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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

H.O.W. HALL, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

JANE ROE,

Real Party in Interest.

G052123

(Super. Ct. No. 30-2013-00689060)

O P I N I O N

Original proceeding; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, David R. Chaffee, Judge. Petition granted.

Ford, Walker, Haggerty & Behar, Jeffrey S. Behar, Tina I. Mangarpan and Adam C. Hackett for Petitioner.

The X-Law Group, Filippo Marchino and Damon Rogers for Real Party in Interest.

* * *

Real party in interest Jane Roe sued petitioner H.O.W. Hall, Inc. seeking damages for injuries she suffered when a third party attacked her. According to Roe's complaint, a man who befriended her through Alcoholics Anonymous (AA) meetings held at petitioner's facility, physically and sexually assaulted her in a trailer he owned. Roe alleged petitioner should have known her assailant used AA functions to find female victims, but failed to either warn women about his proclivity for violent sexual assaults, or protect them from being assaulted by him.

Petitioner moved for summary judgment, arguing it did not owe Roe a duty of care. Respondent superior court granted summary adjudication on two causes of action. But it denied relief on allegations of negligent failure to warn and negligent failure to take reasonable protective measures, concluding petitioner had not negated the existence of a duty as to these causes of action.

Petitioner requests that we vacate the rulings on the latter two causes of action and direct the superior court to enter summary judgment in its favor. We issued an order to show cause. Having considered the parties' arguments, we conclude petitioner is entitled to the relief sought and grant the petition.

FACTS

Petitioner is an unaffiliated nonprofit corporation that has a facility it rents to AA and other similar programs for meetings. But it does not conduct any meetings.

To protect the anonymity of its members, participants in AA meetings only use their first names. Some AA groups have telephone lists of its members, but petitioner does not maintain any such list.

William Bastedo held positions of trust in AA meetings conducted at petitioner's facility. For AA, this meant he had "commitments" such as making coffee,

greeting participants, and acting as the secretary or treasurer at meetings. He was not petitioner's employee, nor did petitioner and Bastedo have any other agency relationship.

In early 2009, petitioner temporarily barred Bastedo from its premises after "a woman complained" that he "had made unwanted sexual advances." Petitioner's board conducted a hearing on the matter and thereafter lifted the suspension.

The details of that incident and what petitioner's board learned about it are unclear. The minutes from the board's February 2009 meeting provided the following limited summary of what occurred: "Bill B's Temporary Suspension [¶] Board of directors listened to alleged incidents from Rachel. This alleged incident did not occur at H.O.W. Hall (on our property) and therefore is not the Board of Directors['] business. Rachel was advised to contact the police. Bill B's temporary suspension was lifted."

Petitioner's board members had little recollection of the February 2009 inquiry. One testified: "[I]t was reported. . . that a woman complained about unwanted advances, I guess you'd say. But that person did not want to identify themselves. Another woman attended the following board meeting after that report had been made . . . and said that she had been told by someone that another woman – that Bastedo had made unwanted sexual advances. And then the board made a decision . . . that . . . to us it was a he said/she said kind of disagreement and we really didn't know who to believe, and so we allowed Mr. Bastedo to continue to attend meetings." Another member testified that he "recall[ed] a woman named Margaret coming forward to the board and alleging a lot of problems on behalf of women with – with somebody."

Roe presented the testimony of a woman named Margaret. But she likewise acknowledged having only a limited memory of what was said at the 2009 board meeting. Margaret "[v]aguely" recalled Rachel and what Rachel told the board. According to Margaret, she and two other women also spoke at the board meeting. But Margaret conceded that she "didn't have a lot to say," and her recollection of what the other two women said was either "[s]omewhat vague" or lacking in detail. The only

incident Margaret specifically mentioned was a woman's complaint that Bastedo had assisted her in moving and later made an unwanted sexual advance while the two were in the woman's Jacuzzi. Margaret admitted Bastedo appeared at the board meeting along with two supporters and denied the accusations.

Roe began attending AA meetings at petitioner's facility in mid-2012, three and one-half years later. According to Roe, the first time she spoke to Bastedo was after a meeting on November 20. During the meeting, Roe had mentioned that she was looking for a more permanent residence. When the meeting ended, Bastedo approached Roe and offered to let her stay at a trailer he owned located about a mile from petitioner's facility. Roe accepted Bastedo's offer and began moving into the trailer on November 23. Later that day, Bastedo came to the trailer and physically and sexually assaulted her.

