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**TORTS — UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN HOLDS THAT AN
AIRLINE HAS A DUTY TO PROTECT A CHILD
PARTICIPATING IN THE UNACCOMPANIED
MINOR PROGRAM FROM THE CRIMINAL ACTS OF A
THIRD PARTY: *GARZA V. NORTHWEST AIRLINES, INC.***

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RECOGNIZING THAT there are times in modern society when a child may be required to travel without a parent or guardian, most major air carriers have developed programs to assist parents and children with their travel. These programs are aimed at easing the parents' anxiety about allowing their children to travel alone and ensuring that children have an enjoyable trip and arrive at their final destinations without trouble. Although the airlines have policies in place to make the travel experience as easy as possible for both children and parents, mishaps are bound to occur. The question then becomes: who is responsible when they do? In the recent case of *Garza v. Northwest Airlines, Inc.*, the Eastern District of Michigan addressed what duties, if any, an airline has to protect a child from the criminal acts of fellow passengers.¹ The court held that Northwest Airlines had a duty to protect a child participating in its "Unaccompanied Minor" program from criminal sexual molestation by a fellow passenger.² However, this holding lacks merit because the court read the allegations in the plaintiff's complaint too broadly and failed to adequately distinguish the case from Michigan Supreme Court precedent regarding a merchant's duty to business patrons. Consequently, the court found a duty where one did not exist.

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¹ *Garza v. N.W. Airlines, Inc.*, 305 F. Supp. 2d 777 (E.D. Mich. 2004).

² *Id.* at 789.

Desiring to accommodate the concerns of parents whose children are traveling alone, Northwest Airlines operates an "Unaccompanied Minor" program.³ This program allows children between the ages of five and seventeen to fly without a parent or guardian.⁴ In return for an additional fee, the airline gives participants extra supervision and assistance with boarding, connecting flights, and flight delays.⁵ In addition, airline employees make sure that a previously designated adult picks up the child at her final destination.⁶

On August 4, 2001, eleven year old Brittany Weir ("Brittany") traveled from Kansas City, Missouri, to Detroit, Michigan, aboard Northwest Airlines ("the Airline") flight number 1186.⁷ Since Brittany was traveling alone, she enrolled in Northwest Airlines' "Unaccompanied Minor" program and paid the required fee.⁸ Upon arriving at the airport, Trina Garza ("Garza"), Brittany's mother, placed her in the care of the Airline's employees, who seated Brittany next to Rivachandra Thuluva ("Thuluva"), another passenger on the flight.⁹ During the flight Thuluva allegedly "touched, fondled, molested, assaulted and battered" Brittany.¹⁰

Following this incident, Garza brought a negligence suit against Northwest Airlines, alleging that the Airline breached its duty of care to Brittany by allowing her to be sexually molested while under the Airline's care and supervision.¹¹ Garza brought this action in the Wayne County Circuit Court for the State of Michigan in April 2003.¹² After removing the case to federal court, Northwest Airlines filed a motion to dismiss for failure to state a claim upon which relief can be granted.¹³ In support of its motion to dismiss, the Airline argued that it had no duty to protect Brittany because, under Michigan tort law, premises owners generally do not have a duty to protect business invitees

³ *Id.* at 778.

⁴ *Id.* at 783; *see also* Northwest Airlines—Unaccompanied Minors, at <http://www.nwa.com/services/onboard/minor/> (last visited Mar. 22, 2005).

⁵ Northwest Airlines—Unaccompanied Minors Frequently Asked Questions, at <http://www.nwa.com/services/onboard/minor/faq.shtml> (last visited Mar. 22, 2005).

⁶ *Id.*

⁷ *Garza*, 305 F. Supp. 2d at 778.

⁸ *Id.* at 778-79.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 777-78.

¹³ *Id.* at 778.

from the criminal acts of third parties.¹⁴ In response, Garza argued that the Airline did have a duty to protect Brittany because Brittany's participation in the "Unaccompanied Minor" program created a special relationship between Brittany and the Airline that took this case outside the scope of premises owner liability.¹⁵

In finding that Brittany's enrollment in the "Unaccompanied Minor" program created a special relationship between Brittany and the Airline, the District Court held that the Airline had voluntarily assumed a greater obligation to Brittany than it had to its other passengers.¹⁶ Since the "Unaccompanied Minor" program promises the provision of supervised travel for its participants, the court determined that the allegations in the complaint were sufficient to support a "claim under the 'voluntary undertaking' theory of liability recognized by Michigan courts."¹⁷ Thus, the District Court found that Northwest Airlines did have a duty to protect Brittany from the criminal acts of other passengers and denied the Airline's motion to dismiss.¹⁸

In considering Northwest Airlines' motion to dismiss, the court first considered Northwest Airlines' theory that as a premises owner it did not have a duty to protect Brittany from the criminal acts of third parties.¹⁹ The court noted that in *MacDonald v. PKT, Inc.*, the Supreme Court of Michigan stated that "a merchant has no obligation generally to anticipate and prevent criminal acts against its invitees."²⁰ *MacDonald* involved a negligence claim against the owner and operator of an amphitheatre brought by patrons who were injured during a sod-throwing incident at a concert they attended.²¹ The Michigan Supreme Court held that a merchant may "assume that patrons will obey the criminal law" and that the law does not place a responsibility on the merchant to protect against foreseeable criminal acts.²²

¹⁴ *Id.*

¹⁵ *Id.* at 782-83.

