

Jerry B. HORST and Shirley Horst, by and through Jerry B. Horst, next of kin and surviving father of Terri Michelle Horst, a minor, deceased, Appellants,

v.

SIRLOIN STOCKADE, INC., a Nevada corporation, Appellee.

Larry LINDSAY, next of kin and surviving father of David Lindsay, a minor, deceased, Appellant,

v.

SIRLOIN STOCKADE, INC., a Nevada corporation, Appellee.

Alvin E. SALSMAN and Novella Salsman, by and through Alvin E. Salsman, next of kin and surviving father of David Gregory Salsman, a minor, deceased, Appellant,

v.

SIRLOIN STOCKADE, INC., a Nevada corporation, Appellee.

No. 55873.

Supreme Court of Oklahoma.

May 17, 1983.

Rehearing Denied June 28, 1983.

Next of kin of three minors, who were murdered while working for defendant employer, brought action against employer alleging negligence on part of employer and its agent as a proximate cause of wrongful death of the three minors. The District Court, Oklahoma County, Jack Parr, J., sustained employer's demurrers and appeal was taken. The Supreme Court, Barnes, C.J., held that: (1) argument that employer violated state and federal labor laws by allowing minors under 16 to work after 9:00 p.m. was unsupported by citation of authority and was insufficient to overcome presumption in favor of correctness of trial court's decision sustaining demurrer of employer; (2) next of kin failed to establish any exceptional circumstances which would have given rise to duty on part of employer

to protect minor employees from criminal conduct; and (3) next of kin failed to state cause of action against employer on basis that agent of employer negligently provoked killings by communicating in a hostile manner with assailants.

Affirmed.

Hodges, Doolin, and Wilson, JJ., dissented.

1. Appeal and Error ⇌756, 761

An argument in a brief which is unsupported by a citation of authority is not sufficient to overcome the presumption in favor of the correctness of the trial court's decision and will not be considered.

2. Appeal and Error ⇌756, 761

Argument of next of kin of employees that employer violated state and federal labor laws by allowing 16-year-old minors, who were murdered while at work, to work after 9 p.m. was unsupported by citation of authority and was insufficient to overcome presumption in favor of correctness of trial court's decision sustaining demurrer of employer.

3. Employers' Liability ⇌30

Employer must provide reasonably safe place in which to work.

4. Employers' Liability ⇌180

To state a cause of action in negligence against employer, employee must allege duty by employer to protect employee from danger, failure by employer to perform a duty, and an injury which is proximately caused by that failure.

5. Workers' Compensation ⇌2156

Employees' next of kin failed to establish any exceptional circumstances which would have given rise to duty on part of employer to have provided employees, who were murdered at work, with protection from such criminal conduct.

6. Workers' Compensation ⇌2155

Next of kin of minor employees, who were murdered at work, failed to state a cause of action against employer by alleging that agent of employee negligently pro-

voked the killings by communicating in a hostile manner with assailants.

An Appeal from the District Court of Oklahoma County; Jack Parr, District Judge.

The next of kin of Terri Michelle Horst, David Lindsay, and David Gregory Salsman, appellants, allege that negligence on the part of Sirloin Stockade, Inc., appellee, and its agent, was the proximate cause of the wrongful death of the three minors. Appellee's demurrer was sustained. Appellants appeal.

AFFIRMED.

Larry A. Tawwater, Lampkin, Wolfe, McCaffrey & Tawwater, Oklahoma City, for appellant Horst.

Ronald W. Horgan, Law Office of John W. Norman, Inc., Oklahoma City, for appellants, Lindsay and Salsman.

John T. Edwards, Monnet, Hayes, Bullis, Thompson & Edwards, Oklahoma City, for appellee.

BARNES, Chief Justice:

The appellants are the next of kin of three minors, Terri Michelle Horst, David Lindsay, and David Gregory Salsman, who were murdered while working for Sirloin Stockade, Inc., appellee, at one of appellee's restaurants. The murders were committed by Roger Dale Stafford, his wife, and his brother and occurred on July 16, 1978, less than one month after the perpetrators had murdered the Melvin Lorenz family. Appellants allege that negligence on the part of Sirloin Stockade Corporation and its agent was the proximate cause of the wrongful death of the three minors. Appellee demurred for failure to state facts sufficient to constitute a cause of action to the Second Amended Petitions of the appellants. The trial court sustained the demurrers, the appellants elected not to amend further, and the cases were dismissed.

When they died, Terri Michelle Horst and David Gregory Salsman were fifteen (15),

and David Lindsay was seventeen (17). The killings took place at 11:00 p.m.

