Yeagle v. Collegiate Times

Facts: Sharon D. Yeagle is employed as an assistant to the Vice President of Student Affairs at Virginia Polytechnic Institute and State University. As part of her responsibilities, she facilitated the participation of students in the 1996 Governor's Fellows Program. The Collegiate Times, the University's student newspaper, published an article describing the University's successful placement of students in the program. The text of the article surrounded a block quotation in larger print attributed to Yeagle. Beneath the quotation, the phrase "Director of Butt Licking" was printed under Yeagle's name.

Yeagle filed a motion for judgment against the Collegiate Times, alleging that the phrase "Director of Butt Licking" constituted common law defamation, defamation per se, and use of insulting words under Code § 8.01-45. The trial court sustained the Collegiate Times' demurrer on all counts and dismissed the case. The trial court held that the phrase at issue was "void of any literal meaning," and that it would be unreasonable to interpret the phrase as conveying any factual information about Yeagle.

Issue: Whether the trial court erred in holding that, as a matter of law, the phrase "Director of Butt Licking" cannot convey a defamatory meaning?

Holding: We conclude that the trial court did not err in sustaining the demurrer because the offending phrase cannot support an action for defamation-an issue properly determined by the court as a matter of law.

Causes of action for defamation have their basis in state common law but are subject to principles of freedom of speech arising under the First Amendment to the United States Constitution and Article I, Section 12 of the Constitution of Virginia. The United States Supreme Court has identified constitutional limits on the type of speech that may be the subject of common law defamation actions. Thus, speech which does not contain a provably false factual connotation,[1] or statements which cannot reasonably be interpreted as stating actual facts about a person cannot form the basis of a common law defamation action.

The threshold issue, whether the complained of phrase including inferences fairly attributable to it could reasonably be interpreted as stating actual facts about Yeagle and, therefore, be actionable defamation, is a matter of law to be resolved by the trial court. In this case, the phrase "Director of Butt Licking" is no more than "rhetorical hyperbole." The phrase is disgusting, offensive, and in extremely bad taste, but it cannot reasonably be understood as stating an actual fact about Yeagle's job title or her conduct, or that she committed a crime of moral turpitude.

Accordingly, because the phrase at issue could not reasonably be considered as conveying factual information about Yeagle, and therefore could not support a cause of action for defamation, we will affirm the judgment of the trial court.

GEORGE GRUBBS ENTERPRISES, INC v. Mitchel L. BIEN

On December 14, 1987, Mitchel Bien, a deaf mute, walked into the teeth of Grubbs Nissan's APB System. Bien was returning from his grandmother's where he had been doing some repairs around her house. It was cold and drizzly outside, with a little bit of rain. Bien lived with his mother and needed to be home for dinner between 6:00 and 6:30 p.m. As a rule, if Bien is going to be late he calls to let his mother know so she will not worry.

Bien was in the market for a new automobile. He was driving his deceased father's pickup and had been considering trading in the pickup for another vehicle. Grubbs Nissan was on the way home, so Bien decided to stop at the dealership. Since it was only 3:45 p.m., he felt he had plenty of time to stop at Grubbs Nissan and still make it home by 6:30 p.m.

While Bien was looking at some Nissan Pathfinders, Maturelli walked up to introduce himself. Upon discovering Bien was deaf, Maturelli went back inside and informed Kielson, his sales manager, that a deaf man was outside looking at cars. Maturelli told Kielson he had never dealt with a deaf person before. Kielson told him to put Bien through the APB System the same as any other person. After further discussions, Maturelli and Kielson came up with the idea of communicating by pen and paper.

NOTE: In the late 1970's, the Grubbs dealerships implemented a sales system technique known as the Automotive Profit Builder Controlled Track Selling System ("APB System"). Grubbs trained its sales force in the use of the APB System and expected its salespeople to follow this system. This system was still being used by Grubbs throughout the trial of this case.

Appellants' expert, Remar Sutton, testified that the goal of a system sales technique, including the APB System, is "to excite the customer, confuse the customer, pressure the customer, and then take every last dime you can get regardless of the consequences to the customer."

