RENDERED: May 30, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001100-MR

GAYNA W. CHAPMAN (NOW FELTS) APPELLANT

v.

APPEAL FROM McCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 95-CI-00967

LOURDES HOSPITAL, INC. APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: DYCHE, HUDDLESTON, AND KNOPF, JUDGES.

KNOPF, JUDGE: Gayna Felts (formerly Gayna Chapman) appeals from a summary judgment of the McCracken Circuit Court, entered May 13, 2002, dismissing her complaint against Lourdes Hospital. Felts seeks damages from Lourdes for injuries she claims to have suffered when a Lourdes employee assaulted her. The trial court ruled that the assault was not foreseeable and thus that the

hospital's failure to prevent it did not, as a matter of law, constitute a breach of its duty to Felts. We agree and affirm.

Summary judgment is inappropriate, of course, unless the movant demonstrates that with respect to a dispositive aspect of the case there is no genuine issue of material fact.[1] Both the trial court and this Court assess such motions, not by weighing the evidence, but by reviewing the record in the light most favorable to the opposing party.[2]

Felts was injured, she claims, on November 23, 1994, as she disembarked from one of the hospital's elevators. She was at the hospital to visit a friend and was accompanied by her sister-in-law, Shannon Chapman, who worked at the hospital and had come along to pick up her paycheck. Chapman had been involved in a troubled relationship with another hospital employee, Scott Turnbow. The two women had found themselves on the elevator with Turnbow, and, according to Felts, as they prepared to exit, Turnbow had slapped Chapman and remarked cruelly on the fact that Chapman's recent pregnancy (with Turnbow's child) had ended in a still birth. Outside the elevator Turnbow and Chapman exchanged insults, and Turnbow grabbed Chapman by the arms. Felts attempted to intervene,

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[1] Steelvest, Inc. v. Scansteel Service Center, Ky., 807 S.W.2d 476 (1991).

[2] *Id.*

whereupon Turnbow allegedly pushed or threw her against a wall. She again attempted to intervene and Turnbow again threw her against a wall, this time injuring her back and neck. Felts claims that the hospital was on notice of Turnbow's violent disposition and so should have protected her from the assault.

As Felts notes, "an employer can be held liable when its failure to exercise ordinary care in hiring or retaining an employee creates a foreseeable risk of harm to a third person."[3] Liability for negligent retention of an employee is predicated

> on the negligence of an employer in placing [or retaining] a person with known propensities, or propensities which should have been discovered by reasonable investigation, in an employment position in which, because of the circumstances of the employment, it should have been foreseeable that the hired individual posed a threat of injury to others.[4]

Felts alleges that the hospital knew or should have known that Turnbow posed an unreasonable risk of harm to Chapman and to those near her. She claims that in April 1993, during Chapman and Turnbow's relationship, the pair had once engaged in a heated verbal confrontation in a hospital waiting room. When another employee had intervened, Turnbow had pushed him into a

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[3] Oakley v. Flor-Shin, Inc., Ky. App., 964 S.W.2d 438, 442 (1998).

[4] Mandy v. Minnesota Mining and Manufacturing, 940 F. Supp. 1463, 1470 (1996). *See also* Restatement (Second) Agency § 213 (1958); Restatement (Second) Torts §§ 315, 317 comment c. (1965).

wall, according to Felts, and threatened him. The incident had resulted in a security report and, allegedly, in verbal warnings to both parties.

Later, according the Felts, when Chapman had learned of her pregnancy and Turnbow had ceased to see her, the two had harassed one another by interoffice phone. Each had complained of the harassment to hospital officials and each had been warned that further incident could result in termination.

Finally, according to Felts, when Chapman had come to the hospital to deliver her baby, about three weeks prior to the alleged attack on Felts, she had requested that hospital security personnel prevent Turnbow from entering her floor. Felts contends that these facts[5] were sufficient to put the hospital on notice that Turnbow was unfit for employment in an environment where he might encounter Chapman and that the hospital had failed adequately to address the situation.

The trial court ruled, however, that, even if Felts's allegations were true, they did not make Turnbow's alleged assault foreseeable. Indeed, the court noted that neither Felts nor Chapman had feared an assault, and so why, the court wondered, would have the hospital. Of course the applicable

[5] Felts also alleges that during Chapman's pregnancy Turnbow once threateningly placed a golf club against Chapman's belly. This alleged incident, however, was not brought to the hospital's attention and so cannot have borne on the hospital's retention of Turnbow.

standard of care is not what the parties happened to foresee, but what a reasonably prudent employer would have foreseen.

Nevertheless, we agree with the trial court that Felts's allegations, even if proven, would not justify a jury verdict in her favor. According to Felts, the hospital had been apprised of none but verbal, tit-for-tat encounters between Chapman and Turnbow. No rational juror could find that these encounters should have made the hospital suspect that Turnbow was prone to assault. Because Felts's allegations thus fail to sustain her cause of action, the trial court appropriately entered summary judgment for Lourdes. Accordingly, we affirm the May 13, 2002, judgment of the McCracken Circuit Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR APPELLANT:	BRIEF AND ORAL ARGUMENT FOR APPELLEE:
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