

**FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.**

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August 24, 2026

In the Court of Appeals of Georgia

A26A1519. RICHARDSON v. THUNDER, LLC et al.

A26A1520. JACKSON v. THUNDER, LLC et al.

BARNES, Presiding Judge.

These companion appeals arise out of a tragic shooting incident at an annual homecoming block party hosted by Upsilon Sigma, the undergraduate fraternity chapter of Omega Psi Phi Fraternity, Inc. (“Omega”) at Fort Valley State University, which resulted in injuries to Megan Jackson and the death of Tyler French. Following the incident, Jackson and the French Plaintiffs¹ filed their respective lawsuits against Omega and Thunder, LLC, the owner and landlord of the property where the block

¹ The French Plaintiffs are Tamia Richardson, as parent, natural guardian, and next friend of Kaiden Lamar French, a minor, and Kamille Amari Mychelle Richardson, a minor, and Amanda McKenzie, as temporary administrator of the Estate of Tyler Lamar French.

party occurred. They asserted premises liability/negligence and nuisance claims. The defendants moved for summary judgment in both cases, and the trial court granted the motions, resulting in these appeals. For the reasons discussed below, we conclude that the evidence was insufficient to create a factual issue regarding whether the shooting incident was reasonably foreseeable. We therefore affirm the judgments.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. On appeal from a grant of summary judgment, this Court conducts a de novo review of the legal questions and the evidence, viewing the evidence, and all reasonable conclusions and inferences drawn from it, in the light most favorable to the nonmoving party. A grant of summary judgment must be affirmed if it is right for any reason, whether stated or unstated in the trial court's order, so long as the movant raised the issue in the trial court and the nonmovant had a fair opportunity to respond.

R. H. v. Wagner, 365 Ga. App. 534, 535 (879 SE2d 653) (2022) (citation modified). See OCGA § 9-11-56(c).

So viewed, the record shows that Omega is a nonprofit corporation that charters and serves as the umbrella governing body for undergraduate and graduate chapters of the Omega Psi Phi Fraternity throughout the United States. Omega is

geographically organized into twelve districts, with each district headed by a district representative who is charged with supervising the local chapters within the district. Districts also appoint local chapter advisors who serve as a resource and provide advice and oversight to undergraduate chapters.

Upsilon Sigma is the undergraduate fraternity chapter of Omega at Fort Valley State University. Since the late 1970s, Upsilon Sigma members have lived at 601 Carver Drive, Fort Valley, Georgia (the “Property”), and the fraternity holds meetings and hosts parties there. The Property is owned by Thunder, a limited liability company consisting of Upsilon Sigma alumni and members of Omega. At the time of the shooting incident, Thunder leased the Property to an undergraduate fraternity member and to a nonmember, but other members of the fraternity also resided there, and the Property was known in the community as a “frat house.”

Upsilon Sigma hosted an annual block party at the Property during Fort Valley State’s homecoming week. The parties attracted large crowds from the community, and there was music, food, and alcohol. Sometimes partygoers would get into physical altercations, and on a few occasions the police were called to the Property for crowd control or disorderly conduct.

For homecoming week in 2021, Upsilon Sigma held its annual block party on October 22. Before the event, the undergraduate fraternity member and other individual who were the lessees of the Property applied to the city for permission to hold a neighborhood block party. The application estimated that there would be a crowd of 250 and requested three off-duty police officers. The application was approved by the city's director of public safety, and fraternity members circulated flyers advertising the block party on social media.

Among other rules, Omega requires local chapters to submit a "Special Event Checklist" ("SEC") for pre-approval of fraternity events open to the general public. Although permission to host the 2021 block party was sought and obtained from the city, Upsilon Sigma never completed an SEC application for the 2021 block party. In the five years preceding the 2021 party, Upsilon Sigma had not completed any SEC applications for fraternity events, and Omega had previously disciplined Upsilon Sigma for failing to comply with the SEC rules and procedures.

As planned, Upsilon Sigma held its annual block party at the Property on the night of October 22, 2021. A DJ played music and partygoers danced and drank alcohol. The event drew a substantial crowd.

Jackson, a freshman at Fort Valley State, learned of the party on social media and attended with a group of other freshman. French, who was not a Fort Valley State student, attended with several of his friends, including Quinterious Trammell. French and his friends knew about the annual party because they had attended in the past.

