No. A19A2438

In the Court of Appeals
For the State of Georgia

ST. JUDE'S RECOVERY CENTER, INC.,

Appellant,
vs.

LAURA VAUGHN,

Appellee.

BRIEF OF APPELLANT

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Statement of the Proceedings Below and Material Facts

Appellee Laura Vaughn, who was a participant in Appellant's residential drug rehabilitation program, was raped while walking back from an unauthorized trip to a nearby gas station to buy cigarettes. She was supposed to be on a bus headed to work at the time, but she had missed her normal bus. Instead of waiting for the next bus or returning to Appellant's facility, Appellee walked the opposite direction down a dark street to a gas station to buy cigarettes in the early morning hours. While leaving the gas station after buying cigarettes, **more than a mile away from Appellant's facility**, Appellee was approached by a stranger who raped her.

Appellee filed her lawsuit on July 25, 2017, seeking to hold Appellant liable for her rape, which occurred more than a mile away from Appellant's premises. (R2–4 to 11.[1]) Appellee filed an Amended Complaint on September 8, 2017. (R2-17 to 25.) Appellant filed its motion for summary judgment on October 26, 2018. (R2-88 to 124.) Appellee filed her response in opposition on December 10, 2018. (R3-980 to 1013.) The trial court entered its order denying Appellant's motion on January 8, 2019 (R4-1184 to 1186), and then entered a timely order granting Appellant a

[1] Appellant notes that many of the page numbers on the electronic version of Record Volume 2 and Volume 3 appear overlapping or otherwise misaligned. Nonetheless, Appellant has tried to make these record citations clear and corresponding to the Record Index.

certificate of immediate review. (R4-1198 to 1199.) This Court granted Appellant's application for interlocutory appeal on February 19, 2019.

Appellee was a resident of Appellant's residential drug rehabilitation program as an alternative to completing a three-year sentence (plus 10 years' probation) for criminal trespass in April 2014 and burglary in July 2014. (R2-281, p. 18; R2-283, p. 26-27.) While incarcerated, Appellee asked for treatment help and was recommended for an in-patient treatment program in lieu of serving the remainder of her sentence in prison. (R2-281, p. 18.) After serving approximately 5 months in jail, Appellee was transferred to St. Jude's Family Care Center ("FCC") program on December 30, 2014. (R2-281, p. 18.)

Appellant St. Jude's is a non-profit, 501(c)(3) organization providing residential and outpatient treatment services through several programs to individuals suffering from substance abuse addiction and other mental health challenges. (R2-161, p. 83.) Appellee was a voluntary participant in Appellant's treatment program and she voluntarily obtained and worked a job at a fast-food restaurant during the latter part of that program—which is where she was supposed to be going at the time the incident occurred. Obtaining employment is not simply a St. Jude's requirement, but a **requirement imposed by the Georgia Department of Behavioral Health and Developmental Disabilities** by contract with Appellant as a treatment provider. To facilitate travel to and from their place of work, residents who complete the job

search phase and enter phase three of Appellant's program are given MARTA pass cards on a weekly basis. Residents must get to work and work their jobs as they would have to do once upon a successful release from the program. The goal of this requirement is to aid residents such as Appellee in preparing themselves to be successful and remain drug-free after they are discharged from Appellant's program. (R2-305, p. 116.)

The FCC is located at 1650 Alma Street in Atlanta. (R2-334, p. 78.) On the morning of the incident, Appellee walked from the FCC to a MARTA bus stop on Carroll Drive at Chattahoochee Avenue. (R2-299, p. 92.) This bus stop is approximately 0.8 miles from the FCC. Unfortunately, Appellee was late to the bus stop and the bus had already left by the time she got there. (R2-295, p. 75.) Instead of waiting at the bus stop for the next bus or returning to Appellant's facility, Appellee elected to walk nearly a half-mile further down Chattahoochee Avenue (about another 10 minute walk) to a convenience store in the dark to buy cigarettes. (R2-295, p. 75.) The convenience store is approximately 0.4 miles from the Carroll Drive bus stop. Appellee admits she knew it was against Appellant's rules for residents such as Appellee to visit the convenience store. (R2-300, p. 95; R2-296, p. 79.)

