

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

ARCENIO PEREZ AND OLIVIA PEREZ, H/W	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
Appellants	:	
	:	
	:	
v.	:	
	:	
	:	No. 1229 EDA 2025
THOMAS JEFFERSON UNIVERSITY HOSPITALS, INC.	:	
	:	

Appeal from the Judgment Entered May 7, 2025
In the Court of Common Pleas of Philadelphia County Civil Division at
No(s): 220301601

BEFORE: PANELLA, P.J.E., NICHOLS, J., and KING, J.

MEMORANDUM BY NICHOLS, J.:

FILED OCTOBER 1, 2026

Appellants Arcenio Perez and Olivia Perez, husband and wife, appeal the judgment of compulsory nonsuit in favor of Appellee Thomas Jefferson University Hospitals, Inc., and the denial of Appellants' motion for post-trial relief. We affirm on the basis that Appellants failed, as a matter of law, to establish a duty of care as required to prevail in their negligence cause of action.

The trial court set forth the relevant facts and procedural history as follows:

Late in the evening of October 3, 2021, Stacey Hayes ([Hayes, Mr. Hayes, or the assailant]) parked a U-Haul truck near the Gibbon Building of Jefferson University Hospital [(Hospital)] in Philadelphia. The building itself encompasses an entire city block, spanning from Chestnut Street to the north, [Sansom] Street to the south, 10th Street to the east, and 11th Street to the west.

At the time, the assailant was a Hospital employee, but had been on leave since August 18, 2021. Because he was technically still a current employee, it was not considered wholly appropriate to deactivate his employee keycard at that time. The assailant used this keycard to gain access to the building through a controlled employee entrance, entering around midnight on October 4, 2021. He made his way to the ninth floor, where he fatally shot Andre James, a nurse and coworker, at a nursing station with a pistol.

The assailant subsequently fled the building through a fire tower, exiting through a door onto 10th Street. He drove away from the scene in the [] U-Haul truck From the time of the assailant's entry to his escape, the entire incident lasted about one minute.

On this same evening of October 3, 2021, Appellant Arcenio Perez [(Officer Perez)] was working a regular patrol shift in his role as an officer for the Philadelphia Police Department. Officer Perez was also a member of the Department's tactical unit, which specialized in tactical responses to violent crimes in West Philadelphia, particularly involving firearms.

Officer Perez received a call regarding the shooting around midnight on October 4, 2021, near contemporaneously to the incident as it was unfolding. However, Hospital security and local law enforcement had already lost pursuit of the assailant after he fled in the U-Haul. As such, Officer Perez was instructed to not come to the Hospital and instead continue his regular patrol within his precinct of 30th to 52nd Streets in West Philadelphia.

At approximately 1:30 A.M., about an hour and half after the shooting at the Hospital, Officer Perez hear[d] shots being fired while patrolling around 35th Street and Lancaster [Avenue]. Officer Perez made his way to the scene occurring outside of the School of the Future, located over four miles away from the Hospital. There he [found] the assailant erratically releasing an AR-15 rifle into the air. Immediately, there was no indication that this situation was connected with what had occurred at the Hospital, nor that this individual was in fact the assailant, therefore Officer Perez treated it as an isolated active threat.

Officer Perez confronted the assailant and ordered him to drop his weapon, where subsequently a shootout ensued. Officer Perez was shot by the assailant in the right forearm with the AR-15 rifle and was quickly transported to Penn Presbyterian Hospital by a fellow officer. The assailant was also brought to Penn Presbyterian, where he was positively identified by a Jefferson

police officer – confirming that the assailant was responsible for both shootings. As a result of his encounter with the assailant, Officer Perez suffered severe injuries to his right arm, resulting in a lengthy and painful physical rehabilitation, and was also forced to take disability and leave the Philadelphia Police Department.

Appellants filed suit against Appellee on March 15, 2022, alleging negligence, as well as loss of consortium on [the] part of Appellant Olivia Perez, Officer Perez’s wife. A jury trial commenced on April 7, 2025. At the conclusion of Appellants’ case-in-chief, Appellee presented an oral motion for compulsory nonsuit on April 8, 2025 . . .

The trial court granted Appellee’s motion for compulsory nonsuit on April 8, 2025. Appellants timely filed [a] motion for post-trial relief on April 17, 2025, [which the trial court denied on April 25, 2025].

Trial Ct. Op., 10/21/25, at 1-3 (citations omitted and some formatting altered).

Judgment in favor of Appellee was entered on May 7, 2025. Appellants filed a timely notice of appeal. Both Appellants and the trial court complied with Pa.R.A.P. 1925.

