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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

DIONNA LEE,

Plaintiff and Appellant,

v.

WILLIAM KWOK WAI WONG et al.,

Defendants and Respondents.

A144008

(Alameda County  
Super. Ct. No. RG13678718)

Dionna Lee brought this suit for damages after injuring herself in a fall from the roof of a house where she was attending a party. She sued Lillyan Wong, who hosted the party, and Lillyan's parents, William Kwok Wai Wong and Ping Yan, the owners of the house.<sup>1</sup> The trial court granted summary judgment for the defense, and Dionna now appeals from the ensuing judgment. We affirm.

**I. BACKGROUND**

In July 2008, William Wong and his wife, Ping Yan, purchased a house at 1303 Caroline Street in Alameda. William, Ping, and their daughter Lillyan lived at a residence on Whittle Avenue in Oakland while the Caroline Street house was being remodeled. The family ultimately moved into the house in the spring of 2012, nine months after Dionna's fall.

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<sup>1</sup> For the sake of brevity and ease of reference, we use the first names of the parties to identify them. We mean no disrespect.

While the Caroline Street house was still vacant, Lillyan, who was 16 years old at the time and attended high school at Encinal High School in Alameda, had access to it. William and Ping allowed her to have her school friends over to the house to socialize, with no adult present. William did not know whether the visitors on those occasions were using alcohol or drugs, and made no effort to find out.

In early July 2011, Lillyan hosted a large, raucous party at the Caroline Street house that was attended by 200 teenagers. Lillyan posted an invitation on Facebook. There was a cover charge at the door of \$5.00 or one bottle of alcohol. There was a doorman. There was a DJ. There were table games in the basement. Party guests drank beer and vodka out of big red cups, and some smoked marijuana.

When neighbors complained of noise during the party, the police responded. Lillyan answered the officers' knock at the door and spoke to them on the porch. Most of the guests were in the basement of the house, and after speaking to the officers, she tried to persuade the guests to leave. She called her father, and told him she was having a party at the Caroline Street house and the police had arrived. He drove over immediately and spoke to his daughter together with the police officers as they stood on the porch.

Lillyan went to the basement several times to try to persuade her guests to leave, assisted by William. The party-goers at first ignored the requests to leave and continued drinking and smoking marijuana, but eventually all of them left. William helped Lillyan and her friends clean up debris from the party, which included bottles of alcohol and big red cups that had been used for drinking alcohol.

This party took place without William's or Ping's advance permission or knowledge. After the party, William scolded Lillyan for holding such a big party and specifically for allowing alcohol and marijuana to be used at the Caroline Street house. William told Lillyan that he was worried someone might be hurt at a party like that. Trying to impress on her a greater sense of responsibility, he said "if someone gets hurt, they're going to sue us. They're not going to sue you. They're going to sue your parents."

To discipline Lillyan and try to place some restrictions on her ability to use the Caroline Street house, William hid the keys to the house, reduced Lillyan's allowance, packed up the ping pong and billiard tables in the basement of the house, and instituted a curfew. Despite the restrictions William placed on Lillyan, she hosted another party for her friends at the Caroline Street house on the night of July 13, 2011, again without the knowledge or permission of her parents. She took the house key surreptitiously, after searching for it and locating it in her father's nightstand drawer.

Dionna, a fellow high school student, attended Lillyan's July 13 party, arriving around 11:00 p.m. She snuck out of her own house and did not tell her parents where she was going. There was alcohol, marijuana, and a hookah pipe at the party.<sup>2</sup> Dionna brought her own alcohol—some vodka concealed in a water bottle, which she shared with a friend. The vodka she brought was the only alcohol Dionna drank while at the party. There was no evidence Lillyan or her parents supplied Dionna with any alcohol. Dionna admitted that, after drinking at the party, she felt intoxicated.

Again the neighbors complained, and again police came to the house. When the officers arrived and knocked on the door at around 12:30 a.m., Dionna was in the basement with other party guests. No one answered, so the officers began searching around with flashlights, looking through windows into the basement, where the guests saw the officers trying to find them. Lillyan fled out of the house and onto the street, leaving her friends inside to fend for themselves.

