

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Gina McNeil,
Appellant,

v.

Omni Hotels Management
Corporation d/b/a OMNI
Severin Hotel and The City of
Indianapolis,
Appellees.

October 27, 2023

Court of Appeals Case No.
23A-CT-268

Appeal from the Marion Superior
Court

The Honorable Timothy Oakes,
Judge

Trial Court Cause No.
49D02-1802-CT-7047

Memorandum Decision by Judge Brown
Judges Crone and Felix concur.

Brown, Judge.

- [1] Gina McNeil appeals the entry of summary judgment in favor of Omni Hotels Management Corporation d/b/a OMNI Severin Hotel (“Omni”) and The City of Indianapolis (the “City”). We affirm in part, reverse in part, and remand.

Facts and Procedural History

- [2] In February 2018, McNeil filed a complaint against Omni and the City. In a second amended complaint filed in March 2020, McNeil alleged that she “entered a hotel stay for two (2) nights” with an arrival date of June 30, 2016, at

Omni in Indianapolis. Appellant's Appendix Volume II at 38. She alleged that a person who was not a registered guest of Omni requested access to her room¹ and that, at approximately 12:15 a.m. on July 2, 2016, Indianapolis Metropolitan Police Officer Christopher Faulds entered her room with Omni's front desk manager Tamara Amos while she was asleep. She alleged she was arrested, subjected to public embarrassment, and transported to the Marion County Jail. In Count I, McNeil alleged that Omni was negligent when it intruded into her room and submitted inaccurate or false information to law enforcement resulting in her eviction from the hotel and arrest. In Count II, she alleged that Officer Faulds did not have probable cause to arrest her. In Count III, she alleged that Omni breached its contract with her by removing her from her hotel room.

[3] On June 24, 2022, Omni filed a motion for summary judgment and designated evidence including excerpts from the depositions of Officer Faulds, Officer Alisha Bernhardt, Todd Gagnon, and McNeil as well as a hotel confirmation and a recording of a phone call made by Amos to the police. A confirmation through Hotwire shows that McNeil had a reservation for a room for June 30, 2016, through and July 2, 2016. The recording of the phone call from Amos to the police states:

¹ The designated evidence indicates the person was Terrence Springer, who accompanied McNeil to Indianapolis.

Hi my name is Tamara from the Omni I need an officer to come over to our facility. We have a domestic dispute going on. . . . They disputed before . . . he came to me. He wants us to call non-emergency to have them go up to the room to talk to her to give him his things because he has nowhere else to go.

Appellees' Joint Appendix Volume III at 15.

- [4] Officer Faulds testified that he arrived at the hotel, spoke with a clerk at the front desk, and identified Terrence Springer. When asked “[d]id you ask the front desk clerk whether or not Terrence Springer was a registered guest of the hotel,” Officer Faulds replied: “No, actually I believe they told me he wasn’t. That’s why they couldn’t – I believe so. I could be wrong, though.” Appellant’s Appendix Volume II at 204. He testified he went to McNeil’s room together with Officer Bernhardt, Amos, and Springer. He testified he knocked on the door to McNeil’s room and that, after several minutes, McNeil opened the door. He testified: “I arrested her because the manager had decided that the noise and disturbance she was causing in the room had exceeded the hotel policy and they asked her to leave. So then we said you need to leave, the hotel needs you out. After several times asking and several refuses from Ms. McNeil, then she was placed under arrest.” *Id.* at 211. When asked if he had evidence that Amos had the authority “to evict a tenant from the hotel,” Officer Faulds stated that Amos was wearing an Omni uniform and identified herself as the manager. *Id.* at 216. He testified: “I tried to speak to [McNeil] in a calm manner in the beginning. It didn’t work. She became more hostile and more violent. She threw things up against the wall. I repeatedly asked her to stop. . .

. [T]hen I tried to talk to her in a more authoritative tone, and neither one of those attempts worked.” *Id.* at 221. When asked “it made you upset because she threw something against the wall,” he answered: “It made the hotel people upset. That was one of the reasons they decided to go ahead and trespass her because she was making such a loud disturbance. It wasn’t our call. I don’t make that determination. The hotel does.” *Id.* When asked if it was unusual to be called to a hotel to assist someone with getting access to things in a hotel room, he answered “[w]e get called to hotels for all kinds of reasons, and that is not something that is not uncommon, no.” *Id.* at 225. When asked to describe the escalation, Officer Faulds testified: “[S]he got mad, she started yelling. And when she started getting really loud and started yelling a lot, I believe that’s when the manager said, okay, look, we can’t have this, she needs to go.” *Id.* at 229. He indicated that he asked McNeil to quiet down several times before the manager indicated that she needed to leave and that she was asked to leave several times.