After buying cigarettes, Appellee left the convenience store and a man followed her from the store's parking lot and approached her under the pretense of

asking for directions. (R2-295, p. 75.) The two walked in the same direction across the street from the convenience store. (R2-296 to 297, p. 80-81.) The man then pulled out a gun, directed Appellee into the trees beside the roadway, and raped her at gunpoint at a location more than a mile from Appellant's facility. (R2-297, p. 81-82.) Appellee described the location of the attack as just off the sidewalk near the Ellsworth bus stop on Chattahoochee Avenue. (R2-297, p. 83-84.)

Appellant did not direct or authorize Appellee to walk from the bus stop to the convenience store that morning, and it is undisputed that none of Appellant's employees knew she was doing so. Furthermore, none of Appellant's employees expected Appellee to be anywhere other than the bus stop, or her place of employment. **Appellee produced no expert testimony, governing law or regulation, or other evidence from which a reasonable factfinder could determine the scope of any duty owed to Appellee by Appellant under these circumstances. Appellee certainly offered no evidence from which a reasonable factfinder could find Appellee breached any such duty. Finally, Appellee offered no evidence from which a reasonable factfinder could find that any alleged breach of duty by Appellant proximately caused Appellee to be raped.**

Jurisdictional Statement

The Court has jurisdiction under O.C.G.A. § 5-6-34(b). The Georgia Supreme Court does not have exclusive jurisdiction over the subject matter of this application. *See* GA. CONST. Art. VI, § 5, Para. 3; § 6, Para. 3.

Enumeration of Errors

1. The trial court erred in failing to decide the question of duty as a matter of law.
2. The trial court erred in its interpretation and application of the Supreme Court of Georgia's opinion in Martin v. Six Flags Over Georgia II, L.P., 301 Ga. 323 (2017).
3. The trial court erred in finding genuine issues of material fact remained as to whether Appellant breached any legal duty to Appellee or whether Appellant proximately caused Appellee's injuries.
4. The trial court erred in denying Appellant's motion for summary judgment.

Argument and Authorities

1. Introduction.

The legal issues raised in this appeal are dispositive of the case and should have been decided by the trial court as a matter of law at the summary judgment stage. Respectfully, the rationale relied upon by the trial count in denying Appellant's motion for summary judgment was erroneous and contrary to

established Georgia precedent. Appellant is entitled to summary judgment in this case because Appellee failed to produce evidence from which a reasonable factfinder could find any of the elements of duty, breach, or proximate cause was satisfied. Furthermore, there are no appellate decisions supporting Appellee's far-reaching arguments for imposing liability on the facts of this case. Appellant is not aware of any appellate decision in Georgia addressing an attempt to impose liability on a rehabilitation center operator when one of its residents is attacked **more than a mile away from its property and in a location it had no knowledge and no expectation its resident would travel to**. If the trial court's denial of Appellant's motion for summary judgment stands, the duties imposed on Appellant—and on property owners and occupiers throughout Georgia as a general matter—will be expanded far beyond the scope permitted under Georgia law.

2. Standard of review.

To prevail on a motion for summary judgment, the movant must demonstrate there is no genuine issue of material fact and the undisputed facts, viewed in a light most favorable to the party opposing the motion, warrant judgment as a matter of law.[2] A *de novo* standard of review applies to an appeal from a ruling on summary

[2] Lau's Corp. v. Haskins, 261 Ga. 491 (1991); O.C.G.A. § 9-11-56(c).

judgment, and this Court views the evidence and all reasonable conclusions and inferences drawn therefrom in the light most favorable to the nonmovant."[3]

3. The trial court erred in failing to determine the issue of duty as a matter of law and in failing to hold as a matter of law that Appellant owed no duty to Appellee when she was attacked.

There is no basis under Georgia law for finding Appellant owed Appellee a legal duty at the time the subject incident occurred. As a preliminary matter, however, the trial court clearly erred by failing to decide whether Appellant owed a legal duty to Appellee, instead purporting to find that there are "issues of fact" to be decided by the jury on something that is a pure question of law. (R4-1184 to 1186.) The trial court should have ruled on the question of duty itself, and there was nothing before the trial court that would permit a finding that a duty existed under the facts of this case.

