
Your Ever-Increasing Duty to Protect Another from the Conduct of a 3rd Person

By Jesse L. Roth

Elmer Carroll was released from prison after completing his 7-year sentence for lewd conduct with a minor. He moved into a halfway house for transients and ex-convicts. A few months later, he assaulted and murdered an 11-year-old girl who lived next door to the house. The girl's estate sued in negligence, alleging that the halfway house had breached its duty of care to the girl. At trial, the jury agreed and awarded the estate \$1.5 million.

Anthony Dixon, a 17-year-old boy, lived in a group home for the mentally challenged. On a visit to his mother's house, 150 miles away from the group home, he shot and killed a dentist outside a convenience store. The dentist's estate sued in negligence, alleging that the group home had breached its duty of care to the dentist. The trial court, however, granted summary judgment for the home.

The former verdict surely led to some hand-wringing by the defense bar as it evidenced an expansion of the “duty to protect” doctrine, while the latter decision likely provided little consolation, i.e., *of course* a group home for the mentally challenged owes no duty to protect a Kwik Stop customer 150 miles away from an attack by a resident of the home.

The appellate courts, however, turned these outcomes on their heads. Encouragingly, the Florida Court of Appeals overturned the jury verdict against the halfway house, ruling that the house owed no duty to protect the girl next door from the attack by its resident. Troublingly, however, the Texas Supreme Court reversed the grant of summary judgment for the group home, ruling that genuine issues of material fact precluded summary judgment as to whether the dentist's murder had been foreseeable. Why?

An individual generally has no duty to protect another who is endangered by a third person's conduct. Nonetheless, courts may find a duty of reasonable care

where one stands in a “special relationship” with either the victim or the person causing the injury. These “special relationships” are generally predicated on an imbalance of control, where one person entrusts himself to the control and protection of another, with a consequent loss of control to protect himself. Where a “special relationship” exists, a duty of reasonable care may be owed toward those third parties who are readily identifiable as foreseeably endangered.

In the halfway house case, *Lighthouse Mission of Orlando, Inc. v Estate of McGowen*, 683 So.2d 1086 (1996), the Florida Court of Appeals decided that the halfway house was not engaged in a “special relationship” with its resident, who assaulted and murdered the girl next door, because it did not exercise sufficient control over the resident: “There were no restraints on his liberty. He lived at the [halfway house] as a tenant. Much like many common landlord/tenant relationships, [he] paid rent in exchange for his room and board.”

In the group home case, on the other hand, *Texas Home Management, Inc. v Peavy*, 89 S.W.3d 30 (2002), the Texas Supreme Court held that the facility, as the party in charge of the juvenile, and which knew or at least reasonably should have known of his criminal propensities, owed a duty of care to people foreseeably exposed to such danger, and that the juvenile’s unsupervised visits to his mother’s house may have presented an unreasonable and foreseeable risk of harm to others.

Indeed, there is a line of cases from around the country, in the same vein as these two, in which courts have held that a “special relationship” that may give rise to a duty to protect another from a third person’s conduct exists where: (1) one exercises sufficient control over the dangerous person or the victim, and (2) one knows or has reason to know that the dangerous person poses a danger either to the victim specifically or to all people within the reach of the dangerous person.

Worryingly, the Michigan Supreme Court, in a recent decision finding for a gunshot victim against the landlord of the residential apartment complex where the victim was shot, has liberalized the “control” requirement to include the relationship between a landlord and its tenant’s invitee. In *Bailey v Schaaf*, 494 Mich 595 (2013), a man was shot in a common area at his brother’s apartment after security guards at the complex had been warned that the assailant was brandishing a gun and threatening to kill someone. The man subsequently attempted to hold the landlord liable for his injuries, arguing that the landlord had breached its duty to protect him from the assailant. The Court agreed, holding that

the landlord-tenant relationship is itself a “special relationship” that gives rise to a landlord’s “duty to respond by reasonably expediting police involvement where it is given notice of a specific situation occurring on the premises that would cause a reasonable person to recognize a risk of imminent harm to an identifiable invitee.” In other words, knowledge of the danger may now be sufficient to give rise to a duty to protect another who is endangered by a third person’s conduct, even where the duty-bound party does not “control,” in the traditional sense, either the dangerous person or the victim.

For those of us involved in litigation in Michigan and elsewhere, it is important that we remain alert to the ever-increasing bounds of duty.