FIRST DIVISION
BARNES, P. J.,
GOBEIL and PIPKIN, JJ.

June 25, 2024

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A24A0365. NOTTINGHAM v. BERGL MANAGEMENT GROUP, INC.

PIPKIN, Judge.

Appellant Arthur Nottingham appeals the grant of summary judgment to Appellee Bergl Management Group, Inc. d/b/a McDonald's on his claims arising from injuries he sustained as a customer as a result of a physical altercation between two McDonald's employees. While we agree with Appellant that the trial court's legal analysis was flawed, the judgment of the trial court was ultimately correct. Accordingly, for the reasons set forth below, we affirm.

1. Reviewing the evidence in a light most favorable to the nonmoving party, see *Smith v. Found*, 343 Ga. App. 816, 817 (806 SE2d 287) (2017), the record shows as follows. In October 2018, Mashaundra Cox and Daniyah Turner -- who were, at that time, still in high school -- were employed at a McDonald's restaurant located in

Warner Robins, Georgia. The two women had an on-going dispute arising from Turner allegedly flirting with Cox's boyfriend. Approximately a week before the incident in question, the women's shift manager, Steven Robinson, became aware of the issue, and he counseled the women to focus on their job and not bring their personal disagreement into work. Believing that the issue was settled, Robinson did not document the incident or put the counseling in writing, which was contrary to company protocol. Further, the women continued to be scheduled to work the same shifts because the managers did not believe that the dispute was significant. There is no evidence that either individual had a disciplinary record on the job or a criminal history.

On the day in question, the two women were working together, but Cox kept disappearing to the bathroom during the shift. According to Robinson, he was "having a tough time" keeping Cox at her work station, but, when he spoke with Cox about her performance -- reminding her to "stay in position" -- Cox assured Robinson that all was well. At one point, Turner remarked to Cox that she kept "walking away" and that her coworkers could not "keep doing [her] part." Robinson intervened, counseling the women not to "bicker," but he explained in his deposition that there

were no other issues between the women that day. Later, however, as Turner was walking food out to a customer, Cox ran after Turner and assaulted her. The resulting fight -- which was briefly captured by a security camera -- moved across the store, and the two women crashed into Appellant as he was standing at a drink dispenser. Robinson and another employee trailed the women and attempted to break up the altercation. According to Appellant, his knee buckled when he was struck by the fighting women, and he experienced additional pain as he pivoted from the scene as Robinson and others attempted to break up the fight.

The actual footage captured by the security camera is not included in the record. Instead, the record includes an undated video recording of the relevant surveillance footage as it played on another screen. This "screen recording" also captures numerous unknown speakers commenting on the video as it is played. The unknown speakers describe the history of the underlying dispute, and the speakers question the veracity of Appellant's injury. At one point, toward the end of the video, an unknown speaker says, "[Robinson] was right there because he knew it was gonna go down."[1]

[1] There was no apparent objection by either party to the comments included in the screen recording of the footage captured by the surveillance system.

Appellant subsequently filed suit against Appellee alleging the following claims: premises liability; vicarious liability; and negligent hiring, training, and supervision. Appellee answered and, following discovery, moved for summary judgment. In its motion, Appellee first argued that "the alleged hazard, a physical altercation between [Appellee's] employees, is not the type of hazard that gives rise to a duty of care . . . under a premises liability theory" but, instead, that "[the] purported liability claim is essentially an ordinary negligence claim." According to Appellee, Appellant could not prevail on a negligence claim because, according to Appellee, the acts of Cox and Turner -- who were mere high school students with no history of assaults or other wrong doing -- were not foreseeable. Appellee asserted that this lack of foreseeability was also fatal to Appellant's claim for negligent hiring, training, and supervision. Finally, Appellee asserted that, because Cox and Turner were not acting within the scope of their employment, Appellant's claim for vicarious liability also failed.

In response, Appellant argued that his premises liability claim was proper and that his claim could be understood as arising from either a pre-existing condition or active negligence. Appellant also asserted that his claims for vicarious liability and negligent hiring, training, and supervision applied to Cox, Turner, *and* Robinson;

according to Appellant, there was a jury question as to whether the employees were acting within the scope of their employment at the time of the fight and, further, whether the fight between Cox and Turner was foreseeable. Appellant also submitted an affidavit from his daughter -- a former employee at that restaurant -- who explained that, when she arrived at restaurant to check on her father, Robinson told her that Cox and Turner "had been arguing and bickering behind the counter all shift long and he 'just knew this was going to happen.'"