The Court here does not have to decide whether a property owner like Appellant could ever face liability because of a duty it has as a landowner or because of an assumed duty under any set of circumstances. But under the specific facts and circumstances present here—where the evidence is that Appellee was attacked far beyond the bounds of Appellant's property, in an area she was not permitted to visit, and there were no prior rapes, sexual assaults robberies on Appellant's property—

[3] Freeman v. Smith, 324 Ga. App. 426, 427 (2013) (internal punctuation omitted)(*overruled* in part on other grounds by Franklin v. Pitts, 349 Ga. App. 544, 552 (2019)).

the Court must find that Appellant owed no duty to Appellee when she was attacked. The trial court's order, if allowed to stand, would greatly expand the duty of nonprofit residential treatment/rehabilitation centers to their residents while also arguably expanding the duty of premises owners more generally for incidents occurring well away from their property.

i. The trial court erred in failing to decide the question of duty as a matter of law.

Appellee's claims against Appellant sound in negligence: Appellee has alleged that "[Appellant] breached its duty owed to [Appellee] to provide reasonable care by requiring Laura to work off site yet failing to provide any security measures, transportation, escort or other means of ensuring that residents remained safe and secure while travelling to and from work." (R2-22 to 23, ¶ 31.) To maintain a cause of action for negligence, Appellee must establish:

> (1) A legal duty to conform to a standard of conduct raised by the law for the protection of others against unreasonable risks of harm; (2) a breach of this standard; (3) a legally attributable causal connection between the conduct and the resulting injury; and, (4) some loss or damage flowing to the Appellee's legally protected interest as a result of the alleged breach of the legal duty.[4]

[4] Watson v. Gen. Mech. Servs., 276 Ga. App. 479, 481 (2005).

The first element that must be proven on any negligence is claim is "a duty owed by the defendant to the plaintiff."[5] Georgia law is clear that "[w]hether a duty exists upon which liability can be based is a **question of law**."[6] Moreover, questions of whether a duty was owed by the defendant to the plaintiff—and the extent of that duty—are **threshold issues** that must be decided by the trial court before any questions of fact may be considered.[7]

In this case, the trial court erred by failing to examine and issue any ruling as to whether Appellant owed a duty to Appellee at the time of the subject rape. While the existence of a duty is often either accepted or presumed (e.g., duty of a motorist to other motorists), the existence of a duty must be shown in cases where it is not. In this case, the trial court's ruling contained no specific finding on duty at all and relied on law applicable to a premises owner. Rather, the trial court stated that unspecified "deposition testimony given by faculty of the defendant concerning knowledge and foreseeability of those possible dangers…raise[s] questions of material, triable fact on issues raised in Defendant's Motion for Summary Judgment." (R4-1185.) Since

[5] Dep't of Labor v. McConnell, Nos. S18G1316, S18G1317, 2019 Ga. LEXIS 336, at *7 (May 20, 2019).

[6] City of Rome v. Jordan, 263 Ga. 26, 27 (1) (1993) (emphasis supplied); Glover v. Ga. Power Co., 347 Ga. App. 372, 375 (1) (2018).

[7] Id. *See also* Bradley Ctr., 250 Ga. at 200.

duty is never a question of fact under Georgia law, the trial court's Order is erroneous without the need to even examine the evidence before the court in this case.

ii. Appellant owed no duty to Appellee where she was attacked.

If the trial court had correctly addressed the question of duty, the court would have been required to find as a matter of law that no duty existed here. Before negligence can be predicated on a given act, "some duty to the individual complaining must be sought and found, the observance of which duty would have averted or avoided the injury or damage."[8] In order to support a finding of liability, such a duty must be "either a duty imposed by a valid statutory enactment of the legislature or a duty imposed by a recognized common law principle declared in the reported decisions of our appellate courts."[9]

In the case below, Appellee pointed to no statutory authority with which Appellant failed to comply. For example, Appellant's facility is not a long-term care facility or nursing home such as those governed by O.C.G.A. §§ 31-8-100, *et seq*. Similarly, Appellee was not committed to the care of a physician or psychiatrist such that principles of medical malpractice may apply. Nor was Appellee a child at the time of this attack such that Appellant would have any duty to supervise her and

[8] City of Douglasville v. Queen, 270 Ga. 770, 771 (1999).

