in an attempt to get the crowd involved in the show. Though Levangie was not a member of the band, he was a friend of the band and took it upon himself to perform as mentioned to heighten the frenzied atmosphere.

On the night in question, Levangie was joined by members of the audience in simulating group head-banging. While the ritual was in progress and during the playing of "Born to be Wild," Levangie was approached from behind by Mike York, nicknamed "York the Dork," who was obviously intoxicated from guzzling "Jack Daniel's" whiskey. York grabbed Levangie, supposedly to perform assisted simulated head-banging, and then shook him violently, allegedly causing a severe spinal injury.

Levangie sued Dunn as owner of the sports pavilion alleging "violations of certain ordinances and statutes as to public gatherings and failure to supervise activities." The trial court granted summary judgment to Dunn. Levangie appealed.

On appeal, the issue was whether the alleged negligence of Dunn was the proximate (i.e. legal) cause of Levangie's injuries. In his complaint, Levangie alleged that Dunn "negligently allowed the dance to be held on his premises without having a dance hall permit; that he allowed patrons to consume alcoholic beverages on the premises without having an alcoholic beverages consumption permit; that he inadequately supervised the safety and well-being of the patrons; and that those omissions were the proximate cause of Levangie's injuries." According to the appeals court, foreseeability would be a key factor in determining negligence liability.

Encompassed within the concept of negligence is an element of foreseeability, which need not be as to the specific injury suffered but as to some injury. However, the concept does not include foreseeability of remote

or unusual events. It is well settled that there can be no proximate cause where there has intervened between the act of the defendant and the injury to the plaintiff, an independent intervening act of someone other than the defendant, which was not foreseeable by defendant, and was not triggered by defendant's act, and which was sufficient of itself to cause the injury.

Applying these principles to the facts of the case, the appeals court found "nothing in the record to indicate Dunn was aware of York's presence or condition before the accident occurred."

Even if Dunn could have foreseen Levangie's injury, he had no supervisory control over how the patrons danced and, therefore, he would have been powerless to prevent such an injury, whether he had a dance permit or not. Dunn had no duty to protect Levangie against such an intervening cause as a fellow party-goer walking up to and shaking him. The record indicates that Levangie's assailant, York, had been drinking whiskey straight from the bottle prior to arriving at the dance. That fact, coupled with the fact that Dunn did not sell or otherwise offer alcohol to patrons, also created a break in the chain of causation that culminated in Levangie's injury. Even if Dunn had obtained a liquor permit he could not have prevented York from consuming his liquor elsewhere and then attending the dance.

There is nothing in the record to indicate Dunn was aware of York's presence or condition before the accident occurred. Therefore, Dunn could not, as a matter of law, be held responsible for Levangie's injury.

We have said repeatedly that foreseeability as an element of negligence is a jury question, except where the evidence is plain, palpable and undisputable. The case before us being within the exception, the trial court did not err in granting summary judgment for Dunn.

The appeals court, therefore, affirmed the summary judgment of the trial court in favor of defendant Dunn.