[5] Officer Bernhardt testified that she responded to a dispatch and “it was an assist to citizen run, or a domestic.” Appellant’s Appendix Volume III at 10. She testified: “I know that the call was there was a domestic between I think it was boyfriend and girlfriend and his personal items were in the room. There was a man, his personal items were in the room, and he just wanted to leave, he just wanted his stuff so he could leave.” *Id.* at 11-12. She stated, “[i]f there was a domestic disturbance, we obviously need to make sure that both people are safe” and “I think the manager had said something about that there was an

argument.” *Id.* at 13. She further stated “I know the reason that she was arrested was because the manager had asked for her to not be there, she was causing a disturbance and there was other people on the floor, and she needed to leave and she refused to leave.” *Id.* at 14-15. When asked “[w]ho told her to leave,” she replied “I think it was Ms. Amos, the agent on the property.” *Id.* at 19. She indicated her understanding was that Amos was the manager.

[6] Todd Gagnon with Omni testified the hotel’s “Good Night’s Rest Policy” was “on the website and they get it with an email confirmation. And when people call and make reservations for certain room types we review this with them. Then it is used at arrival.” Appellant’s Appendix Volume II at 124. When asked “if an unregistered guest goes up to the front desk at midnight . . . and they say they want to visit a room, would it be proper or improper for a staff member to let them have access to that room,” he testified “[t]hey would not be granted” and “it depends on the situation and the scenario. But . . . if they are not a registered guest, they would not be granted access to a guest room. They would not be given a key to access a guest room.” *Id.* at 125. When asked “[b]ased on the Good Night’s Rest Policy . . . does the manager on duty have the authority to trespass an individual for causing disturbance in their room,” he answered “[y]es.” *Id.* at 128.

[7] During her deposition, McNeil testified that she was staying at Omni for a mini vacation, Springer rode with her from Chicago to Indianapolis, and Springer planned to stay with his friends and not with her. She indicated that Amos checked her in and Springer carried her bags to her room and ordered room

service for her. She indicated she asked for one key card at check-in. She indicated Springer left and she locked the room door. She testified that, the following day, she met Springer, they went shopping and returned to her hotel room, Springer left around 6:00 or 7:00 p.m., and she took a shower and fell asleep. McNeil testified that she was asleep when she heard “bam, bam, bam” on her door. *Id.* at 156. She indicated that, as she took the safety latch off the door, Officer Faulds pushed the door open and the door hit her head, Officer Faulds shined a flashlight in her face, and Officer Faulds, Officer Bernhardt, and Amos entered the room. She testified Officer Faulds “started yelling at [her],” asked “[w]hat’s going on in here,” “started touching everything . . . going through [her] stuff,” and told her “to shut up” and “get dressed.” *Id.* at 160-162. She asked if she had “to get dressed in front of everybody” and stated: “This is unnecessary. You didn’t have to come to my room. Why are you here?” *Id.* at 162-163. She testified:

[H]e said, ‘I told you to shut up,’ or something to that effect, and said something to Ms. Amos. He grabbed me. I’ve never experienced anything like this before. I’m 60 years old. He threw me down with such force, my head hit that mattress. I couldn’t breath[e], and I felt this pressure in my back. I turned my head to the side and I said, ‘[Springer].’ They wouldn’t let him say one thing. He yanked me up. I thought he dislocated my shoulder. He yanked me up and walked me out of the room.