[9] Murray v. Ga. DOT, 284 Ga. App. 263, 272 (2007).

protect her from injury.[10] Rather, Appellee was an adult who voluntarily participated in Appellant's rehabilitation program and was unfortunately attacked more than a mile away from Appellant's facility. Similarly, **there is no Georgia common law imposing a duty of rehabilitation facilities such as Appellant to supervise their residents at all times or to provide a security escort when those residents are going to work required by the Georgia Department of Behavioral Health and Developmental Disabilities**—let alone when such a resident **strays from her permitted route, without knowledge of the facility, for a purpose that is solely her own**.

Appellant owed a duty to exercise ordinary care towards Appellee while she was on its property.[11] However, it is undisputed that the attack on Appellee did not occur on Appellant's property—or anywhere near it. Furthermore, Appellant has not attempted to exert control over the gas station or any other portion of the area where Appellee was attacked. Accordingly, Appellant did not have a duty to provide security along this area or to prevent the criminal attack more than a mile away from its property, and the trial court clearly erred in holding that a jury could somehow find otherwise.[12]

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[10] See Bull St. Church of Christ v. Jensen, 233 Ga. App. 96, 99 (1998).

[11] See O.C.G.A. § 51-3-1.

[12] See e.g., Martin v. Six Flags Over Ga. II, L.P., 301 Ga. 323, 334-35 (2017)(Even where Six Flags undertook measures to control traffic, perform landscaping, pick up trash, and erect

iii. The trial court's application of Martin v. Six Flags Over Georgia II, L.P., 301 Ga. 323 (2017) was erroneous, and nothing in the Supreme Court's decision in that case creates a duty here.

In its Order denying Appellant's motion for summary judgment in the case below, the trial court stated that

> [I]n Martin, the Supreme Court held an attack on an amusement park patron by gang members at nearby bus stop was foreseeable even though it was outside of the bounds of the amusement park, and thus, the attack was within the realm of unreasonable risks of which amusement park had superior knowledge and against which it had duty to protect its invitee. There, the court reasoned that in assessing the scope of a landowner's duty to invitees with respect to off-premises incidents, one key is the foreseeability of the incident giving rise to such injuries.[13]

Obviously, that is a gross oversimplification of the Court's holding and reasoning in Martin. More importantly, precedent pertaining to the duty of a property owner for crimes occurring on the property owner's premises or approaches are not relevant to this case since that is not what occurred here. In any event, the Supreme Court's holding in Martin cannot serve as the basis for a duty here since, unlike in Martin, **the subject incident is not alleged to have originated or even begun on Appellant's property**.

Even if Martin did have some application here, it would not authorize denial of Appellant's motion for summary judgment in this case. The Georgia Supreme

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signage beyond its property, those measures fell short of the level of control and dominion required to create any general duty to provide security along that roadway.)

[13] R4-1185.

Court made clear in Martin that "the foreseeability of future criminal acts may be established by evidence of prior criminal acts of a 'substantially similar' nature to those at issue."[14] In determining whether previous criminal acts are substantially similar to the subject incident, the court "must inquire into the location, nature and extent of the prior criminal activities and their likeness, proximity or other relationship to the crime in question."[15] Further, "[f]oreseeable consequences are those which . . . because they happen so frequently, may be expected to happen again."[16] In this case, it is undisputed that there were no prior rapes, sexual assaults, robberies or similar crimes on Appellant's property or approaches. To be sure, Appellee presented no evidence of any prior crimes that would "suggest that personal injury would occur in the manner that it did in this case."[17] Furthermore, there is no evidence in this case regarding any prior crimes which occurred at or near the location where the subject attack actually occurred.

Additionally, and more specifically, the Georgia Supreme Court in Martin went on to hold that "[i]n the context of crimes that are ultimately completed off premises, also relevant to foreseeability are the **physical proximity** of the crime site

[14] Martin, supra, at 331.

[15] Sturbridge Partners v. Walker, 267 Ga. 785, 786 (1997).

[16] Brown v. All-Tech Inv. Grp., Inc., 265 Ga. App. 889, 894 (2004).

