

VOROBAY v. GEROLAMY ET AL.
Case No. C095056

Defendants own approximately 28 acres of land. In one portion of that land, there is a workshop, airplane hangar, and airplanes. On the other end, approximately a half-mile from the workshop, is defendants' residence. One evening around 11:00 p.m., plaintiff and a friend drove onto the property near the airplanes, got out and began filming a plane. A relative of the property owners was also on the property near the airplanes. He discharged a shotgun, striking plaintiff. There had been a series of burglaries in and around the hangar in the weeks prior to the incident.

Plaintiff sued defendants, alleging premises liability based on failing to prevent the relative from shooting someone, such as plaintiff, who entered onto the property. In support of this cause of action, he contended the property owners should have known, despite any prior knowledge of violence or criminal activity, the relative had access to firearms and was a violent person who required prescription medication to control his anger. In a separate cause of action, he alleged liability on a theory of *res ipsa loquitur*.

Defendant property owners moved for summary judgment, arguing they owed no duty to plaintiff. Plaintiff opposed the motion, arguing there were disputed material facts and, based on a totality of the circumstances, the harm was highly foreseeable and there was a minimal burden to reduce the risk of harm. In granting the motion for summary judgment, the trial court found defendants owed no duty because the incident was not foreseeable because there had been no prior similar incidents and defendants owed no duty to take affirmative action to control wrongful acts of a third party. The trial court also found the requirements of *res ipsa loquitur* were not met because plaintiff alleged an intentional shooting rather than an accident.

On appeal, plaintiff contends:

- (1) The trial court erred in granting summary judgment because triable issues of material fact remain as to his premises liability and *res ipsa loquitur* causes of action;
- (2) The trial court erred in making factual findings on disputed issues; and
- (3) The trial court erred in finding the defendant property owners owed no duty of care to plaintiff.