FILED
MAR 30 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-104 / 94-0860

TRYPHENA H. EIDE,
Plaintiff-Appellant,

vs.

MARY ELLEN CONNOLLY and DENNIS CONNOLLY,
Trustees of the Bernard J. Connolly Trust,
Defendants,

and

EASTER ENTERPRISES, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert Hutchison, Judge.

Tryphena H. Eide appeals from a district court order granting summary judgment in favor of defendant Easter Enterprises, Inc. in her action for damages for injuries sustained during a purse snatching at defendant's supermarket. **AFFIRMED.**

Joseph B. Joyce, Des Moines, for appellant.

Paul C. Thune of Peddicord, Wharton, Thune & Spencer, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Cady and Huitink, JJ.

PER CURIAM

Plaintiff-appellant Tryphena H. Eide appeals following the trial court dismissal of her action seeking damages from defendant-appellee Easter Enterprises, Inc. following her fall in the parking lot of defendant's supermarket. Plaintiff contends there was substantial evidence to generate a fact question as to whether defendant breached a duty to protect her from harm caused by another person. Plaintiff had also sued the Bernard J. Connolly Trust, the owner of the real estate. The Trust, too, filed a motion for summary judgment which was sustained. This is not an issue on appeal. We affirm.

In reviewing a motion for summary judgment, we view in a light most favorable to the party resisting the motion. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is not genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact. Milne, 424 N.W.2d at 423. The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Gott, 387 N.W.2d at 343; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423; Gott, 387 N.W.2d at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e). The

language of our rule and case law are substantially similar or identical to that of rule 56 of the Federal Rules of Civil Procedure, see, e.g., Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-88, 106 S. Ct. 1348, 1355-57, 89 L. Ed. 2d 538, 551-53 (1986), from which we may draw for guidance in interpreting our own rule, Sherwood, 179 N.W.2d at 339.

Plaintiff frequently shopped at the store owned by defendant, Easter Foods Grocery Store on Douglas Avenue in Des Moines, Iowa. Many times an employee of the store would assist plaintiff by carrying her groceries to her car. On May 9, 1991, plaintiff purchased a few items at defendant's store. Plaintiff did not request assistance to carry the items to her car. After exiting the store and while walking to her car in the parking lot, plaintiff was assaulted by an unknown man. The man attempted to snatch her purse. As a result of the attack, plaintiff fell and suffered injuries. She brought this action suing defendant for injuries sustained in the fall.

Defendant filed a motion for summary judgment contending there was no evidence to support a finding defendant owed a duty to plaintiff to control the conduct of the unknown assailant. Defendant supported its motion with an affidavit of its manager, Ken Kane. The affidavit stated this was the first purse-snatching that took place at the store since Kane was named manager in 1988. Kane further stated he was not aware of any other occasion where a customer had been assaulted in the parking lot by an unknown person. He further stated, after the accident was reported to him, he went outside to assist plaintiff. Kane found her sitting on the ground near her car, parked in handicapped parking near the building. He continued there were no trees, bushes, shrubbery, dumpster, or other fixed objects near where her car was parked that would obstruct the view. Kane said he was in the store in the hours prior to plaintiff's fall, and he did not note anything unusual in the parking lot. Kane also had not seen anyone in the store meeting plaintiff's description of her assailant.

Defendant also supported its motion with affidavits of employees of the Des Moines Police Department stating there had been no reports of similar incidents on the property.

Plaintiff resisted the motion for summary judgment claiming she was a customer and is elderly. She further contended the motion was resisted by the contents of her deposition. The trial court sustained the motion for summary judgment finding plaintiff had shown no facts suggesting defendant knew or should have known an assault was likely to happen on the premises. The court further found there was no evidence there had been any prior attacks on the premises.

Plaintiff, on appeal, contends defendant is liable to plaintiff because it had a duty to protect her from the person who assaulted and injured her.

The scope of responsibility to one entering on land of another is dependent upon entrant's status as a trespasser, licensee, or invitee. See Morgan v. Perlowski, 508 N.W.2d 724, 727 (Iowa 1993). Plaintiff was on defendant's premises for business purposes. An invitee is a person who enters or remains on land open to the public by invitation or permission and is owed the highest standard of care. Id.

Section 344 of Restatement (Second) of Torts, where on premises for owner's business purposes, in applicable part, provides:

> A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons or animals, and by the failure of the possessor to exercise reasonable care to
>
> (a) discover that such acts are being done or are likely to be done, or
>
> (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.

Restatement (Second) of Torts § 344 (1965).

Defendant has the duty to discover and protect plaintiff from criminal acts occurring at the premises. See Hoffnagle v. McDonald's Corp., 522 N.W.2d 808, 812 (Iowa 1994).

The question is, under these facts, is there a jury issue as to whether defendant knew or should have known it had the ability to control the person or persons causing injury, and whether it knew of the necessity and opportunity to exercise such control. See Morgan, 508 N.W.2d at 728. We agree with the trial court, there is not. We affirm.

AFFIRMED.