¹⁶ *Id.* at 785-86.

¹⁷ *Id.* at 787. Under the voluntary undertaking theory of liability, a business owner who promises to provide special services to his patrons may be held liable for injuries caused by a complete failure to provide those services.

¹⁸ *Id.* at 789.

¹⁹ *Id.* at 780.

²⁰ *Id.* at 781 (quoting *MacDonald v. PKT, Inc.*, 628 N.W.2d 33, 38 (Mich. 2001)).

²¹ *MacDonald*, 628 N.W.2d at 35.

²² *Id.* at 39.

Acknowledging this precedent, the District Court admitted that *MacDonald* precluded recovery under a theory of premises owner liability.²³

After noting that the complaint could only be dismissed if there was no theory of liability under which relief could be granted,²⁴ the court went on to consider whether the allegations in the complaint supported a theory of liability that would distinguish this case from *MacDonald*.²⁵ Recognizing that Michigan tort law only recognizes a duty to protect another "where a special relationship exists between a plaintiff and a defendant," the court analyzed two sets of circumstances under which a special relationship might exist between Brittany and the Airline.²⁶

First, the court considered whether the Airline's status as a common carrier distinguished this case from *MacDonald*.²⁷ However, the court found the relationship between a common carrier and its passengers to be no different from the "owner/invitee relationship" that existed between the concertgoers and the owner of the concert hall in *MacDonald*.²⁸ Thus, the court concluded "that the duties owed by business owners and common carriers alike do not extend to the protection of their customers against the criminal activities of third parties."²⁹

Secondly, the court examined whether the voluntary assumption of an obligation to provide Brittany with safe and supervised travel under the "Unaccompanied Minor" program created a duty to protect Brittany from the criminal acts of fellow passengers.³⁰ In support of the "voluntary assumption of a duty" theory, the court distinguished Brittany's situation from the one in *Scott v. Harper Recreation, Inc.*, a Michigan Supreme Court case addressing the duties imposed on a business owner who voluntarily assumes to undertake security measures.³¹ In *Scott*, a nightclub patron ("Scott") who was attacked in the club parking lot filed a negligence claim against the club owner.³²

²³ *Garza*, 305 F. Supp. 2d. at 782.

²⁴ *Id.* at 779-80 (quoting *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987)).

²⁵ *Id.* at 782-83.

²⁶ *Id.*

²⁷ *Id.* at 783.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 783-86.

³¹ *Id.* at 786-87 (citing *Scott v. Harper Recreation, Inc.*, 506 N.W.2d 857 (Mich. 1993)).

³² *Scott*, 506 N.W.2d at 858-59.

Scott argued that the club owner had voluntarily undertaken a duty to provide a safe parking lot because the owner had advertised that the club had “[f]ree [a]mple [l]ighted [s]ecurity [p]arking.”³³ The Michigan Supreme Court rejected the negligence claim because the club owner did not promise to “provide a [parking] lot free of criminal activity.”³⁴ Instead, the club owner provided exactly what he promised—a lighted parking lot with security guards on duty.³⁵ In its opinion, the Michigan Supreme Court stated that “a promise to take specific steps to reduce danger is a promise to do just that—not a promise to eliminate the danger.”³⁶ The *Garza* court distinguished the present case from *Scott* by finding that Northwest Airlines had promised to supervise Brittany during her travel and that this promise encompassed protecting Brittany from the criminal acts of fellow passengers.³⁷ The court further distinguished *Scott* because Northwest Airlines charged an extra fee for its services, whereas the club owner in *Scott* provided security in his parking lot to patrons without the imposition of an additional fee.³⁸ Based on these distinctions, the court held that Northwest Airlines had a duty to protect Brittany from the criminal acts of a third party and denied the motion to dismiss.³⁹

While the court in *Garza* may have reached the morally correct result, it did not reach the legally correct result. There are both procedural and substantive reasons why the court reached an incorrect result in this case. First, in reaching its decision, the District Court considered evidence beyond its reach. The issue of whether the Airline had a duty to protect Brittany came before the court in the form of a motion to dismiss for failure to state a claim upon which relief could be granted.⁴⁰ As such, “the Court is required to accept as true the well-pleaded factual allegations set forth in [the] Plaintiff’s complaint,” and is not to consider evidence beyond the scope of the complaint.⁴¹ In considering this motion, however, the District Court went beyond the face of the complaint and considered language found on

³³ *Id.*

³⁴ *Id.* at 862.