[1, 2] Appellants' first contention, applicable only to Horst and Lindsay, is that appellee violated state and federal labor laws by allowing the minors under sixteen (16) to work after 9:00 p.m.; however, appellant never cited any statute containing such language. An argument in a brief which is unsupported by a citation of authority is not sufficient to overcome the presumption in favor of the correctness of the trial court's decision and will not be considered. *Vaughn v. Texaco, Inc.*, 631 P.2d 1334 (Okl.App.1981).

[3, 4] Appellants' also allege that the appellee failed to provide adequate security in and about the building, in that the back door was not locked, there were no alarms or other security devices, and there were no security personnel present. The law in Oklahoma requires that an employer provide a reasonably safe place in which to work. *McMillin v. Barton-Robison Convoy Co.*, 182 Okl. 553, 78 P.2d 789 (1938). To state a cause of action in negligence against an employer an employee must allege: (1) a duty by the employer to protect the employee from the danger; (2) a failure by the employer to perform the duty; and (3) an injury which is proximately caused by that failure. *Sears, Roebuck & Co. v. Skeen*, 207 Okl. 180, 248 P.2d 582 (1952).

[5] In *McMillin*, the issue was the same as the one presently before us: Did the employer fail to furnish the employee a safe place to work as required by law? In *McMillin*, an employee was murdered by robbers who were illegally in possession of the employer's premises, and engaged in stealing an automobile. We held that the plaintiff had not presented sufficient evidence to show that the employer failed to provide a safe place to work. This court said, "[w]e are unable to see that an employer has a general duty to protect his employees from the assaults of criminals. We are likewise unable to see that there are any exceptional circumstances in this case which would give rise to such a duty." *Id.*

78 P.2d at 790. See *Davis v. Allied Supermarkets*, 547 P.2d 963 (Okl.1976).

In the case at bar, we find that appellants have not established any exceptional circumstances which would give rise to such a duty.

[6] The appellants' third theory is that an agent of the appellee negligently provoked the killings by communicating in a hostile manner with the assailants. Appellants contend that the reasoning in *Kelly v. Kroger Co.*, 484 F.2d 1362 (10th Cir.1973) should be followed in this case. In *Kelly*, the court was concerned with the propriety of the actions of store employees during a holdup in which a customer was shot and killed by a robber after she was taken hostage when police responded to a silent alarm activated by an employee. The employer had issued to its employees a pamphlet which emphasized that during a holdup, they were to take no action which would excite or startle the robber. The court held that under the circumstances a cause of action did exist. Other courts have found that in such situations the issue of whether violence could have been avoided is speculative, and therefore not the basis of a cause of action. See *Bennett v. Estate of Baker*, 27 Ariz.App. 596, 557 P.2d 195 (1976); *Boyd v. Racine Currency Exchange, Inc.*, 56 Ill.2d 95, 306 N.E.2d 39 (1973). We subscribe to the *Bennett* and *Boyd* doctrine. Appellants have failed to state a cause of action.

The action of the trial court sustaining the demurrers is AFFIRMED.

SIMMS, V.C.J., and IRWIN, LAVENDER, HARGRAVE and OPALA, JJ., concur.

HODGES, DOOLIN and WILSON, JJ., dissent.

Sara EARNEST, Appellant,

v.

SCHOOL BOARD OF INDEPENDENT DISTRICT NO. 16 OF STILLWATER, OKLAHOMA, Appellee.

No. 53755.

Supreme Court of Oklahoma.

July 12, 1983.

Appeal was taken from a judgment of the District Court, Payne County, Ray Lee Wall, J., in favor of school board in suit by school district employee alleging that an amount was wrongfully withheld from her salary. The Supreme Court, Wilson, J., held that school board properly withheld an amount from employee's salary for two of the days she was absent with administrative approval, even though no substitute teacher was hired to replace her during her absence.

Affirmed.

Simms, V.C.J., dissented and filed opinion.

Schools ⇌ 144(3)

Words "only the amount necessary to pay the substitute" in statute providing that a teacher absent by reason of personal business shall have deducted from his salary only that amount limit amount of pay to be deducted, but do not make hiring a substitute a condition for making a deduction; therefore, school board properly deducted amount paid a substitute teacher from salary of school district employee absent with administrative approval for personal business, even though school board did not hire a substitute teacher to replace her during her absence. 70 O.S.Supp.1977, § 6-105, subd. A.

See publication Words and Phrases for other judicial constructions and definitions.

An Appeal from the District Court of Payne County; Ray Lee Wall, District Judge.