The trial court sided with Appellee, concluding that Appellant's premises liability "claim mix[ed] liability and ordinary negligence." The trial court reasoned that the claim failed because "there [was] no static condition or passive defect" and "no evidence [that] the physical premises themselves were unsafe." The trial court also concluded that the vicarious liability claim failed because Cox and Turner were not acting within in the scope of their employment at the time of the fight. Finally, the trial court also determined that Appellant's claim for negligent hiring, training, and supervision failed because the fight between Cox and Turner was not foreseeable. Appellant now challenges this ruling on appeal, asserting numerous intertwined enumerations of error. We address each of Appellant's claims below.

2. We first turn to Appellant's claim that the trial court granted summary judgment without specifically addressing each and every one of his claims. It is well settled that a trial court is not required to issue specific findings of facts or conclusions of law when deciding a motion for summary judgment. See *Kuruvila v. Mulcahy*, 264 Ga. App. 626, 626 (1) (591 SE2d 491) (2003). Moreover, the trial court implicitly rejected all of Appellant's claims by granting Appellee's motion for summary judgment in full. See *Massey v. State Farm Fire & Cas. Co.*, 363 Ga. App. 588, 592 n.4 (871 SE2d 685) (2022). Accordingly, this enumeration offers no basis for relief.[2]

3. We next turn to Appellant's three enumerations of error concerning the grant of summary judgment on his claim of vicarious liability.

"Every person shall be liable for torts committed by . . . his servant by his command or in the prosecution and within the scope of his business, whether the same are committed by negligence or voluntarily." OCGA § 51-2-2. As the Georgia Supreme Court has explained,

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[2] At various places in his brief, Appellant again asserts that the claims not specifically addressed by the trial court in its order granting summary judgment to Appellee "should still stand." For the reasons discussed above, these assertions are without merit.

> [t]wo elements must be present to render a master liable [under respondeat superior]: first, the servant must be in furtherance of the master's business; and, second, he must be acting within the scope of his master's business. If a tort is committed by an employee not by reason of the employment, but because of matters disconnected therewith, the employer is not liable. If a tortious act is committed not in furtherance of the employer's business, but rather for purely personal reasons disconnected from the authorized business of the master, the master is not liable.

(Punctuation and footnotes omitted.) *Piedmont Hosp. v. Palladino*, 276 Ga. 612, 613-14 (580 SE2d 215) (2003). While the question of "[w]hether an employee has acted in furtherance of and within the scope of his employment" is generally for a jury to consider, summary judgment is appropriate where "the undisputed evidence shows that the employee was not engaged in furtherance of his employer's business." (Citation and punctuation omitted.) *Friendship Enterprises v. Hasty*, 368 Ga. App. 7, 9 (2) (889 SE2d 137) (2023).

Here, the trial court concluded that, while Cox and Turner were both "on the clock" at the time of the incident, "they were certainly not engaged in duties for their employer" during the physical altercation. Appellant argues on appeal, however, that there is evidence that Turner was acting within the scope of her employment at the time of the incident. Specifically, Appellant points to testimony from Robinson that, when she was struck by Cox, Turner was "at that point trying to do her job." This

argument ignores the fact that the incident in question was not limited to a single blow and that Appellant's injury did not arise out of the initial punch. Instead, as explained above, the undisputed evidence -- including the surveillance footage -- shows mutual combat between both Cox and Turner at the time that Appellant was allegedly injured. Thus, this argument is a nonstarter.

Next, relying on *McCranie v. Langdale Ford Co.*, 176 Ga. App. 281, 283 (335 SE2d 667) (1985), *Miller v. Honea*, 163 Ga. App. 421, 422 (294 SE2d 629) (1982), and *Andrews v. Norvell*, 65 Ga. App. 241, 245 (15 SE2d 808) (1941), Appellant argues that summary judgment was inappropriate on the vicarious liability claim because, he says, there is evidence showing that the physical altercation was not "purely personal," but, instead, was related to Turner's criticism of Cox's work on the day in question. As we have previously explained, these decisions involved an *intentional* physical assault by an employee on a customer while that employee was acting in a customer-service capacity. See *Leo v. Waffle House*, 298 Ga. App. 838, 842 (2) n.12 (681 SE2d 258) (2009) (discussing *McCranie*, *Miller*, and *Andrews*, among other cases). Here, Appellant has alleged that the employees committed *negligent* rather than intentional acts. As such, these decisions are inapposite. Moreover, there is simply no evidence

that Cox and Turner's *continued* brawling after Cox's initial assault -- whatever the impetus -- was "within the scope of the actual transaction of the master's business for accomplishing the ends of [their] employment." *B-T Two v. Bennett*, 307 Ga. App. 649, 652-653 (1) (706 SE2d 87) (2011).