On appeal, Appellants raise the following claims:

1. Whether the trial court abused its discretion and erred as a matter of law in granting [Appellee’s] motion for compulsory nonsuit . . . and denying [Appellants’] motion for post-trial relief . . . , thereby dismissing all claims against [Appellee]?
2. Whether the trial court abused its discretion and erred as a matter of law in improperly removing the determination of whether [Appellee] owed a duty of care to [Officer Perez] from the jury and granting [Appellee’s] motion for compulsory nonsuit . . . and denying Appellants’ motion for post-trial relief . . . ?
3. Whether the trial court abused its discretion and erred as a matter of law in improperly removing the determination of whether [Appellee’s] negligence was the proximate cause of

[Officer Perez's] injuries and damages from the jury and granting [Appellee's] motion for compulsory nonsuit . . . and denying Appellants' motion for post-trial relief . . . ?

Appellants' Brief at 3-4 (some formatting altered).

Appellants claim that they established sufficient evidence at trial for the jury to find that they had a right to relief and the trial court therefore erred in concluding that the evidence was insufficient to establish Appellee's liability for the harm that befell Officer Perez. **See id.** at 19-20. Specifically, Appellants argue that the evidence established that Appellee owed a duty of care to Officer Perez and that Appellee's negligent performance of this duty was the proximate cause of harm to Officer Perez. **Id.** at 22-43.

Relying on Sections 323 and 324A of the Restatement (Second) of Torts,¹ Appellants contend that Appellee owed a duty to Officer Perez because Appellee provided security services at the Hospital and, further, that Officer Perez suffered injuries as a result of Appellee's failure "to exercise reasonable care in providing the security services it affirmatively undertook to provide." **Id.** at 19, 22-25. Specifically, Appellants argue that Appellee

had its own Public Safety Department, which employed its own security personnel (including both unarmed security guards and TJUH police officers) and implemented a number of safety and security policies, including the use of employee identification cards. . . . It is likewise undisputed that [Appellee] undertook to render such security services to another, including, among others, [Appellee's] patients, employees, and visitors. As a result, [Appellee] should recognize that providing such security services was necessary for the protection of . . . police officers . . . who

¹ **See** Restatement (Second) Torts §§ 323, 324A.

would have to respond to incidents precipitated by [Appellee's] inadequate security.

Id. at 26-27 (citations omitted and some formatting altered).

While conceding that at the time of the incident Mr. Hayes was Appellee's current employee who had been on leave, Appellants contend that Appellee nevertheless should have deactivated Mr. Hayes' employee identification card so that he would not have had access to the Hospital through an employee-only entrance on the night of the incident. ***Id.*** at 27, 41. Appellants also contend that Appellee should have staffed the visitor's desk and installed metal detectors at the entrance Mr. Hayes used to gain access to the facility that night. ***Id.*** at 28. Further, Appellants contend that Appellee's "inadequate security . . . allowed Mr. Hayes to exit the facility as easily as he entered it." ***Id.*** at 29-30. Appellants argue that "these deficiencies allowed Mr. Hayes unfettered access to [Appellee's] facility with an unauthorized firearm, which enabled the sequence of events that were to follow." ***Id.*** at 29. Ultimately, Appellants claim that "there is room for fair and reasonable disagreement" over whether Appellee "fulfill[ed] its obligation" to Officer Perez such that a jury could determine whether Appellee had "exercised reasonable care in the performance of a duty." ***Id.*** at 30-31.

Appellee responds that, while it did provide security services at the Hospital, it was not then liable to Officer Perez for the acts of Mr. Hayes, a third party, because Officer Perez was not a person to whom those security services were intended to protect. Appellee's Brief at 6-9. Rather, Appellee

contends that its security program was designed to “protect patients, employees and visitors to the Hospital from potential threats on its premises, the most likely of which was patient on employee assault” and, further, that Appellants “presented no evidence to suggest that these security measures were intended to protect individuals off [of the Hospital’s] premises.” ***Id.*** at 10-11 (citation omitted). Appellee argues that Officer Perez was, therefore, not “within the foreseeable orbit of risk of harm when [Appellee] undertook its duty to provide security measures at its facility,” *i.e.*, it was not reasonably foreseeable that Officer Perez would be shot by Mr. Hayes four miles away from the Hospital and ninety minutes after Hayes had left the Hospital such that Appellee could be liable for not implementing security measures to prevent such an outcome. ***Id.*** at 9-11. By the time Officer Perez encountered Mr. Hayes, Appellee contends that Mr. Hayes “was engaged in committing a completely separate crime from the one he committed at [the Hospital] . . . [and] was well beyond [Appellee’s] scope of control.” ***Id.*** at 11. Ultimately, Appellee contends that Appellants failed to establish that Appellee owed Officer Perez a legal duty at the time that he was injured by Mr. Hayes. ***See id.*** at 12-13.

We review an appeal of a judgment of compulsory nonsuit “to determine whether the trial court abused its discretion or made an error of law.” ***Baird v. Smiley***, 169 A.3d 120, 124 (Pa. Super. 2017) (citation omitted). Rule 230.1 permits a trial court to enter a nonsuit order where, “at the close of the plaintiff’s case on liability, the plaintiff has failed to establish a right to relief.”

