SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2357-15T1

TRACY CORBISIERO,

Plaintiff-Appellant,

v.

MARIE SCHLATTER,

Defendant-Respondent,

and

ELAINE JAMISON,[1] THOMAS J. GATTO, ANTIQUES AND THINGS, INC., MARIE SCHLATTER AGENCY, INC., and FARMERS INSURANCE COMPANY OF FLEMINGTON,

Defendants.

Argued April 26, 2017 - Decided May 17, 2017

Before Judges Fuentes, Carroll, and Farrington.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-3400-14.

Patrick H. Cahalane argued the cause for appellant (Anglin, Rea & Cahalane, P.A.,

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[1] Improperly pleaded as Elaine Johnson.

attorneys; Mr. Cahalane, of counsel and on the brief).

James J. Pieper argued the cause for respondent (Litvak & Trifiolis, P.C., attorneys; Michael C. Trifiolis, of counsel and on the brief).

PER CURIAM

Plaintiff Tracy Corbisiero appeals from the order of the Law Division granting defendants Marie Schlatter's and Elaine Jamison's motion for summary judgment and dismissing her personal injury cause of action. After reviewing the record developed before the motion judge and mindful of prevailing legal standards, we affirm.

Because the court dismissed plaintiff's complaint as a matter of law, we will review the matter de novo, considering the facts presented by the parties in the light most favorable to Corbisiero, the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2(c).

This personal injury matter arises out of an accident which occurred on June 9, 2013, when Corbisiero fell from a ladder as she attempted to cut with an electric saw branches of a tree located on the property adjacent to the building where she resided. At the time of the accident, Corbisiero was a tenant in a mixed-use building consisting of four apartments and one commercial

unit, owned by defendant Thomas Gatto.[2] According to Corbisiero, branches from trees growing on the adjoining mixed use property owned by defendant Marie Schlatter extended onto the property where she lived. Marie Schlatter's daughter, Elaine Jamison, was a tenant without ownership interest in Marie Schlatter's property. Marie Schlatter's son, David Schlatter, also resided with Marie Schlatter and Jamison.

Prior to the June 9, 2013 accident, twigs and branches from trees located on the Schlatter property had fallen onto the Gatto property. No property damage or injuries to persons had ever resulted therefrom. In March 2013, Corbisiero requested David Schlatter to cut down some of the branches extending over the Gatto property, which he did. Approximately a month prior to the accident, Corbisiero again requested David Schlatter to cut down branches; this time, however, he told Corbisiero that he would do it when he had the time.

Approximately a week before the accident, unbeknownst to Marie Schlatter, Corbisiero spoke to Gatto about cutting down some

[2] In her appellate brief, plaintiff stated the court entered default judgement against Gatto on December 10, 2014, and against defendant Antiques and Things, Inc., on August 18, 2014. Court records show the claims against these two defendants were administratively dismissed without prejudice pursuant to Rule 1:13-7(a) on April 15, 2016. Plaintiff settled her claims against Farmers Insurance on October 13, 2014. Her complaint against this defendant was dismissed with prejudiced on November 12, 2014.

of the overhanging branches. In her deposition, Corbisiero testified that Gatto told Corbisiero that "if they grew over his property . . . we were able to cut them down." Gatto advised Corbisiero he would reimburse her for the purchase of a chainsaw to be used to cut the tree limbs. Corbisiero purchased a chainsaw and decided to cut down the branches herself. She did not ask Gatto for assistance nor request that he hire a landscaper to do the work.

On the day of the accident, Corbisiero stood on a metal stepladder she owned and proceeded to use the chainsaw to cut one of the presumably overhanging tree branches. As Corbisiero described in her deposition, the branch broke and fell in front of her, striking the chainsaw causing her to fall over the top of the ladder. Corbisiero testified that she fell to the ground, landing on her face. Marie Schlatter testified at her deposition that Corbisiero approached her before the accident and advised her "I want to cut some trees." Marie Schlatter recommended that Corbisiero "wait for David." No evidence was adduced that Marie Schlatter knew that Corbisiero intended to ignore that advice, and proceed to undertake the task herself.

On or about June 2, 2014, Corbisiero filed a complaint, which was amended on or about July 1, 2014. With respect to Marie

Schlatter, the amended complaint asserted a claim for negligence, alleging Marie Schlatter:

> carelessly and negligently maintained, inspected, created and/or permitted a hazardous, dangerous, and defective condition to exist on their premises which extended onto the adjacent premises . . .[of which] the defendants knew or should have known . . . as a result of [which] the plaintiff . . . was caused to fall . . . .