[17] Agnes Scott Coll., Inc. v. Clark, 273 Ga. App. 619, 623 (2005).

to the actual premises **and** the **temporal proximity** of the crime to the invitee's presence on the premises."[18] It is clear that a court must consider both physical and temporal proximity in assessing the foreseeability of a third-party criminal attack. As stated by the Georgia Supreme Court,

> [t]hese parameters are necessary to ensure that a landowner's liability to its invitees maintains its connection to the landowner-invitee relationship giving rise to the duty in the first place. The landowner's duty is to take the steps **within its premises** that are necessary to protect its invitees from risks that could reasonably be foreseen in connection with the invitee's presence on the premises, **which necessarily requires both** temporal and physical proximity between the invitee's presence on the premises and the incident giving rise to his injuries.[19]

There is no evidence or even any allegation in this case that any action that could or should have been taken by Appellant "**within its premises**" would have done anything to prevent the rape of Appellee more than a mile away. Indeed, this case is not even remotely factually similar to Martin, and the rationale for finding that a duty existed in that case notwithstanding that the incident occurred off the property owner's premises obviously does not apply here. Here, unlike in Martin, there was no allegation that the eventual attack on Appellee was a continuation of a crime or sequence of events **which began on Appellant's premises**. Without that key component, Martin has no application and cannot be the basis for a finding of

[18] Martin, 301 Ga. at 331 (emphasis added).

[19] Id. at 331-332. (emphasis added).

duty on the part of Appellant in this case.

Indeed, the facts of the cases cited by the Supreme Court in Martin in which a landowner's duties were extended beyond the bounds of its property are far afield from the facts of the case below. For example, in Wilks v. Piggly Wiggly Southern, the attack on that plaintiff occurred 20 to 25 yards beyond the defendant grocery store's property, and immediately upon the plaintiff's exit from the store.[20] In Osborne v. Stages Music Hall, an assault occurred on the sidewalk just outside the subject bar and immediately after patrons exited the defendant's premises.[21] And in Silva v. Spohn Health System Corp., the attack on a hospital employee occurred just after she completed her shift and was standing on the curb of the defendant's property adjoining a public street, awaiting her ride home.[22] In Holiday Inns v. Shelburne, the off-premises attack started on the landowner's property and "spilled over" onto the adjacent parking lot just minutes after the individuals had crossed the property line.[23]

Conversely, in the subject case, Appellee was attacked **more than a mile away** from Appellant's property. Additionally, the attack on Appellee did not occur immediately after or even within minutes of her leaving Appellant's property, but by

[20] 207 Ga. App. 842 (1993).

[21] 726 N.E.2d 728, 733 (Ill. Ct. App. 2000).

[22] 951 S.W.2d 91, 93 (Tex. Ct. App. 1997).

[23] 576 So. 2d 322, 328 (Fla. Dist. Ct. App. 1991), *disapproved on other grounds by* Angrand v. Key, 657 So. 2d 1146, 1149-1150 (Fla. 1995).

all accounts, at least **30 minutes after she left Appellant's premises**. (R2-300, p. 94-95; R2-295, p. 75.)

In this case, there is a complete lack of physical proximity of the location of the attack to Appellant's property and a complete lack of temporal proximity between the attack and Appellee's presence on Appellant's property. Furthermore, it appears the trial court did not consider these necessary factors **at all** in its determination that genuine issues of material fact remain in this matter—which would not have been a correct finding anyway, since the question of duty must always be decided as a matter of law. Furthermore, in its order denying summary judgment, the trial court failed to consider whether there were any substantially similar prior crimes (which there were not) and failed to consider the "nature and extent of the prior criminal activities." Accordingly, the trial court erred when it denied Appellant's motion for summary judgment.

iv. Appellant did not assume any duty of care for Appellee when she was attacked well beyond its property and in an area where Appellee is neither permitted nor expected to be.

During this litigation, Appellee has argued that Appellant assumed a duty of care towards Appellee and negligently performed a voluntary undertaking as contemplated by the Section 323 of the Restatement (Second) of Torts,[24] which provides:

> One who undertakes, gratuitously or for consideration, to render

[24] The provisions of Restatement (Second) of Torts, § 324A are nearly identical.

> services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
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> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.[25]

First and foremost, the above-referenced portions of the Restatement of Torts are not the law in Georgia, though certain provisions and reasonings announced in the Restatement have been adopted by certain Georgia courts applied to specific facts. Nonetheless, any precedential decision must be read in the light of the facts presented in that case.[26] Even assuming that Sections 323 and/or 324A of the Restatement are sufficient summaries of the common law and are available to Appellee, the facts of this case clearly would not provide a basis or establish a duty owed by Appellant to Appellee in this case.

