

**Briefs and Other Related Documents**

Supreme Court of California
 Aaron WIENER et al., Plaintiffs and Appellants,
 v.
 SOUTHCOAST CHILDCARE CENTERS, INC.,
 et al., Defendants and Respondents.
No. S116358.

May 6, 2004.

Background: Parents of two children brought a negligence and premises liability action against a day care center and lessor of property after the children were killed when a man deliberately drove his car through a chain link fence and struck the children. The Superior Court, Orange County, No. G028814, Hugh Michael Brenner, J., granted summary judgment for defendants, and the parents appealed. The Court of Appeal, 132 Cal.Rptr.2d 883, reversed, and the Supreme Court granted review.

Holding: The Supreme Court, Chin, J., held that defendants owed no duty to parents, inasmuch as the driver's criminal act was unforeseeable. Judgment of Court of Appeal reversed with directions.

Moreno, J., concurred and filed an opinion, in which Werdegar, J., joined.

West Headnotes

[1] Appeal and Error ☞863

30k863 Most Cited Cases

Where the plaintiff appeals from the trial court's order granting the defendant summary judgment, the appellate court independently examines the record in order to determine whether triable issues

of fact exist to reinstate the action.

[2] Negligence ☞202

272k202 Most Cited Cases

To prevail on an action in negligence, plaintiffs must show that defendants owed them a legal duty, that they breached the duty, and that the breach was a proximate or legal cause of their injuries.

[3] Appeal and Error ☞895(2)

30k895(2) Most Cited Cases

In performing de novo review following an order granting the defendant summary judgment, the appellate court views the evidence in the light most favorable to the plaintiff as the losing party.

[4] Negligence ☞215

272k215 Most Cited Cases

In the case of a landowner's liability for injuries to persons on the property, the determination of whether a duty exists, 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 the 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.

[5] Landlord and Tenant ☞167(8)

233k167(8) Most Cited Cases

When children are the focus of care in a case of a landlord's liability for injuries to persons on the property, the landlord's duty is to protect the young from themselves and guard against perils that are reasonably foreseeable.

[6] Negligence ☞1016

(Cite as: 32 Cal.4th 1138, 12 Cal.Rptr.3d 615)

272k1016 Most Cited Cases

In determining whether a landowner has a duty to protect against injuries to children on the property, the determination of the scope of foreseeable perils to children must take into consideration the known propensity for children to intermeddle.

[7] Appeal and Error ⚡893(1)

30k893(1) Most Cited Cases

The existence of a duty and foreseeability in a negligence case, when analyzed to determine the scope of a duty, is a question of law that an appellate court will determine de novo.

[8] Negligence ⚡1033

272k1033 Most Cited Cases

California law requires landowners to maintain land in their possession and control in a reasonably safe condition.

[9] Landlord and Tenant ⚡164(1)

233k164(1) Most Cited Cases

[9] Landlord and Tenant ⚡167(8)

233k167(8) Most Cited Cases

A landlord's general duty to maintain the property, which is owed to tenants and patrons, includes the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures.

[10] Negligence ⚡1019

272k1019 Most Cited Cases

A landowner's duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be reasonably anticipated.

[11] Automobiles ⚡17

48Ak17 Most Cited Cases

Child care center and lessor of property on which center was located owed no duty to parents of two children who were killed when a man deliberately drove his car through a four-foot-high chain link fence and struck the children, inasmuch as the driver's criminal act was unforeseeable; no evidence indicated that the child care center had ever been

the target of violence in the past, and the driver's criminal behavior was so outrageous and bizarre that it could not have been anticipated under any circumstances.

See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 933 et seq.; Cal. Jur. 3d, Premises Liability, § 38 et seq.

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CHIN, J.