Jackson and her friends congregated in front of the Property, while French and Trammel remained across the street in front of a neighbor's house until shortly before the shooting, when French went to retrieve his cigarettes from his car. According to Trammel, there was a "heavy police presence," with more than ten uniformed officers present. Jackson observed a police car and two uniformed police officers on the street near the Property. Trammel testified that before the shooting, he and his friends saw "some arguments but nothing alarming" and no physical altercations, and Jackson testified that she was not concerned about her safety.

As the party continued, Jackson heard some partygoers who were near her begin to argue. When the argument escalated and the voices grew louder, Trammel noticed that the music had stopped, and he saw several police officers moving toward the disturbance. However, before the officers could reach the source of the commotion, shots were fired by multiple shooters. Several partygoers were struck by bullets,

including Jackson and French. Jackson was treated at the hospital and released, but French died from his injuries.

Jackson and the French Plaintiffs filed the present lawsuits against Omega and Thunder, seeking damages resulting from the shootout.² In their complaints, as amended, the plaintiffs alleged that Omega had a duty to keep the Property safe from hazardous and dangerous conditions, as well as a duty to monitor and supervise Upsilon Sigma so as to prevent such conditions on the Property, and that Omega had breached these duties, resulting in the shooting incident and the harm caused to Jackson and French. The plaintiffs further alleged that Upsilon Sigma had a duty to keep the Property safe and that Omega was vicariously liable for Upsilon Sigma's breach of that duty based on the existence of a principal-agent relationship. As to Thunder, the plaintiffs alleged that it also had a duty to keep the Property safe from dangerous and hazardous conditions and breached that duty. Additionally, the plaintiffs alleged that both defendants had allowed and maintained a nuisance on the Property.

² Although initially assigned to a different trial court judge, the Jackson case was transferred to the judge hearing the French case in light of the substantially same subject matter. See Uniform Superior Court Rule 3.2.

Following discovery, the defendants filed their respective motions for summary judgment in both cases. Omega argued that it could not be held vicariously liable for the acts or omissions of Upsilon Sigma or its members in failing to keep the Property safe because no principal-agent relationship existed; that it owed no duty of care to the plaintiffs; that its conduct was not the proximate cause of the plaintiffs' injuries; and that the criminal acts of the third-party shooters were not reasonably foreseeable. Thunder argued that it was an out-of-possession landlord under OCGA § 44-7-14, a legal status that it contended eliminated its liability under the undisputed facts of record; that it had no actual or constructive knowledge of the alleged hazardous condition of the Property; and that the shootout was not reasonably foreseeable.

After conducting a hearing on the summary judgment motions, the trial court granted summary judgment in favor of the defendants on several of the alternative grounds set out in their respective motions. These appeals followed.

1. In several related enumerations of error, the plaintiffs argue that the trial court erred in granting summary judgment to Omega on their premises liability/negligence claims. We conclude that summary judgment in favor of Omega

was appropriate because there was insufficient evidence to create a jury issue as to whether the shootout was reasonably foreseeable.

(a) “As a general rule, in order to recover on a premises liability claim arising from third-party criminal conduct, a plaintiff must present evidence of a duty, a breach of that duty, causation, and damages.” *Georgia CVS Pharmacy v. Carmichael*, 316 Ga. 718, 721(II)(A) (890 SE2d 209) (2023). If the “plaintiff cannot establish duty, an essential element of negligence, [the] defendant cannot be liable and summary judgment is proper.” *Batchelor v. Brown*, 226 Ga. App. 113, 113 (486 SE2d 53) (1997).

As previously noted, the plaintiffs alleged that Omega had a duty to keep the Property safe from hazardous and dangerous conditions, or alternatively, that Upsilon Sigma had a duty to keep the Property safe and Omega was vicariously liable for Upsilon Sigma’s breach of that duty based on agency law principles. Both allegations were therefore premised on the existence of a legal duty to keep the premises safe.

