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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1804**

Nikki Garrett, as trustee for the heirs of Thomas Garrett, deceased,
Appellant,

vs.

Thomas Reuben,
Respondent.

**Filed June 8, 2010
Affirmed
Bjorkman, Judge**

Benton County District Court
File No. 05-CV-08-2716

Sharon L. Van Dyck, Van Dyck Law Firm, PLLC, St. Louis Park, Minnesota; and

Stuart L. Goldenberg, Goldenberg & Johnson, PLLC, Minneapolis, Minnesota (for
appellant)

Timothy P. Tobin, Timothy J. Crocker, Brock P. Alton, Gislason & Hunter, LLP,
Minneapolis, Minnesota (for respondent)

Considered and decided by Shumaker, Presiding Judge; Worke, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant Nikki Garrett, acting on behalf of the estate of her deceased husband,
challenges the district court's grant of summary judgment in favor of respondent.

Decedent suffered a fatal heart attack hours after he witnessed a heavy wall fall on respondent. Because decedent's heart attack was not a reasonably foreseeable risk of harm that created a legal duty, we affirm.

FACTS

On April 5, 2008, respondent Thomas Reuben enlisted two friends, Thomas Garrett¹ and Paul Hutchins, to help him disassemble horse stalls in Reuben's barn. Each horse stall was made up of a front door and side wall segments. The wall segments had metal frames that were bolted to the wall of the barn. Into each of the metal frames were inserted wooden slats that fit together in a tongue-and-groove system. The front stall doors were bolted onto hinges attached to alternating wall segments. Because the wall sections were heavy, Reuben needed Garrett and Hutchins to help him take the stalls apart.

The men first discussed how to proceed. Reuben suggested that they take down each wall section in one piece, without first removing the wooden slats. Both Hutchins and Garrett were concerned that the sections would be too heavy to move. Ultimately, the men decided to try removing one of the wall sections intact, and if that was not feasible, they would remove the wooden slats before moving the other wall sections.

The men began by removing the stall doors and placing them on a pallet. They next turned to the side walls. Hutchins began removing the metal plates that held the wooden slats into the top of each wall section. Reuben began at the first stall, removing

¹ Thomas Garrett, the decedent, is referred to as "Garrett." His wife is referred to as "appellant."

the bolts that attached the side wall to the barn. Once these bolts were removed, nothing was holding the wall segment in place, other than its own weight.

Reuben decided that it would be best to remove some of the wooden slats to lighten the weight of the side wall. Both Garrett and Hutchins were aware that this was a potentially dangerous task. The three men used rubber mallets to loosen the slats from each other; then they lifted the slats up through the top of the metal frame. Reuben stood on a ladder on one side of the wall. Hutchins took up a position on the opposite side of the wall from Reuben. Garrett was standing past the end of the wall, so that no matter which way the wall might fall, it would not land on him.

The men removed the first slat without incident. But as Reuben and Hutchins attempted to remove the second slat, the wall began to tip toward Reuben. Garrett and Hutchins each grabbed an end of the wall to try to steady it, but the weight of the wall was too great for them to prevent it from falling. Although they slowed its fall, the side wall fell on Reuben, knocking him to the ground and rendering him unconscious. Garrett and Hutchins were able to use the far end of the wall segment as a fulcrum to lift the wall segment off Reuben. They called 911, and paramedics arrived to transport Reuben to the hospital.

Appellant arrived on the scene shortly after the accident. She observed that Garrett was shaken; he was emotionally and physically distraught and was afraid Reuben had died. Appellant drove Garrett and Hutchins to the hospital where Reuben had been taken. While at the hospital, Garrett reported that he was having chest and shoulder pain, but he declined treatment. After learning that Reuben's condition had stabilized,

appellant and Garrett left the hospital. Garrett appeared to be fine, although he was still concerned about his friend. Garrett suffered a fatal heart attack, several hours after the accident.

Appellant sued Reuben, alleging that his negligence caused Garrett's death. Appellant retained an expert who opined that "the triggering factor that had a substantial part in causing Mr. Garrett's cardiac arrest and subsequent death was the stress (from vigorous physical exertion, emotional stress, and pain) that occurred in relation to the accident."