After hearing oral argument from counsel and considering the evidence presented by the parties, Judge Robert Kirsch did not find any legal grounds to hold Marie Schlatter and Jamison liable. Judge Kirsch provided the following in his statement of reasons attached to his order:

> The undisputed record shows that Ms. Schlatter did not personally request, participate in, or otherwise aid Ms. [Corbisiero's] cutting of tree branches. She also appears to have no knowledge of plaintiff's discussions and agreement with Mr. Gatto regarding same, and no evidence was adduced indicating she was aware of plaintiff's intent to get on a ladder and use an electric saw which she purchased with her landlord's approval. Instead, Ms. Schlatter counseled her to wait for her son, David, to cut down the branches as he had done so in the recent past. Therefore, the court finds that Ms. Schlatter owed no duty of care to Ms. Jamison on the basis of such actions.
>
> It is also undisputed that, at the time of the accident, Ms. Schlatter was the owner of the property adjacent to Mr. Gatto's property. Given the particular facts in the case at bar, however, the court finds no basis

> in the case law to impose a duty of care on Ms. Schlatter as landowner for any physical harm suffered by Ms. Corbisiero. When courts have imposed duties of care on landowners in relation to persons outside of the landowners' properties, the duties imposed have been purposefully limited in scope. [No] exceptions, however, encompass the instant case. Ms. Corbisiero was not on a public highway or right of way. She is not seeking relief for economic damages sustained as a result of tree branches falling and damaging her property.

As we noted earlier, we review a trial court's grant of summary judgment de novo. Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 226 N.J. 403, 414 (2016). "[The] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. R. 4:46-2(c).

In order to be found liable, Marie Schlatter must have breached a duty of care to Corbisiero that proximately caused harm to Corbisiero. A "[p]roximate cause consists of 'any cause which in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of and without which the result would not have occurred.'" Townsend v. Pierre, 221 N.J. 36, 51 (quoting Conklin v. Hannoch Weisman, 145 N.J. 395,

418 (1996)). "A superseding or intervening act is one that breaks the 'chain of causation' linking a defendant's wrongful act and an injury or harm suffered by a plaintiff." Komlodi v. Picciano, 217 N.J. 387, 418 (2014) (citation omitted).

Corbisiero decided to carry out this ill-advised task. She selected and procured the chainsaw, used her own stepladder, and was not on Schlatter's property when she started to cut the tree branches and ultimately fell. There is no evidence the tree branches constituted a dangerous condition requiring immediate attention. Under these circumstances, Schlatter did not create the inherently dangerous condition that caused Corbisiero to fall and injure herself. Rather, Corbisiero herself created the risk that lead to her injury.

We have considered Corbisiero's arguments on appeal in light of the record and applicable legal principles. We affirm substantially for the reasons expressed by Judge Kirsch in his cogent and well-reasoned statement of reasons attached to his order. We add the following comments.

Corbisiero argues that Burke v. Briqq, 239 N.J. Super. 269, 275 (App. Div. 1990) holds a property owner may be held liable based upon nuisance or strict liability for damages caused by a tree. Corbisiero's reliance on Burke is misplaced. In Burke, the plaintiffs sought nuisance damages from the owner of an adjoining

property when a large white oak tree "suddenly fell over onto the [plaintiffs'] property, causing extensive damage to their garage." Id. at 270. This court adopted the private nuisance standard in Restatement (Second) of Torts § 821 D (1979), at 100, and held:

> § 822 General Rule.
>
> One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either
>
> (a) intentional and unreasonable, or
>
> (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.
>
> [Id. at 272-273].

The Supreme Court approvingly cited Burke in Ross v. Lowitz, 222 N.J. 494, 510 (2015). Here, Corbisiero did not file a private nuisance cause of action based on the elements adopted by the Court in Ross. Her claim for damages was explicitly and exclusively based on the tort of negligence. However, as this court noted in Burke:

> [T]he focus in this case should be on whether this defendant was negligent in not making a reasonable use of his property. Such a determination merits a consideration of the various attendant circumstances and factors such as, the nature of the incident, the danger presented by the presence of the tree,

> whether [the defendant], by making inspections, could or should have known of its condition, what steps he could have taken to prevent it from falling onto plaintiffs' property, etc.
>
> [Burke, supra, 239 N.J. Super. at 273-75 (citations omitted)].

Taking into account the attendant circumstances here, there is no evidence Marie Schlatter was either negligent nor making unreasonable use of the property, particularly in light of the fact that the tree in question did not fall or cause damage to person or property prior to Corbisiero's actions. The undisputed material facts show Corbisiero unilaterally decided to undertake the course of conduct that created the dangerous condition that cause her to fall and injure herself.

Affirmed.