Under Georgia premises liability law, an owner or occupier of land has a duty to exercise ordinary care to keep the premises safe for invitees.³ OCGA § 51-3-1. See

³ Proof that a defendant is the owner or occupier of the premises “is a necessary element of any premises-liability claim.” *Williams v. Kasulka Props.*, 370 Ga. App. 653, 658 (3) (898 SE2d 843) (2024) (citation modified). We assume for the sake of argument that Omega exerted sufficient control over the premises to be an occupier

Carmichael, 316 Ga. at 721(II)(B). It is undisputed, however, that Jackson and French, as social guests at the homecoming block party hosted at the Property, were licensees. See *Rigdon v. Kappa Alpha Fraternity*, 256 Ga. App. 499, 501(1) (568 SE2d 790) (2002) (fraternity party guest was licensee). See generally OCGA § 51-3-2(a)(3) (“A licensee is a person who[] ... [i]s permitted, expressly or impliedly, to go on the premises merely for his own interests, convenience, or gratification.”). An owner or occupier of land has a duty only to avoid causing “wilful or wanton injury” to licensees. OCGA § 51-3-2(b). See *Rigdon*, 256 Ga. App. at 501(1).

Nevertheless, the distinction between invitee and licensee is “largely irrelevant” in the context of evaluating an owner or occupier’s liability for the criminal acts of third parties, as “it is usually wilful or wanton not to exercise ordinary care to prevent injuring a person who is actually known to be, or may reasonably be expected to be, within the range of a dangerous act being done.” *Van v. Kong*, 344 Ga. App. 754, 755 (811 SE2d 474) (2018) (quotation marks omitted). See *Rigdon*, 256 Ga. App. at 501(1). Thus, irrespective of whether the person on the property is an invitee or licensee, if an owner or occupier “has reason to anticipate a criminal act, he or she

of the Property or could be held vicariously liable for the acts or omissions of Upsilon Sigma as the occupier of the Property.

then has a duty to exercise ordinary care to guard against injury from dangerous characters.”⁴ *Carmichael*, 316 Ga. at 722(II)(A) (quotation marks omitted). See *Van*, 344 Ga. App. at 755 (applying rule in context of licensee). But no duty arises if the criminal act was not reasonably foreseeable. *Carmichael*, 316 Ga. at 722(II)(A). Thus, “whether [the] duty of ordinary care embraces the specific duty to protect invitees [or licensees] against third-party criminal conduct hinges on foreseeability.” *Id.*

The question of reasonable foreseeability is determined by the “totality of the circumstances relevant to the premises,” “is not susceptible to a mechanical formulation,” and “must be made on a case-by-case basis.” *Carmichael*, 316 Ga. at 726(II)(C). Yet “typically central to the inquiry” is whether there is evidence of “substantially similar prior criminal activity.” *Id.* at 727(II)(C). This is because evidence of past crimes “with a likeness, proximity, or other relationship to the criminal act at issue” can “give a proprietor reason to anticipate such an act occurring on the premises.” *Id.* at 732(II)(C). Prior crimes are more probative of foreseeability if they “(1) happened closer in proximity to the subject premises, (2) happened closer

⁴ In 2025, the General Assembly enacted OCGA §§ 51-3-50 to 51-3-57, which address claims against owners and occupiers of property for negligent security. See Ga. L. 2025 at 19. Because these new statutory provisions apply only to causes of action arising on or after April 21, 2025, they are inapplicable here. See *id.* at 30.

in time to the criminal conduct at issue, (3) happened more frequently, and (4) were more similar to the act that is the subject of the litigation.” Id. at 728(II)(C). While evidence of past crimes “may often be one of the most probative considerations, it is not a required consideration, and other circumstances may be relevant, too.” Id. at 732(II)(C). Whether a third-party criminal act was reasonably foreseeable under the totality of the circumstances is normally for the jury, but “as with any jury question, the trial court, in plain and palpable cases, may resolve the question ... as a matter of law[.]” Id. at 725(II)(B) (quotation marks omitted). See, e.g., *Doe v. Prudential-Bache/A.G. Spanos Realty Partners*, 268 Ga. 604, 606 (492 SE2d 865) (1997) (prior property crimes in apartment parking garage were insufficient, under the facts of the case, to create a factual issue as to whether the landlord “could reasonably anticipate that a violent sexual assault might occur on the premises”).