After remaining quiet for 10 to 15 minutes in the basement, Dionna and a friend decided to go upstairs to the second floor, where she hid in a closet for five or 10 minutes. She then went to a bathroom and climbed out an open window. She spent five to 10 minutes trying to get to a nearby window so she could climb down, but when she

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<sup>2</sup> While both Dionna and Lillyan thought the pipe contained tobacco, it may have contained opiates, since opiates were found in Dionna's blood at the hospital after her fall.

heard the police coming, she tried to climb back in the window and slipped from the roof, falling to the ground two stories below, and sustaining serious injuries.

After the accident, Dionna brought a personal injury suit against William and Ping, and against Lillyan, on theories of negligence (against all three defendants), and premises liability and parental failure to supervise (against William and Ping). The court granted summary judgment for the defense, holding first that, as a matter of law, William, Ping and Lillyan had no “duty to prevent Plaintiff from consuming alcohol at the premises, or from thereafter climbing out a second story window in an attempt to avoid the police,” and, second, that they were all protected by statutory “social host” immunity under section 25602 of the Business and Professions Code, since there was “no evidence either that [Dionna] was ‘obviously intoxicated’ or (more importantly) that [William and Ping] or [Lillyan] supplied Plaintiff with alcohol.”

Dionna filed this timely appeal from the judgment entered on the court’s order granting summary judgment.

## II. DISCUSSION

“A defendant moving for summary judgment meets its burden of showing that a cause of action has no merit by either (1) showing that one or more elements of the cause of action cannot be established, or (2) establishing a complete defense. [Citations.] . . . The defendant’s motion shall be granted if the admissible evidence submitted shows there is no triable issue as to any material fact and the defendant is entitled to judgment as a matter of law.” (*Allen v. Liberman* (2014) 227 Cal.App.4th 46, 53 (*Liberman*)). “ ‘We review the trial court’s decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party.’ ” (*Ennabe v. Manosa* (2014) 58 Cal.4th 697, 705.) Although our review of a summary judgment is de novo, “ ‘[w]e must presume the judgment is correct . . . .’ ” (*Liberman, supra*, 227 Cal.App.4th at p. 53.)

We agree with the trial court that Dionna’s premises liability and negligence claims fail as a matter of law for failure to establish the element of duty. “Duty ‘is an essential element’ of the tort of negligence. [Citation.] Duty ‘may be imposed by law, be

assumed by the defendant, or exist by virtue of a special relationship.’ [Citation.] The existence of a legal duty ‘ “ ‘depends upon the foreseeability of the risk and a weighing of policy considerations for and against imposition of liability.’ ” ’ ” ( *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 529–530 ( *Melton* ).) “Whether a duty is owed is simply a shorthand way of phrasing what is ‘ “the essential question—whether the plaintiff’s interests are entitled to legal protection against the defendant’s conduct.” ’ ” ( *J’Aire Corp. v. Gregory* (1979) 24 Cal.3d 799, 803.) The seminal case on this issue is *Rowland v. Christian* (1968) 69 Cal.2d 108 ( *Rowland* ), which “remains ‘the gold standard against which the imposition of common law tort liability in California is weighed by the courts in this state.’ ” ( *Melton, supra*, 183 Cal.App.4th at p. 530.)

The analysis in *Rowland* begins with the statutory principle, codified in Civil Code section 1714, subdivision (a), that “[e]veryone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.” “A departure from this fundamental principle involves the balancing of a number of considerations; the major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant’s conduct and the injury suffered, the moral blame attached to the defendant’s conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.” ( *Rowland, supra*, 69 Cal.2d at pp. 112–113.) “These same concepts apply to premises liability claims,” where, “[g]enerally speaking, ‘a landowner has a duty to act reasonably in the management of property “in view of the probability of injury to others.” ’ ” ( *Melton, supra*, 183 Cal.App.4th at p. 530.)