In May 2013, petitioner's board permanently banned Bastedo from its premises. The notice sent to Bastedo explained the reason for its decision was that he "ha[d] been accused by several persons of using HOW Hall meetings and meeting phone lists to approach vulnerable women, solicit the[m] for sexual favors, and in at least one case, attempted sexual assault and physical assault." The trial court admitted this evidence, but solely "to show [petitioner's] control over the premises, not culpability."

Roe filed this action against petitioner. She alleged Bastedo "ha[d] a long history of sexual assault, harassment, and physical violence towards women, including women he . . . met at [petitioner's facility]," and "members of [petitioner's] Board had previously been made aware of Bastedo's behavior," but "did nothing to prevent [him] from soliciting victims or attending and supervising meetings." Thus, she claimed petitioner was liable for the injuries she suffered "from the . . . sexual assault and battery" by Bastedo,

Petitioner moved for summary judgment or summary adjudication on each cause of action on the ground it did not owe Roe a duty to protect her from Bastedo's assault on her at his trailer. The superior court granted summary adjudication on counts

alleging negligent hiring, retention, and supervision, and negligent infliction of emotional distress. However, the court refused to strike the causes of action for negligent failure to warn and negligent failure to take reasonable protective measures, ruling that, “as a landowner supplying property for meetings attended by vulnerable women, [petitioner] . . . failed to negate the existence of a legal duty.” Petitioner then sought relief in this court.

DISCUSSION

1. Introduction

Summary judgment is available where “the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).) “A defendant ‘has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action.’” (*Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 464; see Code Civ. Proc., § 437c, subd. (p).)

“[I]n order to prove facts sufficient to support a finding of negligence, a plaintiff must show that defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury.” (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292.) Petitioner’s motion sought summary judgment on the ground it did not owe a duty of care to Roe. “Duty, being a question of law, is particularly amenable to resolution by summary judgment.” (*Parsons v. Crown Disposal Co.*, *supra*, 15 Cal.4th at p. 465.)

The trial court’s ruling on a motion for summary judgment or summary adjudication is subject to review on a petition for a writ of mandate, and if “the trial

court's denial of a motion for summary judgment [or summary adjudication] will result in trial on non-actionable claims, a writ of mandate will issue." (*Travelers Casualty & Surety Co. v. Superior Court* (1998) 63 Cal.App.4th 1440, 1450.) Further, "[s]ince a motion for summary judgment or summary adjudication 'involves pure matters of law,' we review a ruling on the motion de novo to determine whether the moving and opposing papers show a triable issue of material fact." (*Ibid.*)

2. Analysis

The first cause of action in Roe's complaint alleged petitioner "had a general duty to provide adequate warning to its female meeting participants . . . of the risk of known and reasonably foreseeable abuse and harassment from sexual predators" generally and "[s]pecifically, . . . had a duty to provide adequate warning . . . of Bastedo's dangerous propensities and history of sexual harassment and sexual abuse." Her second cause of action alleged petitioner had "a duty to take reasonable protective measures to warn, train, or educate" her "about the known and reasonably foreseeable risks of sexual abuse, and how to avoid or minimize such risks," and "to take reasonable protective measures to provide [petitioner's] designated meeting secretaries, employees, volunteers, and board members with adequate training and education to recognize the signs of physical and/or sexual abuse and to take adequate steps to prevent or stop said abuse." However, in sustaining Roe's second cause of action, the superior court held she had only established petitioner had a duty to ban Bastedo from its premises. Thus, we limit our review of the second count to that theory.

Petitioner claims the superior court should have granted its motion for summary judgment, asserting that it "merely provided a meeting hall for AA to conduct its meetings," and that it had "only prior notice . . . for an unsubstantiated claim of an unwanted advance by Bastedo off [its] premises." It argues the trial court's ruling, if upheld, will impose on it and other community service organizations "an unjust burden"

by requiring it “to investigate off-premises issues.” Roe responds that the record supports a finding that petitioner had a duty of care because petitioner “had knowledge of Bastedo’s propensity to engage in abusive behavior” against women “years prior” to his assault of her, and “[n]otwithstanding th[is] specific knowledge,” it “refused to take reasonable steps to safeguard female patrons and instead took the otherwise nonsensical position that, as long as the behavior . . . was committed off-premises, it was not [p]etitioner’s responsibility.”

