

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

May 21, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

THERESA HYDE

Plaintiff - Appellant

v.

STATE OF TENNESSEE, THE
UNIVERSITY OF TENNESSEE, and
THE UNIVERSITY OF TENNESSEE
AT CHATTANOOGA

Defendants - Appellees

) HAMILTON COUNTY
) 03A01-9611-CV-00346
)
)
)

) HON. L. MARIE WILLIAMS,
) JUDGE
)
)

) AFFIRMED AND REMANDED

LAWRENCE H. PUCKETT OF CLEVELAND FOR APPELLANT

F. R. EVANS OF CHATTANOOGA FOR APPELLEES

O P I N I O N

Goddard, P. J.

This case involves a personal injury by the
Plaintiff/Appellant, Theresa Hyde, at a concert held at the
University of Tennessee Chattanooga Arena.

On May 6, 1993, Ms. Hyde attended a concert by the rock
band Lynyrd Skynyrd at the UTC Roundhouse Arena in Chattanooga.

During the concert, Ms. Hyde and her friend, Jana Griffis, left the arena auditorium for refreshments. While drinking a soft drink in the arena lobby, Ms. Hyde and Ms. Griffis noticed a disturbance. A man in custody was being escorted by security personnel in the proximity of where the pair was standing. They moved out of the way, but shortly thereafter another disturbance involving the wife of the man in custody ensued. In the process, Ms. Hyde, according to her testimony, was injured by a turnstile being either tipped or shoved into her. Ms. Hyde suffered a contusion to her pelvis.

Ms. Hyde filed suit against Lynyrd Skynyrd, CDP, Inc., a/k/a Cellar Door Productions, Inc., a/k/a Cellar Door Concerts of Florida, Inc., and a claim against the State of Tennessee through the Tennessee Claims Commission. The Claims Commission transferred the case to the Circuit Court for Hamilton County, and summary judgment was granted as to the concert promoters.¹ At the close of all proof, the Trial Court found that Ms. Hyde's claim for damages under T.C.A. 9-8-307(E) and (F) was not applicable, and that her claim under 9-8-307(a)(1)(C) must fail because the proof did not establish UTC's notice of a dangerous condition. This appeal followed.

Ms. Hyde submits the following issues for our consideration:

¹ No appeal is raised as to the summary judgment of the promoters.

I. Whether the evidence preponderates against the finding of the trial court that the State of Tennessee did not have notice of the dangerous condition on its premises caused by the location of an unused turnstile in an area where patrons were known to congregate and move in and out of the Arena.

II. Whether the trial court erred in failing to consider as an additional ground of relief the defendant's failure through its security personnel to make the premises reasonably safe for the plaintiff by arresting an unruly patron in sufficient time and manner to avoid injury to the plaintiff.

We first note that our review of the Trial Court's judgment is guided by Rule 13(d), Tennessee Rules of Appellate Procedure. "Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Adams v. Dean Roofing Co. Inc., 715 S.W.2d 341 (Tenn.App.1986).

The Trial Court found, and we concur, that this action is governed by T.C.A. 9-8-307(a)(1)(C), which states:

The (Claims) commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state falling within one (1) or more of the following categories:

. . .

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subsection must establish the foreseeability of the risks and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures.

Ms. Hyde's first argument concerns the issue of whether UTC had notice of a dangerous condition on its premises. The Trial Court found that the location of the turnstile was a negligently created or maintained dangerous condition, and that it was foreseeable that the turnstile could be pushed into someone in the manner in which Ms. Hyde was injured. The Court found, however, that Ms. Hyde had failed to prove that the State was given proper notice sufficiently prior to the injury for it to have taken appropriate measures to correct the situation. Ms. Hyde contends that the preponderance of the evidence was that employees of the University had placed the turnstile in an area where patrons congregated, and notice to the University should therefore be presumed. See Stringer v. Cooper, 486 S.W.2d 751, 757 (Tenn. App. 1972).

We do not believe, however, that the facts of this case give rise to a presumption that an employee of the arena moved the turnstile to the area where it was located at the time of Ms. Hyde's injuries. Mr. Hyde, in her brief, sets forth four possible explanations for the location of the turnstile, two of which involve a patron moving the turnstile. If in fact a patron had moved the turnstile, the University (and consequently the State) would not be charged with notice of the dangerous condition unless an employee knew the turnstile had been moved.

We do not find the evidence preponderates against the finding of the Trial Court that the State had no notice of the dangerous location of the turnstile. The evidence could equally support any of Ms. Hyde's theories about how the turnstile was moved, including the possibility that a patron moved it. Ms. Hyde asks the Court to draw an inference that arena employees must have seen the turnstile being moved because of its color, size and weight. There was no evidence presented her, however, that an arena employee ever witnessed the turnstile in question being moved by a patron, or by an arena employee.

We agree with the Trial Court that Ms. Hyde failed to prove notice, as required by T.C.A. 9-8-307(a)(1)(C).

Ms. Hyde's second issue concerns the Trial Court's refusal to allow her to proceed under T.C.A. 9-8-307(a)(1)(E), "Negligent care, custody and control of persons." The Court relied on Learue v. State, 757 S.W.2d 3 (Tenn.App.1987), which found that the legislative intent of the statute was that it is to apply to:

[P]ersons confined to penal institutions, residences or health and other similar facilities maintained by the state. Our interpretation of (a)(5) [now (a)(1)(E)] is that it has no application to persons paying entrance fees to state maintained recreation facilities merely because there are rules and regulations pertaining to the use thereof.

Learue, at page 5. We agree with this interpretation, and hold that there is no evidence that section (a)(1)(E) was meant to

apply to concert goers at a State-owned arena. Even if we were to rule that section (a)(1)(E) was applicable to persons attending concerts at state-owned arenas, we do not believe Ms. Hyde could prevail under this theory. She was injured when a patron jumped on a security officer or officers and, then, as a group, injured her. She, however, concedes that the patron was not under arrest at the moment she was injured, but was arrested later in the evening, outside of the arena. Thus, at the time of Ms. Hyde's injuries, the patron causing the disturbance was not under arrest and, consequently, was not under the control of the State.

For the reasons set forth above, the judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of appeal are adjudged against Ms. Hyde and her surety.

Houston M. Goddard, P. J.

CONCUR:

Don T. McMurray, J.

Charles D. Susano, Jr., J.