Section 324A (a) applies only to the extent that the alleged negligence of the defendant "exposes the injured person to a greater risk of harm than had existed previously."[27] Thus, the mere "failure to abate a hazardous condition — without

[25] Restat 2d of Torts, § 323.

[26] Thomas County Bd. of Tax Assessors v. Thomasville Garden Center, 277 Ga. App. 591 (2006).

[27] Herrington v. Gaulden, 294 Ga. 285, 288 (2013).

making it worse — does not trigger the application of Section 324A (a)."[28] In this case, there is no evidence that Appellant worsened the allegedly hazardous condition of the roadways or bus stops along Carroll Drive, Chattahoochee Avenue or anywhere else, or did anything to increase the incidence of crime in those areas. Appellee was the victim of a criminal attack by an unknown third party in an area Appellee was not permitted to visit and an area Appellant had no expectation Appellee would be. Simply put, Appellant's alleged acts or omissions neither exacerbated nor created any alleged dangerous condition in this case and both Restatement (Second) of Torts, Sections 323 and 324A, are inapplicable to the facts of this case.

v. Appellant's duty to Appellee did not extend to areas where she was not supposed to be, did not tell Appellant she would be, and was not expected by Appellant.

Even if Appellee were correct in her argument that Appellant's duty to her extended beyond its property in this case— which she is not— Appellant's duties certainly could not be extended to areas where Appellant's has no knowledge Appellee would be. In this case, Appellee was on her way to the Chattahoochee/Carroll bus stop in order to get to her job at Hardees. However, Appellee did not get on the MARTA bus. Appellee also did not remain at the Chattahoochee bus stop or return to Appellant's facility. Appellee admits that

[28] Glover v. Ga. Power Co., 347 Ga. App. 372, 377 (2018).

nothing prevented her from walking back to the FCC and then returning to the Chattahoochee bus stop when it was closer in time for the next bus to arrive. Instead, Appellee decided to walk another half-mile down Chattahoochee Avenue to the Circle K gas station, a location Appellee admits she was not permitted to visit.

Appellee deviated from the route Appellant expected Appellee to take. She was pursuing her own errand and was not fulfilling any program requirements by walking to the Circle K gas station. Accordingly, Appellant did not owe Appellee any duty at the time of the attack because Appellee was over a mile from Appellant's property, she was at a location she was not supposed to be visiting and was not in an area Appellant expected Appellee to be in fulfilling her program requirements.

4. The trial court erred in finding that genuine issues of material fact remain as to whether Appellant breached any legal duty to Appellee or whether Appellant proximately caused Appellee's injuries.

There also was nothing properly before the trial court from which a reasonable factfinder could have found that Appellant breached any duty to Appellee when she walked well off Appellant's property and nearly a half-mile away from anywhere she was permitted to be so she could buy cigarettes. Similarly, the trial court erred in denying Appellant's motion for summary judgment because there was no evidence sufficient to create a genuine issue of material fact on the issue of proximate cause. Rather, the evidence plainly and palpably established that a reasonable factfinder could not have found any conduct by Appellant proximately

caused a criminal perpetrator to rape the Appellee well off Appellant's property and while Appellee had undertaken a detour solely for her own benefit and without notifying Appellant.

Although under Georgia law "questions of negligence are ordinarily for the jury, plain and indisputable cases may be decided by the court as a matter of law."[29] To pursue a cause of action for negligence in Georgia, a plaintiff must establish, among other things, a breach of duty, or that a defendant failed to conform to the standard of conduct raised by the law for the protection of others against unreasonable risks.[30] Furthermore, the general rule regarding premises liability is that any liability against a landlord arising from a third-party criminal attack "must be predicated on a breach of duty to exercise ordinary care in keeping the premises and approaches safe."[31]

Here, Appellee presented no evidence that Appellant breached any duty of care owed to Appellee when she was attacked. In fact, Appellee presented no evidence of standards for conduct or procedures utilized by other drug abuse rehabilitation centers. There was similarly no evidence presented regarding what

[29] Johns v. Hous. Auth. of Douglas, 297 Ga. App. 869, 871 (2009). *See also* George v. Hercules Real Estate Servs., 339 Ga. App. 843 (1) (2016) (*en banc*); Strickland v. DeKalb Hosp. Auth., 197 Ga. App. 63, 67 (2) (1990).