Even viewing the evidence in the light most favorable to plaintiffs as the non-moving parties, we conclude that they have failed to point to evidence in the record sufficient to create a jury issue on the question of reasonable foreseeability. In support of their argument that the shootout was reasonably foreseeable, the plaintiffs rely on evidence that at past homecoming block parties, there were sometimes physical

altercations between partygoers. But there is no evidence that any of the prior fights involved guns or other weapons, led to any injuries or hospitalizations, resulted in any arrests, or caused any harm to innocent bystanders. Moreover, the only deponents who testified about prior fights at homecoming block parties (Trammel and French's girlfriend) referred to fights that had occurred at least four years before the 2021 party at issue here,⁵ and Trammell testified that past fights were "nothing like what happened in 2021, nothing of that nature." The plaintiffs also rely on police incident reports reflecting three occasions where the police responded to a party at the Property to address "crowd control" or "disorderly conduct," but none of the reports describe the specific conduct at issue or refer to any altercations among partygoers. Because these prior incidents were not substantially similar to the multiparty shootout, they were insufficient to show reasonable foreseeability. See *Boone v. Udoto*, 323 Ga. App. 482, 485–86(1) (747 SE2d 76) (2013) (injury to innocent bystander from handgun wielded by club patron was not reasonably foreseeable as a

⁵ Before the shooting incident in 2021, Trammel last attended an Upsilon Sigma homecoming party in 2017, the year he graduated from high school. French's girlfriend last attended a party in 2015. Jackson testified that she attended one prior fraternity party before homecoming week where the police arrived and the partygoers left, but she was unsure whether there had been a physical altercation.

matter of law, where there were prior instances of only fistfights and shoving among club patrons). Cf. *Carmichael*, 316 Ga. at 733(II)(D)(1) (there was sufficient evidence to allow jury to resolve whether armed robbery of customer in store parking lot was reasonably foreseeable, based in part on two prior armed robberies of employees inside the store).

Nor have the plaintiffs pointed to any additional factors that would support a finding of reasonable foreseeability under the totality of the circumstances. Other factors may include, for example, evidence that the premises was located in “high crime area” or that “the landowner had knowledge of a volatile situation brewing on the premises” before the criminal act. *Carmichael*, 316 Ga. at 728–29(II)(C). “Knowledge that a specific third party will be present at the location or event, accompanied by knowledge that the same third party has a history of violence, might also be enough.” *B-T Two, Inc. v. Bennett*, 307 Ga. App. 649, 655(3) (706 SE2d 87) (2011) (physical precedent only). But there is no such evidence in the record here. There is no evidence that the Property was in a high crime area or that partygoers with guns or other weapons had ever been observed at the homecoming block parties. Nor is there any evidence that fraternity members had reason to believe that there would

be guests attending the 2021 party who had criminal histories or violent propensities, that fraternity members or other partygoers felt unsafe at the party before the incident, or that the party was becoming more dangerous or volatile as the night progressed. To the contrary, Trammel testified that there was a “heavy police presence” at the party that night and that he saw “nothing alarming” before the shooting incident, and Jackson testified that she also saw law enforcement at the party and did not feel unsafe before the shooting occurred. And while the plaintiffs argue more generally that block parties where alcohol is available “are ripe circumstances for violence and injury,” to authorize premises liability claims predicated on a third-party criminal act whenever there is a large party with alcohol would make the premises owner the insurer of guests’ safety, which our law does not require. See *SMG Constr. Servs. v. Cook*, 322 Ga. 819, 822 (922 SE2d 76) (2025) (a proprietor is not the “insurer” of the safety of those on its property).

In light of this record, we conclude that the plaintiffs failed to come forward with evidence sufficient to create a genuine issue of material fact as to whether the shootout was reasonably foreseeable. Accordingly, neither Omega nor Upsilon Sigma owed a duty to protect partygoers from that unanticipated third-party criminal