After talking with Kielson, Maturelli went back outside and reintroduced himself via pen and paper. Maturelli then began using the APR System on Bien. He showed Bien the features on the Pathfinder and they took a test drive. After test driving the Pathfinder, Bien noticed a 300ZX and indicated he liked it. Maturelli and Bien then test drove a red 300ZX. After the test drive, pursuant to the APR System, Maturelli parked the car on the sold line even though it had not been sold.

Maturelli next took Bien on a tour of the dealership. Following the tour, Maturelli bought Bien a coke. This is also done pursuant to the APB System to detain the customer and obligate him to the salesperson. Under Grubbs' APR System, the salespeople were taught to put money in the coke machine before asking the customer what he is drinking. Thus, the customer cannot refuse the drink and becomes psychologically obligated to the salesperson. This is also done to make it difficult to leave since it is hard to drive with a drink in one's hands.

After Maturelli bought Bien a coke, they went into Maturelli's office where Maturelli began filling out a worksheet listing the various information about the 300ZX. This too is part of the APR System. It is done in an effort to impress the customer with the product, and in an attempt to obtain a bid on the vehicle from the customer.

After Maturelli filled out the worksheet and the price, he wrote the word "now" on a blank line for the delivery date. Bien responded that he did not want to buy the car at that time. Despite this, Maturelli wrote a note asking if Bien would be willing to do business that day if he could get an acceptable price. He then instructed Bien to put his initials beside this note and Bien complied. Maturelli next filled out a document on Bien's truck. He then went and pulled a computer price and equipment confirmation sheet on the 300ZX. It was at this point that the "negotiations" began.

Maturelli began by asking Bien what he would like to offer for the car. Bien offered to pay $18,500, less $4,775 trade-in for his truck. Maturelli asked Bien about a down payment and Bien said he could make a $4,000 down payment. Maturelli then feigned being Bien's friend and told Bien he needed some form of money to show his manager. Maturelli insisted that he needed Bien to write a $4,000 check so Maturelli could use it as leverage against his boss to get a good

deal.[*fn4] Contrary to his assertions, Maturelli knew his manager did not need to see a check to approve a deal. Rather, obtaining the check was simply another part of the APB System to prevent Bien from leaving and to exert psychological pressure on him.

Bien was hesitant to write the check, but Maturelli assured Bien he would return the check. However, according to the APB System under which Maturelli and the other Grubbs Nissan salespeople were trained, the check is only returned as an ultimate last resort because customers will not leave without it. In accordance with the system, Maturelli took the check to Kielson and instead of showing it to him and returning it to Bien, Maturelli left the check in Kielson's office.

During the discussions in Maturelli's office, they talked about Bien trading in his truck. Maturelli got Bien's keys to have the truck appraised. After it was appraised, pursuant to the APB System, the keys were not returned to Bien, but instead were placed in Kielson's office. Thus, pursuant to Grubbs Nissan's APB System, Bien was now effectively trapped. They had his check which would only be returned as an ultimate last resort, and they also had his keys. They knew Bien was deaf and could not use the phone to call for help, and they knew he could not walk home because of the dangers presented by his disabilities, together with the darkness and bad weather. Grubbs had achieved its goal of obtaining a captive audience.

When Maturelli got Bien to write the $4,000 check, he promised to return it. However, Maturelli did not fulfill this promise. Maturelli admitted Bien had the right to have his check returned immediately upon request, and there is no question Bien had the right to go home immediately upon request. However, pursuant to the APB System, Maturelli ignored Bien's repeated pleas for the return of his check and that he be allowed to go home. Despite these repeated requests, Maturelli continued in his attempt to obtain a sale, even mocking Bien at times. At one point in the so-called "negotiations" Bien explained that he would need to go home first and talk to his insurer. In response, despite the fact he knew Bien was deaf and could not use the phone, Maturelli told Bien that if he wanted to, he could call from the dealership. At another point in the negotiations, when Bien threatened to go to the police if they did not return his check, Maturelli responded: "The police want you to buy a new car and get a good deal!" After writing this note, Maturelli leaned back in his chair and started laughing.