[30] Lau's Corp. v. Haskins, 261 Ga. 491, 492 (1991).

[31] Johns v. Hous. Auth., 297 Ga. App. 869, 871 (2009).

standards might apply to residential substance abuse rehabilitation center beyond ordinary care. To be sure, Appellee presented no evidence of standards or practices of other residential rehabilitation centers regarding how residents should travel to work placements from such facilities. Simply put, Appellee failed to present evidence from which a reasonable jury could find that Appellant breached any duty owed to Appellee by failing to conform to the standard of conduct recognized by law for the protection of Appellee.

Instead, as detailed below, there was evidence that Appellant took more than reasonable efforts to protect residents of its program. Furthermore, "undertaking measures to protect patrons does not heighten the standard of care; and taking some measures does not ordinarily constitute evidence that further measure might be required."[32]

Here, Appellee was attacked by a criminal over whom Appellant had no control, more than a mile from Appellant facility, at a time and in a place Appellant had no reason to believe or expect Appellee to be. There is **no evidence at all** in this case of substantially similar crimes against residents either on Appellant's premises or on its approaches. To be sure, Appellee has presented no evidence of

[32] Lau's Corp. v. Haskins, 261 Ga. 491, 494 -95 (1991).

any prior crimes that would suggest that personal injury would occur in the manner that it did in this case.

Indeed, to the contrary, Appellant took more than reasonable efforts to protect residents of its program. For example, the gate and front door of Appellant's facility was required to remain locked at all times. Residents were required to sign in and out each time they left the facility for any reason. Non-residents were permitted in the residence only when admitted by staff members and only during visiting hours.

Appellee has argued that, in order to prevent this criminal attack, Appellant should have driven residents to the MARTA bus stop or train station. But Appellee has not presented any evidence from which a reasonable jury could conclude that the reasonable operator of a residential rehabilitation center would or even could have done this. To the contrary, giving every resident a ride to MARTA would be inconsistent with the treatment program's goal of ensuring that residents such as Appellee would be self-sufficient in their day-to-day activities—including getting to and from their place of work—upon discharge from Appellant's program. In any event, there simply is no evidence from which a jury could determine that not providing a ride to MARTA was a breach of any duty owed to Appellee.

Furthermore, there is no evidence that the fact Appellee was required to walk to the bus stop, or any other alleged act or omission by Appellant, proximately caused Appellee's injuries in this case. In cases such as this one, "the inquiry is not

whether the defendant's conduct constituted a cause-in-fact of the injury, but rather whether the causal connection between that conduct and the injury is too remote for the law to permit a recovery."[33] "Speculation that raises a mere conjecture or possibility is not sufficient to create even an inference of fact for consideration on summary judgment."[34]

Generally speaking, the intervening criminal actions of a third party "without which the injury would not have occurred, will also be treated as the proximate cause of the injury thus breaking the causal connection between the defendants' negligence and the injury unless the criminal act was a reasonably foreseeable consequence of the defendants' conduct."[35] Thus, in the context of negligent security claims, in particular, the Georgia Court of Appeals has held that "a Plaintiff must do more than merely speculate as to whether enhanced security measures would have prevented an attack."[36] In particular, where under the evidence presented "a jury would have to speculate" that certain steps that could have been taken by the defendant would have prevented a third party from committing a crime, summary judgment for the

[33] Johns, 297 Ga. App. at 871 (internal quotations omitted).

[34] Id. at 872. *See also* Tuggle v. Helms, 231 Ga. App. 899, 902-03 (2) (1998).

[35] Wright v. Ashe, 220 Ga. App. 91, 94 (1996).

[36] Walker v. Aderhold Props., 303 Ga. App. 710, 714-15 (2) (2010). *See also* Sturbridge Partners, 267 Ga. at 787; Fallon v. Metro. Life Ins. Co., 238 Ga. App. 156, 158-59 (2) (1999); Post Props., Inc. v. Doe, 230 Ga. App. 34, 39 (1997) (phys. prec. only); Collins v. Shepherd, 212 Ga. App. 54, 56 (1994); Godwin v. Olshan, 161 Ga. App. 35, 37 (1982).

defendant is appropriate.[37] In such cases, "[t]he causal connection between the [defendant's] conduct and [the plaintiff's] injury is simply too remote for the law to permit a recovery," and, summary judgment is appropriate.[38]