Reuben moved for summary judgment, arguing that he did not owe Garrett a duty, and that if a duty were owed, Garrett's assumption of the risk and decision to encounter an open and obvious danger relieved Reuben of any duty. The district court granted summary judgment on all three grounds. This appeal follows.

D E C I S I O N

Summary judgment is appropriate when there are no genuine issues of material fact and a party is entitled to a judgment as a matter of law. Minn. R. Civ. P. 56.03. "We review de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

A plaintiff in a negligence action must prove four elements: "(1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of that duty being the proximate cause of the injury." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). "Whether one owes a legal duty to another is a question of law to be determined by the

court.” *Zimmer v. Carlton County Co-op Power Ass’n*, 483 N.W.2d 511, 513 (Minn. App. 1992), *review denied* (Minn. June 10, 1992).

The existence of a legal duty turns on the relationship of the parties and “the foreseeability of the risk involved.” *Gilbertson v. Leininger*, 599 N.W.2d 127, 130 (Minn. 1999). A landowner who invites a person onto property creates a relationship from which a duty of care arises. *See Peterson ex rel. Peterson v. Balach*, 294 Minn. 161, 163-64, 199 N.W.2d 639, 641-42 (1972); *see also Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 168–69 (Minn. 1989) (“Whether a duty is imposed depends, therefore, on the relationship of the parties and the foreseeable risk involved.”). But a legal duty exists only with respect to the risks of harm that are reasonably foreseeable. *Foss v. Kincade*, 766 N.W.2d 317, 322 (Minn. 2009) (“A harm which is not objectively reasonable to expect is too remote to create liability.”). In determining whether a risk of harm is foreseeable, we consider “whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility.” *Whiteford by Whiteford v. Yamaha Motor Corp., U.S.A.*, 582 N.W.2d 916, 918 (Minn. 1998). While the question of foreseeability may present a jury issue in some cases, where, as here, the issue is clear, the foreseeability of the harm is for the court to decide. *See Foss*, 766 N.W.2d at 322-23.

In *Foss*, the supreme court held that the homeowners (the Kincades) owed no duty to a three-year-old visitor to their home who climbed onto an empty and unsecured bookshelf, causing it to fall on him. *Id.* at 319. The *Foss* court rejected the argument that the Kincades’ admission that the bookcase tipping over was “within the ‘realm of

conceivable possibility” was sufficient to create a fact issue as to foreseeability. *Id.* at 323. Absent actual knowledge that Foss had a propensity to climb bookcases, the supreme court concluded that the harm to Foss was not reasonably foreseeable. *Id.*

Likewise, here, we recognize that the realm of possible harm is larger than the realm of reasonably foreseeable harm. Although it was conceivable that Garrett could suffer a heart attack hours after witnessing the stall wall fall on Reuben, this harm was not reasonably foreseeable. The specific danger that was objectively reasonable to expect was that all or a portion of a wall segment would fall on one of the men. The harm that was objectively reasonable to expect was that a person struck by this heavy item would be physically injured. It was objectively reasonable to expect that someone could sustain a crushing injury if a heavy wall fell on him, but it was not reasonably foreseeable that a witness to such an accident would later suffer a heart attack due to his effort to assist the injured person or the associated emotional stress. As in *Foss*, Reuben was not on notice that Garrett had a heart condition and had no way of knowing that Garrett would have a heart attack as a result of witnessing or responding to the wall falling on Reuben. Accordingly, there is no question of fact for the jury.

Ultimately, whether a duty will be imposed is a policy question. *Erickson*, 447 N.W.2d at 169; *K. L. v. Riverside Med. Ctr.*, 524 N.W.2d 300, 303 (Minn. App. 1994), *review denied* (Minn. Feb. 3, 1995); *see also Becker v. Mayo Found.*, 737 N.W.2d 200, 212 (Minn. 2007) (noting that duty “is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection”). We conclude that public policy does not support imposition of a duty under

the circumstances of this case. The possibility that Garrett would die from a heart attack after witnessing Reuben's injury was conceivable but not reasonably foreseeable. To hold otherwise, on these facts, would create potentially unlimited liability.

Because we conclude that Reuben owed no duty to Garrett, we need not reach the issues of whether Garrett assumed the risk of injury or whether the condition of the stall wall and the hazard it presented were open and obvious.

Affirmed.