Maturelli never did fulfill his promise to return Bien's check. Instead, when Maturelli left his office at one point during the "negotiations," Bien got up without Maturelli's knowledge and went looking for his check. However, before leaving the office, Bien retrieved all the written notes so he could explain to his mother where he had been and why he was late getting home. Bien then walked through the halls of the dealership until he saw his check lying on Kielson's desk. He went into the office to get his check, and when he turned around to leave Maturelli was standing in the door. When Bien started to walk out, Maturelli moved to block his path. Bien then stuck the check in the front of his pants and Maturelli stepped aside.

After retrieving his check, Bien walked outside to get in his truck and leave. However, the truck was not where Bien had parked it. When Bien finally located his truck, the keys were not in it. Thus, he was forced to go back inside to get his keys before he could leave. When Bien went back inside, he met Maturelli in the hall. Maturelli was smiling at Bien and he was dangling the keys in front of him.

According to Bien's mother, Bien finally arrived home between 8:30 and 9:00 p.m. As Bien had suspected, his mother was very worried about him. Bien's mother testified that when he came in the house, he was very upset and he was making a crying and yelling noise. She also testified Bien had torn the check into small pieces and he threw the pieces into the air.

Bien claimed that prior to the Grubbs incident he never had any difficulty in dealing with the hearing world, but that afterwards he became depressed and withdrew into himself. He also claimed the incident caused him to have headaches, recurring nightmares and flash-backs, to lose his self confidence, to lose his trust for the hearing world and his ability to obtain and keep a job, and to lose his sexual desire. In general, he became moody, irritable and unhappy.

As a result of the Grubbs incident, Bien sought psychiatric counseling. He saw Dr. Stahlecker, Dr. Swen Helge, and Dr. Ursula Palmer. In addition, at appellants' request, Bien was examined by Dr. Russell Brown. All of these experts, including Dr. Brown, concluded that Bien suffered from severe anxiety disorder that was directly attributable to the Grubbs incident.

Not surprisingly, appellants' explanation of the events on December 14, 1987, is somewhat different than Bien's. Appellants admitted at trial that each and every action they took with Bien was done in conformity with the policies and procedures of Grubbs. Appellants simply argue that Bien was a very good negotiator who sent out all the signals of a typical buyer. In fact, despite Bien's repeated requests for his check and his threats to go to the police, appellants contend the series of "negotiations" between Bien and Maturelli were typical of any barter-based sales transaction, and argue that Bien misperceived the entire exchange.

Appellants also claim Bien did not suffer any damages as a result of the Grubbs incident. Instead, they contend Bien was in a precariously unstable emotional state prior to walking into the dealership. According to appellants, any emotional problems Bien suffers from were caused by other events, such as the death of his father, or the break-up with his girlfriend. Appellants also assert that Bien's unemployability is self-imposed and was not caused by the incident at Grubbs. However, after hearing three weeks of evidence, the jury rejected appellants' arguments. Likewise, Bien and his attorneys have requested this court to dismiss appellants' version of the events of December 14, 1987, as being "well imagined, well written fiction."

Issue: Whether there is sufficient evidence to support a claim of intentional infliction of emotion distress?

Holding: Yes. To recover for intentional infliction of emotional distress, a claimant must establish the following elements: (1) the defendants acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the actions of the defendants caused the claimant's emotional distress; and (4) the emotional distress suffered by the claimant was severe.

Appellants contend Bien failed to prove these elements.

Appellants first argue there is no evidence, or alternatively insufficient evidence, that they acted with intent or recklessness designed to cause Bien emotional harm. In support of this argument, appellants rely on their own testimony that they did not intend to harm Bien, but instead only intended to sell him a car. However, the supreme court recognized … that "rarely will a defendant admit knowing of a substantial certainty that emotional harm would befall the victim. " The court went on to state that "juries, however, are free to discredit the defendant's protestations that no harm was intended and to draw necessary inferences to establish intent."

Appellants were aware the APB System was inflicting emotional pressure on Bien. Bien's requests for the return of his check and that he be allowed to go home became more urgent and frequent. He began underlining words and using capital letters and exclamation points, which one expert testified were the equivalent of a hearing person shouting. Bien told Maturelli that they were putting him through a lot of pressure, that they were making him crazy, that he was becoming sick and that he was confused and needed some rest. Maturelli did not think Bien was lying when Bien told him these things. Thus, since Grubbs' policy was that no customer could leave without the permission of management, Maturelli informed Kielson that Bien wanted his check back and that he wanted to go home. However, Kielson made the decision that the sale should go on, and pursuant to Kielson's instructions, Bien was subjected to a takeover by another salesman. Thus, in light of all the evidence discussed above, there is some evidence from which the jury could determine appellants acted intentionally or recklessly in their dealings with Bien.