conduct, and the trial court therefore properly granted summary judgment to Omega on the plaintiffs' premises liability claims.⁶ See *Shadow v. Fed. Express Corp.*, 359 Ga. App. 772, 775–81(4) (860 SE2d 87) (2021) (summary judgment to defendants was appropriate where the evidence failed to create a factual issue as to whether a mass shooting was reasonably foreseeable); *Rigdon*, 256 Ga. App. at 502–03(1) (affirming summary judgment to fraternity where there was no evidence that the violent attack upon a guest at a fraternity party was reasonably foreseeable). Cf. *Martin v. Six Flags Over Ga. II*, 301 Ga. 323, 332(II)(A) (801 SE2d 24) (2017) (gang attack on park patron at bus stop near amusement park was reasonably foreseeable where, among other things, “disturbances by gang members at the park were routine and often a topic of daily security briefings”; there was a prior gang-related fight that migrated from the park to a bus stop and culminated in a drive-by shooting; and park security was aware of gang members terrorizing families earlier on the evening of the attack).

⁶ To succeed on their claim that Omega was vicariously liable for Upsilon Sigma's negligent failure to keep the premises safe, the plaintiffs had to prove the underlying tort committed by Upsilon Sigma in addition to the existence of a principal-agency relationship. See *Cotton States Mut. Ins. Co. v. Kinzlow*, 280 Ga. App. 397, 399 n.3 (634 SE2d 172) (2006). Because there was insufficient evidence to create a factual issue regarding whether Upsilon Sigma owed a duty to the plaintiffs to anticipate and guard against the shooting incident, summary judgment in favor of Omega on the vicarious liability claim was appropriate.

(b) Summary judgment was also proper on the plaintiffs’ claims against Omega for the alleged negligent failure to supervise and monitor Upsilon Sigma so as to prevent hazardous conditions from developing on the Property. The negligent failure to supervise or monitor an employee or other agent⁷ results in liability “only where it is reasonably foreseeable that the employee [or agent] could cause the type of harm sustained by the plaintiff,” and “an independent, intervening criminal act of a third party, without which the injury would not have occurred, will be treated as the proximate cause of the injury,” defeating such a negligence claim. *Paradise Entertainment Group v. Favors*, 363 Ga. App. 636, 641–42(1)(b) (871 SE2d 916) (2022) (citation modified). Even if Omega failed to adequately supervise and monitor Upsilon Sigma, the random shooting of partygoers at a fraternity party was not a reasonably foreseeable result of that failure, given the absence of evidence discussed supra in Division 1(a). Consequently, Omega was entitled to summary judgment on the plaintiffs’ claims for negligent supervision and monitoring. See *Paradise Entertainment Group*, 363 Ga. App. at 641–42(1)(b) (negligent supervision claim failed as a matter of law in absence of evidence of reasonable foreseeability of shooting incident). See

⁷ We assume for the sake of argument that Omega owed a legal duty to supervise and monitor Upsilon Sigma.

generally *Carmichael*, 316 Ga. at 734(II)(D)(1) (discussing foreseeability in context of proximate cause).

2. In several related enumerations of error, the plaintiffs argue that the trial court erred in granting summary judgment to Thunder on their claims for negligently failure to keep the premises safe. For the same reasons discussed *supra* in Division 1, we conclude that the plaintiffs failed to come forward with evidence showing a genuine issue of material fact as to whether the shooting incident was reasonably foreseeable to Thunder. Consequently, Thunder owed no duty as owner of the Property⁸ to protect the plaintiffs from that unanticipated criminal act, and the trial court properly granted summary judgment to Thunder on the plaintiffs' claims for negligent failure to keep the premises safe.

3. In granting summary judgment to the defendants, the trial court also determined that the record did not include evidence that would permit a finding that Omega "could be otherwise liable to [p]laintiffs on [their] nuisance claim" or that Thunder "maintained a nuisance." While the plaintiffs in their opening briefs

⁸ We assume for the sake of argument that Thunder had not fully parted with possession of the Property and was not an out-of-possession landlord under OCGA § 44-7-14.

enumerate these findings by the trial court as error, they do not include any legal argument supporting those specific enumerations. Those enumerations of error are therefore deemed abandoned. See Ct. App. R. 25 (d) (1) (“Any enumeration of error that is not supported in the brief by citation of authority or argument may be deemed abandoned.”); *Guilford v. Marriott Intl.*, 296 Ga. App. 503, 504–05 (675 SE2d 247) (2009) (enumerations of error not “supported by either citation of authority or argument” treated as abandoned).

Judgments affirmed. Markle and Hodges, JJ., concur.