

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

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June 29, 2020

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A20A0735. STEPHENS et al. v. SOUTHLAND PROPERTY
MANAGEMENT, INC. et al.

GOBEIL, Judge.

After an unidentified assailant shot and killed Milton Stephens, Jr. (the “Decedent”) in his apartment, the Decedent’s son, Deontray Stephens, individually, and the Decedent’s father, Milton Stephens, Sr., as administrator of the Decedent’s estate (collectively, the “Plaintiffs”), filed suit against the owners and operators of the Decedent’s apartment complex: Southland Property Management, Inc., Latanya Village Associates, Ltd., and Dodge Court Associates, LLLP (collectively, “Southland”), asserting claims for inter alia negligence, negligence per se, nuisance, and punitive damages. The trial court granted Southland’s motion for summary judgment, concluding that the Decedent’s act of voluntarily opening the door to his

assailant precluded a finding that Southland proximately caused the Plaintiffs' injuries. The Plaintiffs appeal, arguing that the trial court disregarded evidence giving rise to a jury question as to causation. For the reasons set forth below, we affirm the grant of summary judgment.

Summary judgment is appropriate when no genuine issue of material fact exists for consideration by a jury, entitling the movant to judgment as a matter of law. OCGA § 9-11-56 (c). A de novo standard of review applies to an appeal from a grant of summary judgment, and we review the evidence, and all reasonable conclusions and inferences drawn from it, in the light most favorable to the nonmovant.

Glover v. Ga. Power Co., 347 Ga. App. 372, 373 (819 SE2d 660) (2018) (citation omitted).

So viewed, the evidence shows that in August 2014, the Decedent lived in the Rockland Apartment complex (the "complex"), which was owned and managed by Southland. The complex is located in a high-crime area. At the time of the attack, the fence surrounding the apartment complex had several holes in it. The apartment complex did not have a front gate, surveillance cameras, or security patrols.

The Decedent, who lived by himself at the time of the incident, was in poor health, and his eyesight had deteriorated to the point that he was no longer able to

drive. During the early morning hours of August 18, 2014, at approximately 3:00 a.m., the Decedent's upstairs neighbor began experiencing knee pain and got out of bed to get some Tylenol. While the neighbor was awake, he heard someone knock on the Decedent's apartment door. The Decedent asked who was at the door, and the assailant responded with a one-syllable name, either "T," "G," "B," or "Me." The neighbor then heard someone say: "Give it up[,]" followed by a gunshot. The neighbor did not know how the assailant gained entry into the apartment complex. The Decedent died as a result of the gunshot injury, and law enforcement has not determined the identity of the perpetrator.

Bibb County Sheriff's Office Investigator Robert Shockley, Jr. responded to the incident, investigated the crime scene, and was familiar with the Rockland complex and surrounding area. In his deposition, Investigator Shockley testified that the Decedent voluntarily opened his apartment door to his attacker, but there was no way to know how the attacker entered the complex or if the Decedent invited the attacker onto the property. Investigator Shockley further testified that it was his opinion that the holes in fencing and a lack of controlled access to the apartment complex created access points where criminals could escape detection or run from

police, and these conditions increased the likelihood that tenants could become victims of crime.

The Plaintiffs filed a complaint against Southland, alleging that they breached their duty of care to keep tenants safe. According to the Plaintiffs, Southland's negligent maintenance of the fence surrounding Rockland and failure to provide additional security measures, such as on-site security guards and access gates, proximately caused the shooting.

Southland moved for summary judgment, arguing, among other things, that the Plaintiffs failed to provide sufficient evidence to create a material issue of fact as to whether any alleged negligence in providing security or maintaining the fence was a cause of the shooting. As the movant, Southland offered evidence that it employed the following security measures at the complex: outdoor pole lighting and lighting outside the front and back of individual apartments; fencing surrounding the premises; deadbolt locks on apartment doors; and periodic safety inspections. Southland routinely communicated with a liaison from the Macon Police Department to compile lists of individuals who were banned from the complex for criminal activity. In response to Southland's motion for summary judgment, the Plaintiffs offered Investigator Shockley's testimony, as well as the deposition and report from

John Villines, a security expert. In forming his opinion, Villanes reviewed industry practices, and he opined that Southland should have based its security decisions on published standards and guidelines. According to Villines, had Southland employed additional security measures, such as video surveillance, security gates, and security patrols, “the murder of [the Decedent] would, more likely than not, have been deterred.” The trial court granted summary judgment to Southland on all claims, and this appeal followed.