Appellants next argue their conduct was not sufficiently extreme and outrageous to subject them to liability for intentional infliction of emotional distress. Instead, appellants maintain their conduct was "typical" of any barter-based business transaction between strangers.

Conduct is sufficiently extreme and outrageous where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Whether conduct satisfies this criteria is initially a question of law for the court. If the court determines that reasonable men may differ, then it is for the jury to decide whether the conduct is sufficiently extreme and outrageous to result in liability.

In support of their argument that their conduct was not extreme and outrageous, appellants argue that the actual negotiating process took only twenty minutes. This argument is based on the speculative testimony of appellants' expert, Remar Sutton, that beginning with the computer price and confirmation sheet, the actual negotiations all probably took place in the last twenty minutes. However, the written exchanges between Bien and Maturelli indicate that Maturelli got Bien's $4,000 check at approximately 4:45 p.m., and that Maturelli was still pressuring Bien to buy the car at approximately 6:45 p.m. Other written notes show appellants were still pressuring Bien and refusing *854 to let him leave approximately four hours after he had arrived at the dealership. Thus, the jury could have reasonably dismissed Sutton's testimony that the actual negotiations lasted only twenty minutes, and could have determined that appellants detained Bien against his will for close to four hours in their efforts to sell him a car. Furthermore, even when Sutton testified that the actual negotiations lasted only twenty minutes, he still testified that he did not doubt Bien was traumatized by the experience. Based on all of this, as well as other evidence presented at trial, we conclude appellants' conduct was sufficiently extreme and outrageous to support submission of the question concerning intentional infliction of emotional distress to the jury, and to support the jury's answer to this question.

Finally, appellants contend there is no evidence or insufficient evidence to support the finding that their actions caused Bien's emotional distress, or to support the finding that Bien suffered severe emotional distress. Appellants continue to argue that any emotional problems Bien suffers from are a result of his pre-existing hypersensitivity and other influences in his life such as his father's death. Appellants also argue Bien does not suffer from severe emotional distress, but instead continues to enjoy a busy social life, including playing sports, dining out, and interacting with friends. However, in making these arguments appellants ignore the contrary evidence that the Grubbs incident caused Bien to suffer severe emotional distress.

Bien was evaluated by four doctors, including one who examined Bien at appellants' request. All four doctors concluded Bien suffered from psychological injuries directly attributable to the activities at the Grubbs dealership on December 14, 1987. As a result of the incident at Grubbs, Bien was diagnosed as having an atypical anxiety disorder, a generalized anxiety disorder, and an adjustment disorder with mixed emotional features. An individual suffering from these injuries would experience a subjective feeling of discomfort, dread, anxiety, and nervousness. The individual might also experience some physiological problems such as sweating, insomnia, increase in blood pressure, and increase in heart rate. According to Dr. Brown, the doctor who examined Bien at appellants' request, the incident at Grubbs was so traumatic that Bien was still unable to return to work some three years after the incident. Dr. Brown also determined that the incident had long-lasting effects on Bien's confidence and self-image in relation to the rest of the world. Thus, there is evidence from which the jury could reasonably determine that the incident at Grubbs caused Bien to suffer severe emotional distress.

Having reviewed all the evidence, we hold that there is sufficient evidence to support the jury's finding that appellants acted intentionally or recklessly, that their conduct was extreme and outrageous, and that their conduct caused Bien to suffer severe emotional distress. Accordingly, appellants' eleventh point of error is overruled.

Helen Palsgraf v. The Long Island Railroad Company

NOTE: This is a landmark case which came done in 1928. It discusses negligence as a concept and the necessary element which must be established for liability to ensue. Be sure to take your time deciphering this, as Judge Cardozo as a very interesting writing style.