Id. (citation omitted); **see also** Pa.R.Civ.P. 230.1(a)(1). In other words, the trial court must decide that “the jury . . . could not reasonably conclude that the elements of the cause of action had been established” based on the evidence presented by the plaintiff in its case-in-chief. **Gillard v. Martin**, 13 A.3d 482, 486–87 (Pa. Super. 2010) (citation omitted). In arriving at this decision, the trial court must also consider that “a jury may not be permitted to reach a verdict based on mere conjecture or speculation.” **Id.** at 487. In reviewing an appeal of a judgment of nonsuit, this Court gives the appellant the benefit of every reasonable inference and resolves all evidentiary conflicts in the appellant’s favor. **See Baird**, 169 A.3d at 124.

Here, the underlying action is a negligence claim. To establish a “viable cause of action for negligence,” a plaintiff must demonstrate:

(1) a duty or obligation recognized by the law that requires an actor to conform his actions to a standard of conduct for the protection of others against unreasonable risks; (2) failure on the part of the defendant to conform to that standard of conduct, *i.e.*, a breach of duty; (3) a reasonably close causal connection between the breach of duty and the injury sustained; and (4) actual loss or damages that result from the breach.

Harris v. Hutchinson Sportsmen’s Club, 352 A.3d 1063, 1072 (Pa. Super. 2026) (citation omitted). To establish a *prima facie* case of negligence, it is essential for the plaintiff to demonstrate that the defendant “owed a duty of care Indeed, the **issue of whether the defendant owed a duty of care to the plaintiff is the primary question in a negligence suit.**” **Id.** (citation omitted); **see also Carrender v. Fitterer**, 469 A.2d 120, 124 (Pa.

1983) (holding that “the element of duty [is] essential to a *prima facie* case of negligence” (citation omitted and some formatting altered)); **Kistler v. Dietrich**, 303 A.3d 168, 175 (Pa. Super. 2023) (affirming summary judgment for defendants where the plaintiffs in a negligence action failed to establish that the defendants owed a duty of care).

We further note that, in considering whether a duty of care is established, Section 323 of the Restatement (Second) of Torts states that a defendant who “undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking.” Restatement (Second) Torts § 323. Section 324A employs almost identical language to Section 323, differing only in that it addresses the protection of a ‘third person’ rather than ‘the other person.’ **See** Restatement (Second) Torts § 324A.

After our review of the record, giving Appellants the benefit of every reasonable inference and resolving all evidentiary conflicts in Appellant’s favor, we find no abuse of discretion or error of law in the trial court’s conclusion that, as a matter of law, Appellants’ case-in-chief failed to establish that Appellee owed Officer Perez a duty of care. **See Baird**, 169 A.3d at 124; **see also** Pa.R.Civ.P. 230.1; **Gillard**, 13 A.3d at 486–87. While Appellee undertook to provide security services at the Hospital, this undertaking did not then establish that Appellee owed a duty of care to Officer Perez, even

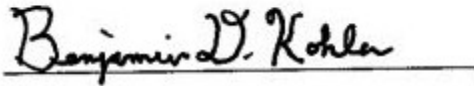
when examined through the lens of the theory of liability contained in either Sections 323 or 324A of the Restatement (Second) of Torts. Here, the trial court took into account that Appellee's security program was intended to protect the Hospital's patients, employees, and visitors against harm occurring on the Hospital's premises; Officer Perez was not a patient, employee, or visitor at the Hospital, nor did he enter the Hospital's premises on the night of the incident. Further, the violence and harm perpetuated by Mr. Hayes was unprecedented in the history of the operation of the Hospital and the encounter between Mr. Hayes and Officer Perez occurred off the Hospital's premises and later in time.

Appellants do not dispute these facts but argue that "there [was] room for fair and reasonable disagreement" over whether Appellee "fulfill[ed] its obligation" to Officer Perez such that the jury should have been permitted to determine whether Appellee had "exercised reasonable care in the performance of a duty." Appellant's Brief at 30-31. Appellants' argument, however, confuses the first required element of a negligence action, namely a duty of care, with the second required element, *i.e.*, how a duty, once undertaken, is carried out. ***See Harris***, 352 A.3d at 1072. The trial court held that, as a matter of law, Appellants had failed to proffer evidence in its case-in-chief on which the jury could find that Appellee owed a duty of care to Officer Perez. Finding no reason to disturb this conclusion, we affirm the judgment of compulsory nonsuit and the denial of Appellants' post-trial motion

for relief. **See Harris**, 352 A.3d at 1072; **Carrender**, 469 A.2d at 124; **Kistler**, 303 A.3d at 175.²

Judgment affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/1/2026

² In the absence of a duty of care, no jury may find a defendant liable in a negligence action. **See Harris**, 352 A.3d at 1072; **see also Carrender**, 469 A.2d at 124; **Kistler**, 303 A.3d at 175. Accordingly, because Appellants failed to establish that Appellee owed a duty of care to Officer Perez, we need not address Appellant's downstream claim that Appellee's negligence was the proximate cause of Officer Perez's injuries. **See id.**