Id. She stated “[h]e pushed [her] on” the elevator, she “hit the back of the elevator,” “they was hurting me so bad,” she asked Officer Bernhardt to take her arm because Officer Faulds was hurting her, “[a]nd she did.” *Id.* She

testified: “They never explained anything to me.” *Id.* at 166. When asked “[y]ou didn’t hear anybody from the Omni say anything to Officer Faulds,” she stated “I was so shocked, I don’t recall hearing anything,” “[s]he said something, but I don’t know what she said,” and “[s]he said something because it gave him the signal to grab me and throw me down.” *Id.* at 166-167. She stated “this whole incident . . . was all fabricated.” *Id.* at 180. On June 30, 2022, the City filed a motion for summary judgment and designated evidence.²

[8] On July 25, 2022, McNeil filed a designation of evidence in response to Omni’s summary judgment motion. She designated her confirmation through Hotwire and a document setting forth “Key Procedures” stating that only guests registered to a guest room may be issued additional keys. Appellant’s Appendix Volume III at 127. McNeil designated Omni’s “Good Night’s Rest Policy,” which provided that “[o]nly registered guests are permitted to enter guestroom elevators or guest rooms after 10:00pm” and “[i]f a disturbance is created as a result of a party or noise from a room whether the registered guest is present or not, all guests in the room may be asked to leave the hotel, without refund of any charges.” *Id.* at 86.

² The City designated the evidence submitted by Omni in support of its summary judgment motion.

[9] McNeil also designated the transcript of an audiotaped statement of Officer Faulds.³ In the statement, when asked “[t]here was a person trying to get back into the room,” he answered: “Yes. That’s what the original call was.” *Id.* at 161. Officer Faulds testified that Springer “apparently had been staying in that room, and he had wanted to get some personal effects out of the room, but the hotel staff could not get anyone to respond because the door was locked . . . and no one would answer the door.” *Id.* When asked “[d]id you verify that . . . he had an interest in the room,” he answered “[t]he hotel staff told me he did” and “they knew that he was one of the occupants of the room.” *Id.* at 162. He testified McNeil “was very hostile from the get-go” and “her voice was raised to the point where I had to ask her to lower her voice several times.” *Id.* He testified “[t]he hotel manager stated that . . . she needed to leave the premises,” McNeil “said she wasn’t going anywhere,” and “[t]hen they asked us to escort her out.” *Id.* at 162-163. McNeil also filed a response in opposition to the City’s summary judgment motion.

[10] On November 17, 2022, the trial court held a hearing. It issued orders granting Omni and the City’s motions for summary judgment.

³ The transcript refers to cause number 49G07-1607-CM-25490, and the chronological case summary under that cause number shows that the McNeil was charged with criminal trespass and disorderly conduct in July 2016 and that the counts were dismissed August 2017. The State’s motion to dismiss indicated that it moved to dismiss all counts “for the following reasons,” and the phrase “Good Defense” is circled. August 18, 2017 Motion to Dismiss, cause number 49G07-1607-CM-25490.

Discussion

[11] We review an order for summary judgment *de novo*, applying the same standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). The moving party bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Manley v. Sherer*, 992 N.E.2d 670, 673 (Ind. 2013). If the moving party succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact. *Id.* We construe all factual inferences in favor of the nonmoving party and resolve all doubts as to the existence of a material issue against the moving party. *Id.* Our review is limited to those materials designated to the trial court. *Mangold v. Ind. Dep't of Nat. Res.*, 756 N.E.2d 970, 973 (Ind. 2001). We must carefully review a decision on a summary judgment motion to ensure that a party was not improperly denied its day in court. *Id.* at 974.

[12] McNeil maintains the trial court erred in entering summary judgment in favor of the City and Omni.

A. The City

[13] McNeil asserts that, in order for the police to have probable cause for trespass, Amos was required to tell her that she was no longer welcome and whether she did so is in dispute. She also asserts that whether her conduct rose to the level of disorderly conduct and whether she was asked to stop are in dispute. The City maintains that the police had probable cause to arrest McNeil for criminal

trespass and disorderly conduct, Officer Faulds could reasonably assume that Amos had the authority to revoke McNeil’s privilege to stay at the hotel, McNeil refused to leave when asked, and McNeil was yelling loudly and refused to stop when asked.