Plaintiff was standing on a platform of defendant's railroad after buying a ticket to go to Rockaway Beach. A train stopped at the station, bound for another place. Two men ran forward to catch it. One of the men reached the platform of the car without mishap, though the train was already moving. The other man, carrying a package, jumped aboard the car, but seemed unsteady as if about to fall. A guard on the car, who had held the door open, reached forward to help him in, and another guard on the platform pushed him from behind. In this act, the package was dislodged, and fell upon the rails. It was a package of small size, about fifteen inches long, and was covered by a newspaper. In fact it contained fireworks, but there was nothing in its appearance to give notice of its contents. The fireworks when they fell exploded. The shock of the explosion threw down some scales at the other end of the platform, many feet away. The scales struck the plaintiff, causing injuries for which she sues.

The conduct of the defendant's guard, if a wrong in its relation to the holder of the package, was not a wrong in its relation to the plaintiff, standing far away. Relatively to her it was not negligence at all. Nothing in the situation gave notice that the falling package had in it the potency of peril to persons thus removed.

Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. The plaintiff as she stood upon the platform of the station might claim to be protected against intentional invasion of her bodily security. Such invasion is not charged. She might claim to be protected against unintentional invasion by conduct involving in the thought of reasonable men an unreasonable hazard that such invasion would ensue. These, from the point of view of the law, were the bounds of her immunity, with perhaps some rare exceptions, survivals for the most part of ancient forms of liability, where conduct is held to be at the peril of the actor. If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming, with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one involving the risk of bodily insecurity, with reference to someone else. The plaintiff sues in her own right for a wrong personal to her, and not as the vicarious beneficiary of a breach of duty to another.

The argument for the plaintiff is built upon the shifting meanings of such words as "wrong" and "wrongful," and shares their instability. What the plaintiff must show is "a wrong" to herself, i. e., a violation of her own right, and not merely a wrong to someone else, nor conduct "wrongful" because unsocial, but not "a wrong" to any one. We are told that one who drives at reckless speed through a crowded city street is guilty of a negligent act and, therefore, of a wrongful one irrespective of the consequences. Negligent the act is, and wrongful in the sense that it is unsocial, but wrongful and unsocial in relation to other travelers, only because the eye of vigilance perceives the risk of damage. If the same act were to be committed on a speedway or a race course, it would lose its wrongful quality.

The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension. This does not mean, of course, that one who launches a destructive force is always relieved of liability if the force, though known to be destructive, pursues an unexpected path. "It was not necessary that the defendant should have had notice of the particular method in which an accident would occur, if the possibility of an accident was clear to the ordinarily prudent eye". Some acts, such as shooting, are so imminently dangerous to anyone who may come within reach of the missile, however unexpectedly, as to impose a duty of prevision not far from that of an insurer. Even today, and much oftener in earlier stages of the law, one acts sometimes at one's peril. Under this head, it may be, fall certain cases of what is known as transferred intent, an act willfully dangerous to A resulting by misadventure in injury to B. These cases aside, wrong is defined in terms of the natural or probable, at least when unintentional. The range of reasonable apprehension is at times a question for the court, and at times, if varying inferences are possible, a question for the jury. Here, by concession, there was nothing in the situation to suggest to the most cautious mind that the parcel wrapped in newspaper would spread wreckage through the station. If the guard had thrown it down knowingly and willfully, he would not have threatened the plaintiff's safety, so far as

appearances could warn him. His conduct would not have involved, even then, an unreasonable probability of invasion of her bodily security. Liability can be no greater where the act is inadvertent.

Negligence, like risk, is thus a term of relation. Negligence in the abstract, apart from things related, is surely not a tort, if indeed it is understandable at all. Negligence is not a tort unless it results in the commission of a wrong, and the commission of a wrong imports the violation of a right, in this case, we are told, the right to be protected against interference with one's bodily security. But bodily security is protected, not against all forms of interference or aggression, but only against some. One who seeks redress at law does not make out a cause of action by showing without more that there has been damage to his person. If the harm was not willful, he must show that the act as to him had possibilities of danger so many and apparent as to entitle him to be protected against the doing of it though the harm was unintended. Affront to personality is still the keynote of the wrong. The victim does not sue derivatively, or by right of subrogation, to vindicate an interest invaded in the person of another. He sues for breach of a duty owing to himself.