We granted review in this case to determine whether a child care center and its property owner should be liable in tort for a third party's intentional criminal act against the center's children, when there had been no reported prior similar criminal acts or indeed any similar activity on or near the child care premises. As will appear, we conclude that under ***1142***Ann M. v. Pacific Plaza Shopping Center*

(Cite as: 32 Cal.4th 1138, 12 Cal.Rptr.3d 615)

(1993) 6 Cal.4th 666, 678, 25 Cal.Rptr.2d 137, 863 P.2d 207 (*Ann M.*), and its progeny, the center and property owner should not be liable because the criminal act involved here was unforeseeable.

STANDARD OF REVIEW

[1][2] Because plaintiffs appealed from the trial court's order granting defendants summary judgment, we independently examine the record in order to determine whether triable issues of fact exist to reinstate the action. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767, 107 Cal.Rptr.2d 617, 23 P.3d 1143 (*Saelzler*).) As we stated in *Sharon P. v. Arman Ltd.* (1999) 21 Cal.4th 1181, 91 Cal.Rptr.2d 35, 989 P.2d 121 (*Sharon P.*), involving a negligence claim based on a criminal act and resolved on summary judgment, "To prevail on [an] action in negligence, plaintiff[s] must show that defendants owed [them] a legal duty, that they breached the duty, and that the breach was a proximate or legal cause of [their] injuries." (*Id.* at p. 1188, 91 Cal.Rptr.2d 35, 989 P.2d 121; Code Civ. Proc., § 437c, subd. (o) (2).) We have recently observed that the amendments to Code of Civil Procedure section 437c modified the *Sharon P.* rule to place the initial burden on the defendant moving for summary judgment and shift it to the plaintiff upon a showing that the plaintiff cannot establish one or more elements of the action. (*Saelzler, supra*, 25 Cal.4th at pp. 767-768, 107 Cal.Rptr.2d 617, 23 P.3d 1143.)

In this action, therefore, we must determine whether defendants have shown that plaintiffs have not established a prima facie case of negligence, "a showing that would forecast the inevitability of a nonsuit in defendants' favor. If so, then under such circumstances the trial court was well justified in awarding summary judgment to avoid a useless trial." (*Saelzler, supra*, 25 Cal.4th at p. 768, 107 Cal.Rptr.2d 617, 23 P.3d 1143; see *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 335, fn. 7, 100 Cal.Rptr.2d 352, 8 P.3d 1089; see also *id.* at p. 374, 100 Cal.Rptr.2d 352, 8 P.3d 1089 (conc. opn. of Chin, J.) [amendments to summary judgment statute modified traditional rule to provide that moving party may establish summary judgment by showing plaintiff failed to present triable evidence

crucial to the case].)

[3] In performing our de novo review, we view the evidence in the light most favorable to plaintiffs as the losing parties. (*Saelzler, supra*, 25 Cal.4th at p. 768, 107 Cal.Rptr.2d 617, 23 P.3d 1143.) In this case, we liberally construe plaintiffs' evidentiary submissions and strictly scrutinize defendants' own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs' favor. (*Ibid.*) Keeping these principles in mind, we resolve the action in defendants' favor.

FACTS

Southcoast Childcare Centers, Inc. (Southcoast), had leased its child care property from First Baptist Church of **618 Costa Mesa (the Church) since 1997. *1143 The child care center was located on a busy street corner on Santa Ana Avenue in Costa Mesa. A four-foot-high chain link fence enclosed the playground located adjacent to the sidewalk and street. On May 3, 1999, Steven Abrams intentionally drove his large Cadillac Coupe de Ville through the fence, onto the playground, and into a group of children.

The carnage caused by Abrams's act was horrific. He killed two children, Brandon Wiener and Sierra Soto, and injured several others. Plaintiffs Aaron and Pamela Wiener, the parents of Brandon, and Eric and Cindy Soto, the parents of Sierra (collectively, plaintiffs), sued Southcoast and the Church (collectively defendants), [FN1] alleging wrongful death, negligence, and premises liability. Plaintiffs also sued Abrams, who is not a party to this appeal. A court-appointed psychiatrist examined Abrams and concluded that "the offense at the schoolyard in itself, in the context of Mr. Abrams' life pattern--behavior and in the context of our society's standards and norms, was patently and highly absurd and bizarre, and was so outrageous that it borders on the inconceivable." Abrams was convicted of first degree murder in the deaths of Brandon and Sierra with lying-in-wait and multiple murder special circumstances, attempted murder, and inflicting great bodily injury on the injured children. He was sentenced to life without parole.