We conclude petitioner’s argument has merit. Case law recognizes that “[u]nder traditional tort law principles, one is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a special relationship of custody or control.” (*Nally v. Grace Community Church, supra*, 47 Cal.3d at p. 293; *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203.) Petitioner did not exercise control over AA meetings or AA’s members. It merely leased a space to AA and other similar programs for meetings. Contrary to Roe’s argument, petitioner did not conduct or monitor AA meetings, maintain lists of who attended them, or have any means of contacting meeting participants. While some of the AA groups that used petitioner’s premises kept telephone lists of participants, petitioner did not maintain any such list. Further, petitioner relied on the persons conducting meetings to ensure compliance with its posted rules concerning maintenance of the facility and the behavior of AA members on the premises. AA recognized Bastedo as a trusted person, but he was not petitioner’s employee and it did not have any other agency relationship with Bastedo.

In the context of an action for premises liability, courts recognize a land owner’s or occupier’s “possession of the premises and the attendant right to control and manage the premises” imposes a “duty to take affirmative action for the protection of individuals coming upon the land.” (*Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 368; *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1157-1158.) But this duty of care “will *not* be imposed ‘for injuries to an invitee from criminal activity occurring off

the landowner's premises.' [Citation.] 'A defendant cannot be held liable for the defective or dangerous condition of property which it did not own, possess, or control. Where the absence of ownership, possession, or control has been unequivocally established, summary judgment is proper.'" (*Balard v. Bassman Event Security, Inc.* (1989) 210 Cal.App.3d 243, 247; *Medina v. Hillshore Partners* (1995) 40 Cal.App.4th 477, 482-483.) Here, while Roe first met Bastedo at an AA meeting at petitioner's facility, that encounter involved only his offer to her of a place to live. The assault occurred much later at his trailer.

Roe contends petitioner had a duty in this case because it "was . . . aware of Bastedo's modus operandi of using his position of authority to gain the confidence and trust of potential victims in AA meetings," and petitioner had the "ability to control his access" to AA meetings held on its premises. The record fails to support her claims.

In 2009, the board heard complaints of possible unwanted advances, none of which occurred on petitioner's premises. Bastedo denied these allegations, and there was no suggestion he had violently assaulted a woman. Roe's reliance on a board member's 2013 e-mail describing Bastedo as a "predator" who used AA meetings to "gain[the] confidence and trust" of women lacks merit since it was sent long after both the 2009 incidents and the assault on her.

In *Castaneda v. Olsher* (2007) 41 Cal.4th 1205 (*Castaneda*), the Supreme Court recognized that in the premises liability context, while case "precedents call for consideration of several factors" mentioned in *Rowland v. Christian* (1968) 69 Cal.2d 108, "[f]oreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations." (*Castaneda*, at p. 1213.) In applying the foreseeability factor, courts apply a "sliding-scale balancing formula." (*Morris v. De La Torre* (2005) 36 Cal.4th 260, 271.) "The degree of foreseeability necessary to warrant the finding of a duty . . . var[ies] from case to case. . . . [W]here the burden of preventing future harm is great, a high degree of foreseeability may be required," but "in cases where there are

strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required.” (*Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 125.)

The burden that would be imposed on petitioner in this case would be considerable. The issuance of either a warning or a declaration banning Bastedo from the premises present significant problems. Cases have recognized “a duty to warn in the context of dangers existing off premises will seldom be as simple as passing along unverified information,” and would require “not just a duty to warn but a duty to investigate, monitor and evaluate reports of off-premises dangers.” (*Balard v. Bassman Event Security, Inc.*, *supra*, 210 Cal.App.3d at p. 250 [security guard not required to warn patron who was physically assaulted off premises that previously another woman had been verbally assaulted]; *Conti v. Watchtower Bible & Tract Society of New York, Inc.* (2015) 235 Cal.App.4th 1214, 1228 [“the burden the duty to warn would create and the adverse social consequences the duty would produce outweigh its imposition”].)