Appellant additionally contends that his vicarious liability claims were not limited to Cox and Turner but also included Robinson. Appellant claims that Robinson was acting within the scope of his duty when attempting "to stop the brawl." However, Appellant points to no evidence suggesting that Robinson somehow acted tortuously in breaking up the fight. Instead, Appellant again relies on cases in which a customer-service employee is directly involved in a physical assault against a patron,[3] but these cases are even less relevant to his claims involving Robinson, who played no role in the altercation. Accordingly, this argument fails.

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[3] See *Howard v. J. H. Harvey Co.*, 239 Ga. App. 677, 681 (5) (521 SE2d 691) (1999) (store security guard accosted customer and allegedly bruised her arm during shoplifting investigation); *Reynolds v. L & L Mgmt.*, 228 Ga. App. 611, 611-615 (1) (492 SE2d 347) (1997) (restaurant supervisor struck stack of trays in anger, hitting complaining customer); *Odom v. Hubeny, Inc.*, 179 Ga. App. 250, 250-251 (1) (345 SE2d 886) (1986) (restaurant employee "manhandled" pair of patrons and poured coffee on one of them).

4. We now look to Appellant's premises liability claim. As an initial matter, we agree with Appellant that the trial court erred by characterizing the claim as one for "ordinary negligence" and resolving the claim on the existence of a "static condition or passive defect." However, despite the use of an erroneous legal standard, the trial court reached the correct result.

As we have explained

> [t]he concept of premises liability imposes upon the proprietor a duty to exercise ordinary care in keeping his premises safe for invitees. This concept focuses on different inquiries depending on whether the injury arises (a) from pre-existing conditions or (b) from active negligence, i.e., from the proprietor's acts or omissions occurring at the time the plaintiff was on the premises. In the former, the inquiry is whether the proprietor had superior knowledge of the defect or dangerous condition; in the latter, the inquiry is whether the proprietor could reasonably foresee that his actions or inactions would cause injury to the plaintiff. If a third party's misconduct causes injury to a plaintiff while on the premises, the former concept applies, and the inquiry is whether the proprietor had superior knowledge of the danger that a third party would so act.

(Footnotes omitted.) *Brownlee v. Winn-Dixie Atlanta*, 240 Ga. App. 368, 369 (2) (523 SE2d 596) (1999).

Because the employees here were acting outside the scope of their employment at the time of the incident, they are each considered a "third party" for the purposes of our premises liability analysis. See *Dowdell v. Krystal Co.*, 291 Ga. App. 469, 472 (2)

(662 SE2d 150) (2008). Thus, Appellant's premises liability claim survives a motion for summary judgment only if there is evidence that Appellee "had superior knowledge of the defect or dangerous condition." *Brownlee*, 240 Ga. App. at 369 (2). The Georgia Supreme Court recently discussed this "superior knowledge" standard, explaining that

> the knowledge relevant to the question of reasonable foreseeability is the proprietor's knowledge. . . . [While] [t]he plaintiff's knowledge is relevant to the ultimate question of liability, [] it has nothing to do with the proprietor's knowledge -- and thus, the proprietor's duty. Determining the reasonable foreseeability of a crime asks simply whether the proprietor had sufficient reason to anticipate the criminal act.

Georgia CVS Pharmacy v. Carmichael, 316 Ga. 718, 727 (II) (C) n.7 (890 SE2d 209) (2023). The Georgia Supreme Court also emphasized "that the touchstone of premises liability remains the proprietor's failure to protect against a condition on the premises that creates a *foreseeable risk of harm.*" (Emphasis supplied.) Id. at 728 n. 11.