[14] “A false arrest requires absence of probable cause.” *Row v. Holt*, 864 N.E.2d 1011, 1016 (Ind. 2007) (citing *Earles v. Perkins*, 788 N.E.2d 1260, 1265 (Ind. Ct. App. 2003)). Ind. Code § 35-33-1-1 provided in part that a law enforcement officer may arrest a person when the officer has probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer’s presence.⁴ “The probable cause determination turns on ‘whether a reasonable person, under the facts and circumstances encountered by the arresting officer, would believe that the suspect had committed or was committing a criminal offense.’” *Row*, 864 N.E.2d at 1017 (citing *Earles*, 788 N.E.2d at 1265). “As we explained in *Ogle v. State*, 698 N.E.2d 1146, 1148 (Ind. 1998), ‘[t]he determination of probable cause is not one of mathematical precision, but rather is grounded on the notions of common sense.’” *Id.* at 1018.

[15] Ind. Code § 35-43-2-2 provided in part that a person who, not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person’s agent commits criminal trespass as a class A

⁴ Subsequently amended by Pub. Law No. 175-2022, § 6 (eff. July 1, 2022); and Pub. Law No. 112-2023, § 3 (eff. July 1, 2023).

misdemeanor.⁵ Ind. Code § 35-45-1-3 provides in part that a person who recklessly, knowingly, or intentionally engages in fighting or in tumultuous conduct or makes unreasonable noise and continues to do so after being asked to stop commits disorderly conduct as a class B misdemeanor.

[16] The designated evidence reveals that Amos called the police and reported “[w]e have a domestic dispute going on.” Appellees’ Joint Appendix Volume III at 15. The officers were informed that Springer’s personal items were in McNeil’s hotel room. Officer Faulds testified that it is not uncommon for the police to assist with access to a hotel room. He indicated that Amos decided the disturbance caused by McNeil “exceeded the hotel policy,” that he did not make that determination, and that McNeil was asked several times to leave the hotel premises. Appellant’s Appendix Volume II at 211. Also, Officer Bernhardt indicated that Amos, as the agent on the property, asked McNeil to leave the hotel. When asked if he had evidence of Amos’s authority, Officer Faulds testified that Amos was wearing an Omni uniform and identified herself as the manager. Gagnon indicated that Amos had the authority to trespass an individual for causing a disturbance in a room and that it was within the manager’s discretion to call the police if there was a possibility of a domestic disturbance. Under the circumstances, the police were able to reasonably conclude that Amos had the authority to determine that McNeil violated the

⁵ Subsequently amended by Pub. Law No. 181-2018, § 20 (eff. July 1, 2018); Pub. Law No. 276-2019, § 5 (eff. July 1, 2019); Pub. Law No. 75-2021, § 8 (eff. April 19, 2021); Pub. Law No. 209-2021, § 12 (eff. July 1, 2021); Pub. Law No. 220-2021, § 10 (eff. July 1, 2021); and Pub. Law No. 79-2023, § 3 (eff. July 1, 2023).

hotel's policies or her agreement with the hotel and to ask her to leave the hotel premises. We decline to find that a law enforcement officer, during the possibly chaotic moments of addressing the conduct of a hotel guest while hotel management is present, is required to determine the extent to which the hotel management's decision to ask the guest to leave is ultimately consistent with the guest's stay agreement and the hotel's policies. The designated evidence reveals that Officer Faulds had probable cause to believe that Amos had the authority to ask McNeil to leave the hotel and that McNeil was committing a criminal offense, and accordingly the trial court did not err in granting the City's motion for summary judgment.

B. *Omni*

[17] McNeil argues that Omni owed her the contractual duty of diligence in providing hotel services and of reasonable care in performing those services. She argues that Omni had a duty not to disturb her in the middle of the night, not to help Springer disturb her, and not to mislead police into believing there was a domestic dispute. She points to her testimony that Springer was not staying in her room and notes that Officer Faulds testified that Amos told police that Springer was staying in her room. She argues there are factual disputes as to whether Omni had the right to evict her and whether she was violating any hotel policy or causing any disturbance. Omni argues it was well within its rights to tell the police that McNeil was no longer welcome at the property and needed to leave for a perceived violation of the hotel's policy. It argues that McNeil failed to demonstrate that her arrest was a foreseeable consequence of

involving the police to assist with access to her room. It asserts that McNeil does not argue that any consideration was given in exchange for the Good Night's Rest Policy or that she reviewed or received the policy prior to her stay.