The key *Rowland* factor here is “the closeness of the connection between the defendant’s conduct and the injury suffered.” ( *Rowland, supra*, 69 Cal.2d at p. 113.) It is true, as Dionna emphasizes, citing *Sakiyama v. AMF Bowling Centers, Inc.* (2003) 110

Cal.App.4th 398, 407 (*Sakiyama*), that drinking and drug-taking at a rowdy, late-night party attended by teenagers, and the potential for injury at such an event, is foreseeable—as William himself recognized in warning Lillyan about this possibility—but foreseeability alone is not enough to establish a tort duty. In this case, there is not a close enough connection between the specific peril that led to Dionna’s injury, her decision to climb onto the roof in an attempt to evade police officers, and the holding of the party. The court in *Sakiyama* came to the same conclusion about a fatal car accident involving drunk teenage guests who left an all-night “rave” party. (*Id.* at pp. 909–910.) Dionna cites and relies on *Sakiyama* for its foreseeability analysis, but as the trial court correctly recognized, the holding in the case cuts against her.<sup>3</sup>

In a variation on her negligence theory focused specifically on William and Ping, Dionna advances a theory of negligent supervision. She argues that “[p]arents are responsible for their negligent failure to control” a child who they know has a proclivity to engage in conduct “which presents a risk to others.” For this proposition she cites *Robertson v. Wentz* (1986) 187 Cal.App.3d 1281, 1285–1286 (*Wentz*), where a 17-year-old boy took a pistol from his father’s unlocked bedside table and shot someone with it in a robbery; *Costello v. Hart* (1972) 23 Cal.App.3d 898, 899–900 (*Hart*), where a four-and-one-half-year-old boy tripped a customer in a department store; *Singer v. Marx* (1956) 144 Cal.App.2d 637, 640 (*Marx*), where a nine-year-old boy struck another child in the

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<sup>3</sup> We need not sort through each of the other *Rowland* factors. The *Sakiyama* court carries out that analysis in a “rowdy-teen-party” case, weighing the pertinent policy considerations bearing upon whether to impose a tort duty for allegedly lax oversight of such a party. (*Sakiyama, supra*, 110 Cal.App.4th at pp. 406–412.) We agree with the analysis there. The main difference here is that, on the moral blame factor, *Sakiyama* involved a commercial establishment (a bowling hall that had been rented out for the party), while in this case we have a private residence owned by the parents of a teenage party host. Dionna emphasizes the moral blameworthiness of William and Ping for what she characterizes as their “feckless” attempts to control Lillyan’s behavior. She even goes so far as to suggest that recognizing a tort duty here would “help parents be better parents.” Perhaps William and Ping were too indulgent with their teenager (which is debatable), but even if they were, that failing does not make them morally blameworthy in the *Rowland* sense.

eye with a rock; and *Ellis v. D'Angelo* (1953) 116 Cal.App.2d 310, 312, 317 (*D'Angelo*), where a four-year-old boy shoved his baby-sitter to the ground. In these cases, “[k]nowledge of dangerous habits and ability to control the child are prerequisites to imposition of liability.” (*Wentz, supra*, 187 Cal.App.3d at p. 1290.)

The record here certainly shows that William and Ping had advance notice of Lillyan’s behavior at the Caroline Street house, as Dionna points out. Their ability to control Lillyan is less clear. In *Wentz*, the only one of the failure-to-supervise cases Dionna relies upon that involves a teenager, the court refused to recognize a basis for negligent parental supervision, in part, for lack of control (*Wentz, supra*, 187 Cal.App.3d at p. 1290); *Hart, Marx* and *D'Angelo* all involved much younger children. More fundamentally, however, all of the negligent parental supervision cases Dionna cites involved intentional infliction of injury by a misbehaving child. What we have here, at most, even assuming Dionna could establish a tort duty—which we have held she cannot—is negligence by Lillyan. We are unaware of any case in which a parent has been held liable on a negligent supervision theory for the negligent conduct of a child.

Since the trial court was correct to rule that as a matter of law there was no basis to find William, Ping or Lillyan liable to Dionna on a theory of negligence or premises liability, we have no occasion to address whether “social host” immunity under section 25602 of the Business and Professions Code applies.

### **III. CONCLUSION AND DISPOSITION**

We affirm the judgment following the court’s order granting summary judgment for William, Ping and Lillyan. Dionna to pay costs.

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Streeter, J.

We concur:

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Ruvolo, P.J.

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Reardon, J.