³⁵ *Id.*

³⁶ *Id.*; see also *Garza*, 305 F. Supp. 2d at 786.

³⁷ *Id.* at 787-88.

³⁸ *Id.* at 786-87.

³⁹ *Id.* at 789.

⁴⁰ *Id.* at 778.

⁴¹ *Id.* at 779 (citing *Morgan*, 829 F.2d at 12).

Northwest Airlines' website.⁴² Relying on selected portions of Northwest Airlines' website, the court found that the Airline had promised to provide safe and supervised travel for passengers participating in the "Unaccompanied Minor" program.⁴³ Unfortunately, it is not possible to tell whether the court would have reached the same conclusion if it had not considered the content from the Airline's website. Nevertheless, it certainly calls the court's decision into question.

In addition to the opinion's procedural defects, the District Court's reasoning is flawed. The present case is not as easily distinguished from *Scott* as the court would like to believe. The Michigan Supreme Court found that the nightclub owner had no duty to protect his patrons from the criminal acts of third parties because the owner did not promise that he would provide a parking area "free of criminal activity."⁴⁴ Similarly, Northwest Airlines did not promise to provide unaccompanied minors with a travel environment free from criminal activity. The Airline only promised that it would provide "safe, comfortable and fun" travel for unaccompanied minors participating in its program.⁴⁵ This promise includes assurances that there will be someone available to assist the child with boarding the plane, supervise the child during flight delays, and make sure that the previously designated adult picks up the child when the child reaches his or her final destination.⁴⁶ Garza's complaint did not allege that Northwest Airlines failed to provide any of these services to Brittany. Instead, the complaint alleged that the Airline failed to provide her with a level of supervision that can only be described as being equivalent to police protection during her flight.⁴⁷ Since the Airline never promised to provide this level of protection, it had no duty to provide it to Brittany; therefore, the complaint does not allege a failure to perform any duty that the Airline had.

Even if the Airline had voluntarily assumed the duty to provide Brittany with constant supervision during her flight that would have detected and prevented the attack, the suit cannot

⁴² *Id.* at 783-84.

⁴³ *Id.* at 785.

⁴⁴ *Id.* at 786 (quoting *Scott*, 506 N.W.2d at 862).

⁴⁵ *Id.* at 783 (quoting Northwest Airlines—Unaccompanied Minors, *supra* note 4).

⁴⁶ *Id.* at 787-88; see also Northwest Airlines—Unaccompanied Minors Frequently Asked Questions, *supra* note 5.

⁴⁷ *Garza*, 305 F. Supp. 2d at 779.

be maintained on this ground. The Michigan Supreme Court stated in *Scott*, that “even where a merchant voluntarily takes safety precautions . . . [s]uit may not be maintained on the theory that the safety measures are less effective than they could or should have been.”⁴⁸ The District Court attempts to get around this rule by arguing that Garza’s complaint asserted that the safety measures the Airline promised were wholly lacking.⁴⁹ However, this reading of the complaint is misleading. The main allegations made in the complaint were that the Airline breached its duty through its (i) failure to provide adequate in-flight supervision, “(ii) failure to place [Brittany] in a designated section, . . . [and] (iii) failure to detect and halt the abuse.”⁵⁰ These allegations are more accurately read as assertions that the measures the Airline had in place to accommodate their unaccompanied minor participants were inadequate, not completely lacking as the court asserts.⁵¹ This reading properly places the *Garza* case under the rule in *Scott*: a suit cannot be maintained on the theory that the merchant’s services are less effective than they could have been.⁵² Therefore, even if Northwest Airlines assumed a duty to provide extra supervision for Brittany, the Airline cannot be held liable for the alleged defects in its program.

Programs such as Northwest Airlines’ “Unaccompanied Minor” program provide society with a valuable service that numerous parents use every year. Holding airlines responsible for the criminal acts of fellow passengers committed against this subset of passengers is unreasonable and potentially devastating to these types of programs. Under Michigan law, an airline is no different from any other business and should not be held to a higher standard. By finding that Northwest Airlines had a duty to protect Brittany from the criminal acts of a fellow passenger, the District Court ignored Michigan Supreme Court precedent and tried to carve out a special rule for airlines. In doing so, the court created a duty based on promises the Airline never made and disregarded the general purpose behind these programs—to make sure that the child makes it to his final destination without getting lost.

⁴⁸ *Scott*, 506 N.W.2d at 863 (citing *Williams v. Cunningham Drug Stores, Inc.*, 418 N.W.2d 381, 384 (Mich. 1988)).

⁴⁹ *Garza*, 305 F. Supp. 2d at 787.

⁵⁰ *Id.* at 779.

⁵¹ *Id.* at 787.

⁵² *Scott*, 506 N.W.2d at 863 (citing *Williams*, 418 N.W.2d at 384).



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