The law of causation, remote or proximate, is thus foreign to the case before us. The question of liability is always anterior to the question of the measure of the consequences that go with liability. If there is no tort to be redressed, there is no occasion to consider what damage might be recovered if there were a finding of a tort. We may assume, without deciding, that negligence, not at large or in the abstract, but in relation to the plaintiff, would entail liability for any and all consequences, however novel or extraordinary. There is room for argument that a distinction is to be drawn according to the diversity of interests invaded by the act, as where conduct negligent in that it threatens an insignificant invasion of an interest in property results in an unforseeable invasion of an interest of another order, as, e. g., one of bodily security. Perhaps other distinctions may be necessary. We do not go into the question now. The consequences to be followed must first be rooted in a wrong. The judgment of the Appellate Division and that of the Trial Term should be reversed, and the complaint dismissed, with costs in all courts.

WIENER et al., v. SOUTHCOAST CHILDCARE CENTERS, INC

Facts: Southcoast Childcare Centers, Inc. (Southcoast), had leased its child care property from First Baptist Church of Costa Mesa (the Church) since 1997. 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), 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.

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.

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, contending that Abrams's murderous rampage was a "wholly unforeseeable" criminal act that could not give rise to negligence liability. 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. 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 involving the mail truck was not a prior similar incident that made Abrams's crime foreseeable. Defendants also responded that the fence in place at the time of the rampage met all code and safety requirements, and was sufficient to stop traffic from entering the property in most cases. Therefore, according to defendants, the fence was sufficient to stop traffic from entering the property in all foreseeable circumstances.

The trial court granted summary judgment for defendants after finding that plaintiffs failed to present evidence of prior similar incidents of violent crime or criminal acts and therefore failed to show defendants owed a duty to prevent Abrams's murderous rampage. The Court of Appeal reversed the judgment, holding that an "errant" motorist careening through the fence accidentally was a foreseeable event, so that defendants' failure to build a stronger fence was a legal cause of the incident here, even though the actual incident was criminal in nature. We granted review.

Issue: Whether defendants have shown that plaintiffs have not established a prima facie case of negligence?

Holding: No. As indicated, in order to prevail in a negligence action, plaintiffs must show that defendants owed them a legal duty, that defendants breached that duty, and that the breach proximately caused their injuries. 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." When children are the focus of care, the landlord's duty is to protect the young from themselves and guard against perils that are reasonably foreseeable. "The determination of the scope of foreseeable perils to children must take into consideration the known propensity for children to intermeddle."

California law requires landowners to maintain land in their possession and control in a reasonably safe condition. In the case of a landlord, this general duty of maintenance, which is owed to tenants and patrons, has been held to include 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. We also observed that "a 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."

In the case of a criminal assault, the decision to impose a duty of care to protect against criminal assaults requires "balancing the foreseeability of the harm against the 'burdensomeness, vagueness, and efficacy' of the proposed security measures."

In cases of third party criminal acts, these are handled differently from ordinary negligence, and require a heightened sense of foreseeability before a defendant can be held liable for the criminal acts of third parties. There are two reasons for this: first, it is difficult if not impossible in today's society to predict when a criminal might strike. Also, if a criminal decides on a particular goal or victim, it is extremely difficult to remove his every means for achieving that goal. "A criminal can commit a crime anywhere" "but cars cannot crash into picnic tables just anywhere." Thus there is a distinction between acts of ordinary negligence and criminal acts. "The burden of requiring a landlord to protect against crime everywhere has been considered too great in comparison with the foreseeability of crime occurring at a particular location to justify imposing an omnibus duty on landowners to control crime." "There is no legal requirement in

[circumstances surrounding a foreseeable accident] for the type of heightened notice which might be provided by a prior similar incident, as may be necessary in instances of third party crime."

Applying such a balancing test to the present facts, we conclude defendants owed no duty to plaintiffs because Abrams's brutal criminal act was unforeseeable. No evidence indicated defendants' child care facility had ever been the target of violence in the past and no hint existed that either defendants or any other similar business establishment had ever been the target of any criminal acts. Indeed, here, the foreseeability of a perpetrator's committing premeditated murder against the children was impossible to anticipate, and the particular criminal conduct so outrageous and bizarre, that it could not have been anticipated under any circumstances.