

COURT OF APPEAL FOR ONTARIO

CITATION: Jonas v. Elliott, 2021 ONCA 124

DATE: 20210225

DOCKET: C68049

Doherty, Pepall and Thorburn JJ.A.

BETWEEN

Richard Edmond Jonas and Anne Catherine Jonas

Plaintiffs (Appellants)

and

Matthew Elliott, The City of Stratford and Carrie Goudy

Defendants (Respondents)

James J. Mays and John G. Langlois, for the appellants

Robert Smith, for the respondents

Heard: February 19, 2021 by videoconference

On appeal from the order of Justice Michael D. McArthur of the Superior Court of Justice, dated January 17, 2020, with reasons at 2020 ONSC 354.

REASONS FOR DECISION

[1] This is an appeal of an order granting partial summary judgment, dismissing the action against Carrie Goudy, the host of a party, and the City of Stratford which rented the facility used to host the party and granted permission to serve alcohol. While attending the party, Matthew Elliott assaulted Richard Jonas, who suffered injuries.

[2] The appellants, Richard and Anne Jonas, claim the motion judge erred in (a) finding no duty of care on the part of the host and/or the City, and (b) bifurcating the proceeding which, they assert, will result in a risk of duplication with their surviving claim against Mr. Elliott.

[3] Following the hearing, the appeal was dismissed with reasons to follow. These are those reasons.

[4] The *Occupiers' Liability Act* R.S.O. 1990, c. O.2 provides that a person or organization with physical possession and/or responsibility for and control over a property is supposed to take steps to ensure that all persons on the property are reasonably safe while on the premises. This duty was correctly articulated by the motion judge.

[5] He also correctly noted that in order to establish a duty of care, there must be a relationship of proximity and foreseeable harm.

[6] The motion judge held that, in this case, there was a relationship of proximity. However, he held the altercation was not reasonably foreseeable because:

- a) Experienced and trained staff were hired to serve alcohol and a friend provided security at the door;
- b) Both Messrs. Jonas and Elliott had consumed alcohol before attending the party but neither exhibited prior signs of aggressive behaviour or conduct that would suggest they had consumed alcohol before they arrived;
- c) Ms. Goudy was unaware of their prior alcohol consumption;
- d) The incident was both sudden and brief;
- e) There was only one other minor incident that evening involving an intoxicated patron who was appropriately removed from the party, placed in a taxi and taken home; and,
- f) The fact that Mr. Jonas was let into the party by Ms. Goudy, was not the cause of the incident.

[7] These findings of facts about the activity at the party are sufficient to demonstrate that the harm was not reasonably foreseeable, and these findings are owed deference. In any event there is no evidence that the altercation was caused or contributed to by intoxication.

[8] The appellants suggest there was evidence that conflicts with the motion judge's finding that the entrance was properly supervised and the event was a "modest" gathering. The appellants claim that although those providing alcohol were properly certified, the person at the entrance to the party was a friend. They say that some witnesses thought there were over two-hundred people at the gathering, inconsistent with this being a "modest" gathering.

[9] We see no merit to these submissions as, even if this evidence had been accepted by the motion judge, it is not material to whether the altercation was reasonably foreseeable.

[10] The motion judge accepted that the appellants did not demonstrate that there was an act or failure to act on the part of the occupier that caused Mr. Jonas' injury. The assault by Mr. Elliott on Mr. Jonas was entirely unexpected and could not have been reasonably foreseen by the respondents. As such, he concluded that there is no genuine issue requiring a trial.

[11] We see no error in his finding that the harm was not reasonably foreseeable or his conclusion that Mr. Jonas' claim and Mr. Elliott's crossclaim against Ms. Goudy and the City should be dismissed.

[12] Moreover, he correctly granted partial summary judgment. The claims against the respondents could readily be bifurcated from the remaining claim against Mr. Elliott in an expeditious and cost-effective manner. Given the nature of

the remaining claim for damages for assault and battery against Mr. Elliott, any risk of inconsistent findings was immaterial.

[13] For these reasons, the appeal is dismissed.

[14] Costs to the respondents in the amount of \$10,000, inclusive of disbursements and HST.

Whitby JA
St. Repall JA
JA Thibault JA