(Cite as: 32 Cal.4th 1138, 12 Cal.Rptr.3d 615)

FN1. There are no issues regarding control of the property or fault that would require us to treat defendants separately.

Plaintiffs' complaints against defendants, which were consolidated in the trial court, alleged that defendants were aware the chain link fence in front of the property provided inadequate protection against intrusion into the child care center, that the fence was three to four feet from the roadway, and that Shirley Hawkinson, owner of Southcoast, had previously requested the Church provide funds to erect a higher fence in order to prevent the children from escaping the property. In the past, before Southcoast operated the child care center, a few noninjury traffic accidents happened near the property next to the sidewalk.

One freak accident occurred in 1996, of which Hawkinson testified she had no knowledge. According to a neighbor, a mail truck pulled up to the sidewalk across the street from the child care center, and the mail carrier reached out of his truck to open the adjacent mailbox. As the mail carrier reached for the box, he slipped, did a flip, and landed between the mailbox and the truck. The truck took off and headed toward the fence across the street. At the time, the property was leased by another school, not Southcoast. The truck bounced over the curb and went through the fence before coming to a stop at a tree inside the yard. Other than the mail carrier, who hurt his back, no one was injured in the incident.

*1144 Neighbors testified that other traffic incidents occurred near the premises involving vehicles that hit the curb, although no cars had gone through the fence at the child care center's location. The City of Costa Mesa reported no known traffic accidents at the child care center's site. Plaintiffs alleged, however, that had a sturdier barrier (i.e., a brick and iron fence) been in place at the time Abrams decided to kill the children, the barrier would have prevented him from driving his car onto the playground and killing them.

In nearly identical responses, defendants each moved for summary judgment, **619 contending

that Abrams's murderous rampage was a "wholly unforeseeable" criminal act that could not give rise to negligence liability under *Ann M.*, *supra*, 6 Cal.4th 666, 25 Cal.Rptr.2d 137, 863 P.2d 207. Defendants' moving papers included Hawkinson's declaration stating that she was unaware of any prior criminal acts on the premises before Abrams's attack. Neither defendant was aware of any criminal acts or incidents occurring on or around the child care property, and neither had notice of any prior similar acts that would place it on notice of a need for increased security. The Church also contended that the fence surrounding the playground was in compliance with the applicable code and safety regulations on the date of the incident.

In opposition to the summary judgment motions, plaintiffs asserted that defendants owed a duty as a matter of law to plaintiffs, because it was foreseeable that any vehicle could leave the road and strike the playground fence. Plaintiffs contended that defendants had a general duty to maintain their property in a reasonably safe condition, and that defendants had a statutory duty to fence the playground in a manner that protected the children. Plaintiffs argued that it did not matter whether the driver of the vehicle that killed the children acted negligently or with criminal intent, because the risk of harm from an unsafe fence was the same, and that defendants owed a duty to make the fence stronger. Plaintiffs claimed that the four-foot-high chain link fence surrounding the property failed to protect the children from Abrams's car, and a stronger fence would likely have been allowed under the then current City of Costa Mesa Zoning Code. (Costa Mesa Zoning Code, § 13- 75 [requiring Planning Commission approval of new fence or wall to be constructed adjacent to a public street].) In addition, plaintiffs argued that defendants had not shown as a matter of law that the harm to the children was "wholly unforeseeable," that defendants were unaware of any similar or other criminal incidents that occurred on or around the child care center's property, or that the potential danger was unknown to defendants.

Defendants replied that the prior similar incident