

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001140-MR

DEBORAH ELAINE GENTRY FINLEY

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 01-CI-00242

INDIAN HILLS GARDEN SHOP, INC.

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE AND KNOPF, JUDGES; HUDDLESTON¹, SENIOR JUDGE.

DYCHE, JUDGE. On October 28, 2000, appellant, Deborah Finley, was accidentally shot while shopping at the store belonging to appellee, Indian Hills. The shot, which apparently ricocheted, came from a farm belonging to George Gore, which lies across the road from Indian Hills Garden Shop; the shot was fired by either Jason Baggett or Christopher Stites. Finley filed this action

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

against Gore, Baggett, and Stites, seeking money damages to compensate her for her injuries and the related expenses she had incurred.

At a later time, Finley amended her complaint to include Indian Hills as a defendant. She alleged that Indian Hills had breached its duty to "warn and advise" her of "the latent and dangerous conditions of its premises, as its employees and agents knew of the shooting that had occurred near Indian Hills' premises previously and its dangerous possibilities." She further alleged that this failure was a direct and proximate cause of her injuries.

Discovery had already been commenced when Indian Hills was joined in the action, and within a short time Indian Hills moved for a summary judgment (CR 56), arguing that the injury to Finley was not reasonably foreseeable, and that its failure to warn her of any danger was not a substantial factor in causing her injuries.

The trial court accepted memoranda from the parties, conducted a hearing on the motion, and granted summary judgment to Indian Hills, finding that Indian Hills

could not have reasonably foreseen that a stray bullet could have struck the Plaintiff on the premises of Indian Hills, and therefore there was no duty to warn customers, including the Plaintiff, Deborah Finley. Plaintiff must establish a duty on Indian Hills, a breach of that duty, and a

causal connection between that breach of duty and the injury suffered by the Plaintiff.

This appeal followed.

Finley's entire argument on appeal is that Indian Hills had a duty to make its premises safe, or to warn her of the potential danger. We would agree with this general statement, but would also agree with the trial court that a potential danger must be reasonably foreseeable in order to trigger the duty to warn.

This court has recently explained the requirements of maintaining a cause of action in a case such as this:

In order to state a cause of action based on negligence, a plaintiff must establish a duty on the defendant, a breach of the duty, and a causal connection between the breach of the duty and an injury suffered by the plaintiff. The causal connection or proximate cause component traditionally was composed of two elements: cause-in-fact and legal or consequential causation. Cause-in-fact involves the factual chain of events leading to the injury; whereas, consequential causation concerns the concepts of foreseeability and the public policy consideration on limiting the scope of responsibility for damages. In Kentucky, the cause-in-fact component has been redefined as a "substantial factor" element as expressed in Restatement (Second) of Torts § 431. The scope of duty also includes a foreseeability component involving whether the risk of injury was reasonably foreseeable.

Lewis v. B & R Corporation, Ky. App., 56 S.W.3d 432, 436-7
(2001) (footnotes omitted).

We agree with the trial court that, as a matter of law, Finley cannot establish that the injury to her was reasonably foreseeable by Indian Hills. The failure of Indian Hills to warn of the "danger" was not a substantial factor in Finley's injuries.

The judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kenneth R. Haggard
Hopkinsville, Kentucky

BRIEF FOR APPELLEE:

Wendell H. Rorie
Hopkinsville, Kentucky