[18] A contract is formed when parties exchange an offer and acceptance. *Jernas v. Gumz*, 53 N.E.3d 434, 445 (Ind. Ct. App. 2016), *trans. denied*. The basic requirements for a contract are offer, acceptance, consideration, and a meeting of the minds between the contracting parties on all essential elements or terms of the transaction. *Id.* Our paramount goal is to ascertain and effectuate the intent of the parties. *Id.* Rules of contract construction and extrinsic evidence may be employed in giving effect to the parties' reasonable expectations. *Id.* When a contract contains general and specific provisions relating to the same subject, the specific provision controls. *Id.* Further, "[a]ccompanying every contract is a common law duty to perform the thing agreed to be done with care, skill, and faithfulness," and "it has long been the rule in Indiana that one who undertakes by contract to perform a service not only owes a duty of diligence . . . but also owes a general duty to perform the service with reasonable care. The negligent performance of a contract may give rise to liability in tort." *Crum v. AVCO Fin. Servs. of Indianapolis, Inc.*, 552 N.E.2d 823, 827 (Ind. Ct. App. 1990) (citations omitted), *trans. denied*. See also *INS Investigations Bureau, Inc. v. Lee*, 784 N.E.2d 566, 577-578 (Ind. Ct. App. 2003) ("As a general rule, there is implied in every contract for work or services a duty to perform it skillfully, carefully, diligently, and in a workmanlike manner, and a negligent failure to observe any of these conditions is a tort, as well as a

breach of contract. . . . The prevailing rule appears to be that where there is a general duty, even though it arises from the relation created by, or from the terms of, a contract, and that duty is violated, either by negligent performance or negligent nonperformance, the breach of the duty may constitute actionable negligence.”) (citing 57A AM. JUR. 2d Negligence §§ 119-121), *trans. denied*.

[19] In order to prevail on a claim of negligence, a plaintiff is required to prove: a duty owed by the defendant to the plaintiff; a breach of that duty by the defendant; and an injury to the plaintiff proximately caused by the breach. *Haire v. Parker*, 957 N.E.2d 190, 195 (Ind. Ct. App. 2011) (citing *Peters v. Forster*, 804 N.E.2d 736, 738 (Ind. 2004)), *trans. denied*. In negligence cases, summary judgment is rarely appropriate. *Id.* (citing *Rhodes v. Wright*, 805 N.E.2d 382, 387 (Ind. 2004)). “This is because negligence cases are particularly fact sensitive and are governed by a standard of the objective reasonable person—one best applied by a jury after hearing all of the evidence.” *Id.* (citing *Rhodes*, 805 N.E.2d at 387).

[20] The designated evidence reveals that McNeil made a reservation for a room for June 30, 2016, through and July 2, 2016, and paid for the room. Omni’s “Good Night’s Rest Policy” provided:

Only registered guests are permitted to enter guestroom elevators or guest rooms after 10:00pm. All guests must be registered at check-in and no additional guests can be registered after check-in.

* * * * *

If a disturbance is created as result of a party or noise from a room whether the registered guest is present or not, all guests in the room may be asked to leave the hotel, without refund of any charges.

Appellant's Appendix Volume III at 86.

[21] The designated evidence further reveals that McNeil was the only registered guest in the room. When asked if he verified that Springer had an interest in the room, Officer Faulds stated “[t]he hotel staff told me he did” and testified “they had confirmed that he was one of the occupants of the room.” *Id.* at 162. However, McNeil testified that Springer planned to stay with his friends in Indianapolis and not with her, he was not a registered guest in her room, he did not have a key to her room, he had not stayed in her room on the night of June 30, 2022, he left her hotel room at around 6:00 or 7:00 p.m. on July 1, 2022, and she took a shower and fell asleep. McNeil testified that she was asleep when she heard the knocking on her door at approximately 12:15 a.m. The designated evidence shows there is a genuine material dispute as to whether McNeil was in violation of her stay agreement or the hotel's policies or that Omni's actions were consistent with its policies and the duty it owed her. Mindful of the fact-sensitive nature of the claims and that we resolve all doubts as to the existence of a material issue against the moving party, we conclude that McNeil's contract and negligence claims should be heard and determined by the trier of fact and reverse the trial court's order granting Omni's summary judgment motion.

[22] For the foregoing reasons, we affirm the trial court's order granting the City's motion for summary judgment, reverse the order granting Omni's motion for summary judgment, and remand for further proceedings.

[23] Affirmed in part, reversed in part, and remanded.

Crone, J., and Felix, J., concur.