In *Conti*, the appellate court gave the following explanation for its rejection of a claim that church elders had a duty to inform the congregation of one member’s child molestation conviction: “The burden would be considerable because the precedent could require a church to intervene whenever it has reason to believe that a congregation member is capable of doing harm, and the scope of that duty could not be limited with any precision. For example, would the duty to warn be triggered by an accusation, or only an admission, of misconduct? Would one warning be sufficient, or would continuous warnings be required to ensure that new congregation members are alerted to the danger? Child molestation is a particularly heinous evil, but which other potential harms would the church have a duty to avert? Would the duty be limited to crimes and, if so, which ones? Imposition of a duty to warn would also have detrimental social consequences. It would [also] discourage wrongdoers from seeking potentially beneficial intervention” (*Conti v. Watchtower Bible & Tract Society of New York, Inc.*, *supra*,

235 Cal.App.4th at p. 1228.) The objections to a duty to warn expressed in *Balard* and in *Conti* equally apply to the imposition of a duty requiring petitioner to take protective measures such as banning an AA member for off-premises conduct.

Also contrary to Roe's suggestion, a warning or a ban that described Bastedo as a sexual predator could also result in petitioner being sued for defamation. (Civ. Code, § 45 ["Libel is a false and unprivileged publication . . . which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided"]; *Montandon v. Triangle Publications, Inc.* (1975) 45 Cal.App.3d 938, 944 ["article convey[ing] the impression that [the plaintiff] was to be the only guest to discuss the subject of 'how far can a party girl go before she becomes a call girl[]' . . . could be considered a knowing falsity"].) And, since AA tries to protect the anonymity of its members by using only first names, a warning that used Bastedo's full name or a declaration barring him by name from petitioner's facility might support an action for invasion of privacy. (*Kinsey v. Macur* (1980) 107 Cal.App.3d 265, 271 [cause of action intended to "protect[] . . . individual freedom from the wrongful publicizing of private affairs and activities which are outside the realm of legitimate public concern"].)

Thus, we conclude a "heightened [level of] foreseeability" (*Castaneda, supra*, 41 Cal.4th at p. 1221) applies in this case. Further, the evidence of "prior similar incidents" or "other indications of a reasonably foreseeable risk of violent criminal assaults" (*ibid.*) by Bastedo known to petitioner's board before he assaulted Roe did not justify imposing either a duty to warn women about Bastedo or in permanently banning him from its property.

Moreover, other *Rowland* factors support our conclusion petitioner did not have a duty of care to Roe. (*Rowland v. Christian, supra*, 69 Cal.2d at p. 113.) For one thing, except for the fact Roe met Bastedo through AA meetings at petitioner's facility, there was no connection between petitioner's alleged nonfeasance and Roe's injuries.

In addition, the consequences of imposing a duty in a case such as this one would be detrimental to the efforts of AA and similar programs that seek to help persons overcome substance abuse. Requiring one who leases space for such programs to issue even a generic warning about the possibility of sexual predators would discourage AA members from feeling comfortable in discussing their personal issues that are frequently obstacles to overcoming alcoholism or drug abuse. And a requirement that an entity bar access to certain persons suspected of causing problems might weaken the resolve of AA participants or their sponsors to offer assistance to others lest their efforts be misconstrued.

Finally, there is the adverse consequence of the increased financial costs to provide liability insurance to organizations and others who provide space for substance abuse programs. Generally, AA and other similar programs pay for the use of a meeting place through the collection of dues from participants. Substance abuse is frequently either triggered by or the cause of financial problems. Entities that provide space for AA and other programs would likely pass on the increase in insurance costs to meeting participants, thereby adding to the burden on those most in need of help.

Consequently, we conclude petitioner did not owe Roe either a duty to warn her about Bastedo or even generally caution her about the possibility of being approached by a sexual predator, or alternatively, a duty to take other steps to protect women attending AA or similar programs from off-premises assaults.

DISPOSITION

The petition is granted. Let a peremptory writ of mandate issue directing the superior court to vacate its order denying petitioner's summary adjudication motion as to real party in interest's first and second causes of action, issue an order granting

petitioner's motion for summary judgment, and enter judgment in petitioner's favor.
Petitioner is entitled to recover its costs in this proceeding.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.