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Tennessee Supreme Court Holds That Landlords May Have a Duty to Protect Tenants from the Criminal Conduct of Other Tenants

Giggers v. Memphis Housing Auth., 277 S.W.3d 359 (Tenn. 2009).

The Tennessee Supreme Court recently held that the Memphis Housing Authority (“MHA”) could be found liable for injuries caused by the criminal conduct of one of its tenants when that conduct was reasonably foreseeable.

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FACTS AND PROCEDURAL HISTORY

L.C. Miller, a tenant in a public housing project, fired shots in the direction of a security guard with whom he was having a dispute. A shot fired by Mr. Miller accidentally struck and killed Charles Cornelius Brown, another tenant at the facility who happened to be in the area.

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Approximately five years prior to this incident, Miller had stabbed another tenant with a pocket knife after a verbal altercation. Following the stabbing, Miller was arrested for aggravated assault. In response, MHA placed Miller on probationary status for a year, warning that any future violations of MHA policy would result in the termination of his lease.

Based on Miller's prior criminal acts and upon reference to several other shooting incidents on various MHA properties, Mr. Brown's heirs filed a wrongful death suit against MHA alleging that it failed to maintain reasonably safe premises for its tenants. The trial court held that MHA did not have any affirmative duty to conduct criminal background checks on its perspective residents. Accordingly, the trial court dismissed the plaintiffs' claims. On appeal, the plaintiffs argued that based upon MHA's prior knowledge of Miller's violent behavior, MHA had a duty to monitor his actions or evict him from the premises. The Court of Appeals affirmed the trial court's ruling and held that "a landlord has no affirmative duty to evict or closely monitor a tenant who is known to have a criminal history." Giggers, 277 S.W.3d at 363. Following the Court of Appeals' ruling the Tennessee Supreme Court granted review.

THE MAJORITY'S ANALYSIS

The Tennessee Supreme Court began its analysis by noting that the dispositive issue in the case was whether MHA owed a duty to Mr. Brown. Id. at 364. Although courts are generally reluctant to impose liability for nonfeasance, i.e., a failure to act, such liability may be imposed when certain special relationships exist between defendants and plaintiffs. Id. The Court then identified the relationship of landlord tenant as a special relationship and stated that "a landlord, while not an insurer, owes a tenant the duty 'to take reasonable precautions to protect [his or her] tenants from criminal acts of third parties on the lease premises,' among other foreseeable dangers." Id. at 365 (quoting Tedder v. Raskin, 728 S.W.2d 343, 347 (Tenn. Ct. App. 1987)).

The Court then noted that the question of whether a duty of care arises is a question of law to be determined by the courts. Id. When making this determination, courts recognize that a duty to act with due care will arise "if the foreseeable probability and gravity of harm posed by a defendant's conduct outweigh the burden upon defendant to engage in alternative conduct that would have prevented the harm." Id. (quoting McCall v. Wilder, 913 S.W.2d 150, 153 (Tenn. 1950)). Although foreseeability is not in and of itself sufficient to give rise to a duty, it is a crucial part of the duty analysis. Id. at 365-66.

In applying this duty analysis to the case at hand, the Court found that violence in a housing project is generally foreseeable. Id. at 366. Moreover, the Court found that this specific instance of violence was also foreseeable, in that Miller had a previous criminal record of which MHA had knowledge. Id. at 367. Although the Court noted that there were significant public policy reasons in favor of providing low-income housing to all persons, including those with prior criminal histories, the Court found that these public policy considerations were not incompatible with a duty to provide public housing tenants with reasonable protections against criminal violence by third parties. Specifically, the Court noted the feasibility of a one-strike policy, in which tenants would be evicted after their first violent criminal act. Id. at 370. The Court went on to state, “[h]owever, the question of what steps, if any, are required by the duty of reasonable care will inevitably depend upon the facts of individual cases and should be left to the finder of fact, not the courts.” Id. at 371. In its conclusion, the Court held that “all landlords – whether public housing authorities or the owners of luxury high rises – have a duty to use reasonable care to protect their tenants from unreasonable risks of physically injurious attacks by third parties, if those risks are foreseeable and public policy considerations do not militate otherwise.” Id. at 371. Based on this reasoning, the Court reversed the lower courts, found that MHA owed a duty to Mr. Brown, and remanded the case for additional proceedings.

CONCLUSION

Although this case applied specifically to the Memphis Housing Authority, the Court explicitly notes in its conclusion that its holding is equally applicable to private landlords. Accordingly, landlords who become aware of a tenant’s criminal conduct may have an obligation to protect other tenants from similar conduct that could potentially occur in the future. This is particularly true when the prior conduct occurred on the landlord’s property and involved an injury to another tenant. Although the Court stopped short of expressing exactly what a landlord must do to fulfill its duty to protect its tenants from criminal attacks by third parties, the Court did state that a one-strike policy is feasible and suggested that such

a policy may fulfill a landlord's obligations. It is clear, however, that a Tennessee landlord is best advised to have some policy in place designed to deal with tenants who commit criminal acts, or the landlord may be potentially liable for any persons harmed by future criminal activity by that tenant.

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