In their sole claim of error, the Plaintiffs argue that the trial court erred by granting summary judgment in favor of Southland because the court disregarded facts that created a jury question on the issue of causation. We disagree.

There are four elements to a negligence claim in Georgia: (1) [a] legal duty to conform to a standard of conduct raised by the law for the protection of others against unreasonable risk of harm; (2) a breach of this standard; (3) a legally attributable causal connection between the conduct and the resulting injury; and, (4) some loss or damage flowing to the plaintiff’s legally protected interest as a result of the alleged breach of the legal duty.

George v. Hercules Real Estate Svcs., Inc., 339 Ga. App. 843, 845 (1) (a) (795 SE2d 81) (2016) (citation and punctuation omitted).

“Questions regarding causation are peculiarly questions for the jury except in clear, plain, palpable and undisputed cases.” *Knight v. Roberts*, 316 Ga. App. 599, 604 (1) (a) (730 SE2d 78) (2012) (citation and punctuation omitted). “Guesses or speculation which raise merely a conjecture or possibility are not sufficient to create even an inference of fact for consideration on summary judgment.” *Brown v. Amerson*, 220 Ga. App. 318, 320 (469 SE2d 723) (1996) (citations omitted).

On the issue of the fact of causation, as on other issues essential to the cause of action for negligence, the plaintiff, in general, has the burden of proof. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to grant summary judgment for the defendant.

George, 339 Ga. App. at 845 (1) (a) (citation and punctuation omitted).

Upon a close review of the record, we agree with the trial court that summary judgment was warranted on the issue of causation. The Plaintiffs did not produce evidence from which a factfinder could conclude that enhanced security measures would have made a material difference in preventing the attack. Specifically,

Investigator Shockley noted that additional security measures may not have prevented the crime, but could have had a deterrent effect and made apprehending the attacker easier. The Plaintiffs points to no evidence in the record concerning how the assailant gained entry to the complex, including whether the Decedent invited the assailant. Furthermore, there is no evidence of forced entry or evidence showing that the assailant was not a resident of the complex or otherwise unlawfully on the premises such that he would have been prevented from entering the property if Southland had employed enhanced security measures. See *Post Properties, Inc. v. Doe*, 230 Ga. App. 34, 39 (495 SE2d 573) (1997) (negligence claim alleging inadequate security measures “defeated by [the plaintiff’s] failure to produce evidence concerning how her assailant entered the property, [and] whether he was lawfully there, and how he entered her apartment . . . [because it] would require a jury to engage in pure speculation and guesswork” on the issue of causation) (physical precedent only).

Finally, the Plaintiffs’ own expert witnesses could not say that Southland’s acts or omissions caused the attack based on the Decedent’s voluntary act of opening the door to his attacker after midnight. Simply put, there is too much speculation required for a jury to determine that any alleged negligence by Southland (in failing to implement adequate security measures at the complex) caused the Plaintiffs’ injury.

Because the Plaintiffs have not produced evidence demonstrating that the assailant's entry into the complex would have been thwarted by additional security measures, coupled with the undisputed evidence that the Decedent voluntarily opened the door to his attacker after midnight, we conclude that the trial court did not err by granting summary judgment. See *George*, 339 Ga. App. at 848 (1) (a) (summary judgment for apartment complex manager appropriate because evidence showed tenant sustained injuries "when he was shot after voluntarily opening his door to an unknown person after midnight"); *Johns v. Housing Auth. for the City of Douglas*, 297 Ga. App. 869, 871-872 (678 SE2d 571) (2009) (upholding summary judgment for landlord because tenant's failure to secure her apartment foreclosed the issue of causation as to whether the landlord's failure to provide enhanced security allowed a sexual assault to occur, and plaintiff failed to supply more than speculation that allegedly deficient lighting and broken fence contributed to assault); *Stephens v. Clairmont Center, Inc.*, 230 Ga. App. 793, 794 (2) (498 SE2d 307) (1998) (summary judgment warranted when there was no evidence to causally link shopping center landlord's allegedly negligent failure to provide security with the attack and shooting of a store employee by three men posing as customers). See also *Godwin v. Olshan*, 161 Ga. App. 35, 37 (3) (288 SE2d 850) (1982) (noting the "exceptional uncertainty with respect to the issue of

causation” involved in a case of negligent security because of “the extraordinary speculation inherent in the subject of deterrence of men bent upon criminal ventures”).

Based on the foregoing, we affirm the trial court’s grant of summary judgment to Southland.

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