We agree with the trial court that Appellant has produced no evidence that Appellee had superior knowledge -- that is, a sufficient reason to anticipate -- that Cox and Turner would end up in a physical altercation. Notably, neither woman had any history of disciplinary action or had a criminal history. Further, while the two women may have had a known disagreement about a love interest -- and while one may have

been displeased with the work performance of the other -- these circumstances do not give rise to a reasonable belief of impending violence.[4] See *Rucker v. Troll Book Fairs*, 232 Ga. App. 189, 190 (2) (501 SE2d 301) (1998) ("absolutely no reason to have anticipated" that employee would instigate a fight with a former coworker after employee and former coworker had an "angry" exchange in which employee accused former coworker of "starting rumors about an alleged sexual affair"); *Ableman v. Taco Bell Corp*, 231 Ga. App. 761, 762 (1) (501 SE2d 26) (1998) (no evidence that husband of fast-food manager would become violent toward customers where husband had only ever made verbal threats against his wife and had never been physically violent toward her or anyone else prior to incident). Compare *Advanced Disposal Svcs. Atlanta v. Marczak*, 359 Ga. App. 316, 319, 320 (2) (857 SE2d 494) (2021) (jury question remained on issue of foreseeability when, six weeks before assaulting a customer, the employee "reacted aggressively when accused of not performing his work properly, and he warned his supervisor not to 'mess' with him further").

[4] Because it was not reasonably foreseeable that Cox and Turner would end up in a physical altercation, there is no merit to Appellant's claim that Robinson -- and by extension, Appellee -- was some how negligent in failing to schedule Cox and Turner to work different shifts.

Appellant disagrees, and he asserts that his daughter's affidavit and the comments heard on the "screen recording" create a jury question on the issue of foreseeability; according to Appellant, the trial court failed to give this evidence sufficient consideration. We agree with the trial court, however, that the affidavit does not save Appellant's claims from summary judgment. Assuming, as we must, that the 2023 affidavit is truthful and accurate, see *Lucas v. Beckman Coulter*, 348 Ga. App. 505, 510 (3) (823 SE2d 826) (2019), it merely establishes on-going animosity between Cox and Turner, which, as discussed above, is insufficient to create a fact issue as to foreseeability. Further, Robinson's alleged statement that "he just knew this was going to happen," is merely a post-hoc articulation of a suspicion or fear come to fruition; Robinson's hindsight is not, however, evidence of *reasonable* foreseeability.[5] Instead, "[n]egligence is predicated on faulty or defective foresight rather than on hindsight which reveals a mistake." (Citation and punctuation omitted.) *Savannah Bank & Trust Co. v. Weiner*, 193 Ga. App. 616, 617 (1) (388 SE2d 725) (1989). Likewise, we agree with the trial court that any statement by the unknown speaker on

[5] Robinson flatly denied knowing that the employees were going to fight. When asked about this statement during his deposition, he responded, "I don't recall saying that I knew that was going to happen. I'm not psychic. I didn't."

the "screen recording" about what Robinson supposedly "knew" is rank speculation. "[A]s we have held, mere hunches and speculation will not raise a question of fact to avoid summary judgment." *ABM Aviation v. Prince*, 366 Ga. App. 592, 598 (2) (a) (884 SE2d 8) (2023). Accordingly, the trial court properly granted summary judgment to Appellee on Appellant's premises liability claim.

5. Finally, we turn to Appellant's claim for negligent hiring, training, and supervision of Robinson, Cox, and Turner. While these three claims represent separate, distinct theories of recovery, see *Friendship Enterprises*, 368 Ga. App. at 14 (7), each claim requires proof that the relevant injury, harm, or behavior is reasonably foreseeable by the defendant employer. See, e.g, *ABM Aviation*, 366 Ga. App. 592, 597-598 (2) (a-c) (884 SE2d 8) (2023) (discussing the various theories of recovery). However, as discussed above, Appellant has failed to produce evidence that it was reasonably foreseeable that Cox and Turner would become violent toward each other. Thus, Appellant's claims of negligent hiring, training, and supervision fail with respect to Cox and Turner.

In addition to foreseeability, each of these claims require that the employer's negligent act or omission somehow *cause* the injury, harm or incident in question. Id.

While Appellant faults Robinson for failing to memorialize his verbal counseling of Cox and Turner -- and, thus, alleges that Appellee failed to properly retain, train, and supervise Robinson -- there is simply no evidence that Robinson's failure to properly document his discussions with Cox and Turner contributed to the circumstances leading to the brawl that ultimately injured Appellant. See *Doe I v. Young Women's Christian Assn. of Greater Atlanta*, 321 Ga. App. 403, 408 (2) (740 SE2d 453) (2013) (reiterating the necessity of a "causal link" between breach of duty and injury in the context of negligent training and supervision claims). Accordingly, the trial court properly granted summary judgment to Appellee on these claims as well.[6]

Judgment affirmed. Barnes, P. J., and Gobeil, J., concur.

[6] We do not authorize the reporting of this opinion because it does not announce a new rule or policy, or involve an interpretation of law that is not already precedent. See Court of Appeals Rules 33.2 (b), 34.