In the more recent case of George v. Hercules Real Estate Services,[39] this Court, sitting *en banc*, held that the defendant premises owner was entitled to summary judgment where there was far more evidence of prior knowledge of prior crimes than in this case. In George, the plaintiff sued the owner of the apartment complex where he lived after he was shot by assailants during a home invasion, alleging that the defendant had knowledge of prior, similar crimes on the premises and should have taken additional steps to protect the plaintiff prior to the home invasion. The on-site property manager had told the defendant that more security was needed on the premises, and the very apartment where the home invasion took place had been burglarized just weeks before. The plaintiff contended, among other things, that the defendant should have provided more security at night in the complex.

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[37] Johns, 297 Ga. App. at 871-72 (granting summary judgment to defendant because "a jury would have to speculate that improvements to security patrols and lighting, and a repair to the fence, would have prevented the assailant from approaching Johns' apartment unit and reaching through her window to gain entry into her apartment").

[38] Id. at 872. *See also* Cowart v. Widener, 287 Ga. 622, 633 (2010) (holding that "[s]ummary judgment cannot be avoided based on speculation or conjecture").

[39] 339 Ga. App. 843 (2016) (*en banc*), *cert. denied*, 2017 Ga. LEXIS 561 (June 30, 2017).

Nevertheless, citing the Johns v. Housing Authority case with approval, this Court held that the defendant premises owner was entitled to summary judgment due to a lack of evidence of proximate cause. This Court found the plaintiff in that case had not presented evidence from which a jury reasonably could find that any action or failure to act by the defendant premises owner proximately caused the home invasion.

In this case, Appellee has presented no evidence from which a reasonable jury could find that any proposed measure **by Appellant** would have prevented this attack on Appellee from occurring over a mile away from Appellant's premises. Appellee was not attacked while walking from the facility to the bus stop; she was attacked while walking back from an unauthorized side trip to buy cigarettes after she missed the bus.

If allowed to stand, **the trial court's ruling in this case would improperly expand the scope of duties for landowners far beyond that permitted by Georgia law.** The trial court's ruling effectively means that a landowner's duties to invitees can now be expanded to incidents which occur far beyond the defendant's property, long after the invitee leaves the defendant's premises, and without regard to whether anything the defendant should or could have done would have had any impact whatsoever. Further, taking Appellee's argument to its logical conclusion, Appellant's duties to provide security to its residents would never end. Under such

a framework, Appellant and any other residential rehabilitation facility would have a duty to protect against unforeseeable attacks to its residents that occurred on the MARTA bus, or on the train, at work, and seemingly anywhere in between. As Martin makes clear, an incident such as these would have a complete lack of physical and temporal proximity to Appellant's property. Furthermore, there is a complete lack of substantially similar prior crimes sufficient to put Appellant on notice that an attack like this would occur well away from its property and in an area its residents were prohibited from visiting. Accordingly, this Court should reverse the trial court's denial of summary judgment.

Conclusion

As shown, the facts of this case and the law demonstrate that Appellant was entitled to summary judgment. The attack upon Appellee by an unknown criminal assailant which occurred well away from Appellant's property, in an area Appellant had no reason to expect Appellee would be, at least 30 minutes after Appellee left Appellant's property, was entirely unforeseeable to Appellant. Additionally, there is no evidence of substantially similar prior crimes or occurrences known to Appellant. Georgia law is clear that under the facts of this case, Appellant owed no duty to Appellee at the time of the subject attack and the trial court erred when it (i) failed to decide the question of duty as a matter of law and (ii) failed to hold that Appellant owed no duty to Appellee. Furthermore, as applied to the facts of this case,

Georgia law mandates that Appellant breached no duty owed to Appellee, and, thus, Appellant cannot be liable for the independent, criminal attack she suffered. None of Appellant's actions were the cause in fact or the proximate cause of Appellee's injuries or damages in this case and this Court should reverse the trial court's denial of summary judgment.

Word Count Certificate

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 1st day of August, 2019.

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Certificate of Service

I have this day served the attorneys of record for Appellee with the foregoing ***BRIEF OF APPELLANT*** by placing a true and correct copy thereof in the United States Mail in an envelope with sufficient postage to ensure delivery, addressed as follows:

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This 1st day of August, 2019.

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