SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0023-16T1

JUANA QUILES,

Plaintiff-Appellant,

v.

MIGUEL A. HECTOR,

Defendant-Respondent.

Argued December 5, 2017 – Decided January 19, 2018

Before Judges Yannotti and Carroll.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-4935-14.

Patrick M. Sages argued the cause for appellant (Hack Piro, PA, attorneys; Patrick M. Sages and Reiah N. Etwaroo, on the briefs).

Kevin F. Colquhoun argued the cause for respondent (Colquhoun & Colquhoun, PA, attorneys; Moira E. Colquhoun, on the brief).

PER CURIAM

Plaintiff Juana Quiles appeals from orders entered by the Law Division on July 22, 2016, which granted summary judgment in favor of defendant Miguel Hector, and denied plaintiff's cross-motion

for summary judgment on liability. For the reasons that follow, we affirm.

I.

On November 12, 2014, plaintiff filed a complaint in the Law Division, alleging that on December 26, 2012, she was a business invitee on premises owned and controlled by defendant in the Township of North Bergen. Plaintiff alleged defendant had a duty to maintain the premises in a reasonably safe condition. Plaintiff claimed defendant had notice of an unsafe, dangerous and hazardous condition on the premises, and negligently and carelessly failed to give proper warning or notice of that condition.

Plaintiff alleged that as a direct and consequential result of defendant's negligence, she sustained severe injuries. Plaintiff sought damages, with interest, attorney's fees, and costs of suit. Defendant later filed an answer, denying liability, and the parties conducted discovery.

Thereafter, defendant filed a motion for summary judgment. Plaintiff opposed the motion and filed a cross-motion for partial summary judgment on the issue of liability. The record before the trial court on the motions revealed that on December 26, 2012, at approximately 8:05 p.m., plaintiff slipped and fell on the premises of defendant's apartment complex, which is located on Kennedy Boulevard in North Bergen.

At his deposition, defendant testified that he purchased the apartment complex in 1993 and the complex consists of six buildings, including Building 1715, which has forty residential units on five separate floors. Defendant said he is responsible for snow removal at the complex. He noted that the complex has "internal streets . . . and internal sidewalks" for which he uses a machine to remove snow.

Defendant further explained that he starts cleaning the internal streets and walkways when it stops snowing. He stated, however, that if it starts snowing after nine o'clock at night, he does not "touch" the snow "until the next day at seven o'clock in the morning." When asked what his procedure for snow clearance would be if the snow stopped at "six, seven, or eight o'clock in the evening," defendant said he would call his workers in and "get it cleaned up."

At her deposition, plaintiff testified that she was not aware how long it had been snowing on the day of her accident. She said, "I don't pay too much attention to the weather all the time." Plaintiff stated, however, that it was not snowing when she woke up on the morning of the accident. That day, plaintiff left work between 5:30 p.m. and 6:00 p.m. and drove to a pizzeria to pick up something to eat for dinner. It was snowing at that time.

Plaintiff testified that when she arrived at the pizzeria, "it was freezing" and "[m]aybe one inch" of snow had fallen. At approximately 7:30 p.m., plaintiff left the pizzeria to deliver a pizza for her friend who worked there. Plaintiff said it "was not that slippery" when she arrived at the pizzeria, but it was snowing and slippery when she left. Plaintiff was to deliver the pizza to a tenant in Building 1715 of defendant's complex.

Plaintiff stated that while she was driving and looking for Building 1715, she could not see the address due to the snow. She parked the car on Kennedy Boulevard and "went walking." She was asked why she did not pull her car into the driveway area of the building, and plaintiff replied that she was not sure whether delivery vehicles were allowed there.

After she left her car, plaintiff did not walk on the sidewalk because it "had too much snow." Instead, plaintiff walked down the driveway, which was clearer, toward the entrance to Building 1715. Plaintiff then walked onto the sidewalk, before she reached the railings at the entrance of the building. Plaintiff stated that she saw the snow and knew it was slippery when she was walking. After she walked approximately "three or four minutes," plaintiff slipped on the sidewalk and fell.

Plaintiff said that when she fell, she injured her right hand and lower back. After the accident, plaintiff walked back to the

pizzeria because she could not drive. She told her friend at the pizzeria to call an ambulance. Plaintiff was transported to a hospital, where x-rays were taken.

In support of her cross-motion for summary judgment, plaintiff also submitted a certification. She asserted that freezing water and icy precipitation continued throughout most of the workday on December 26, 2012. She stated, however, that the precipitation had stopped well before her fall.

According to a report of local climatological conditions issued by the National Oceanic and Atmospheric Administration (NOAA), on December 26, 2012, precipitation began at 2:00 p.m. and continued until 5:00 a.m. the following morning. The NOAA report indicates that the precipitation began as snow and changed to ice pellets and rain during the storm.

R.G., the tenant in Building 1715 to whom plaintiff delivered the pizza, provided a statement to an investigator.[1] R.G. stated that it was snowing when she ordered the pizza and there was approximately one foot of snow on the ground when she placed her order. R.G. said it was still snowing when plaintiff delivered the pizza to her.

[1] We use initials for this individual to protect her privacy.

On July 22, 2016, the Law Division judge heard oral argument on the motions and placed an oral decision on the record. The judge noted that commercial property owners have a duty to maintain their properties in reasonably good condition, and they are liable for a negligent failure to do so.

The judge stated, however, that under New Jersey law, a property owner is permitted a reasonable period of time after a snowstorm to clear the snow from areas used by the public. The judge found that in this matter, defendant did not owe plaintiff a duty of care because the snowstorm was continuing when plaintiff fell.

The judge further noted that North Bergen has enacted an ordinance, which states that property owners have twelve hours after daylight following a snowstorm to clear the snow from a public sidewalk. The judge found this persuasive evidence that twelve hours after a storm is a reasonable time to remove any snow.

The judge also noted that plaintiff objected to the court's consideration of NOAA's report. The judge found, however, that other evidence established that the storm was continuing when plaintiff fell.

The judge therefore determined that defendant's motion should be granted, and plaintiff's cross-motion denied. The judge

memorialized her decision in orders dated July 22, 2016. Plaintiff's appeal followed.

II.

On appeal, plaintiff argues that the trial court erred by: (1) concluding that defendant did not owe a duty of care to plaintiff; (2) relying upon the ongoing storm doctrine rather than whether defendant acted reasonably under the circumstances; (3) finding that there were no genuine issues of material fact; (4) finding that the North Bergen ordinance was persuasive on the issue of whether defendant acted reasonably; and (5) denying plaintiff's cross-motion because defendant was negligent as a matter of law.

We review a trial court's summary judgment disposition de novo based upon our independent review of the motion record, applying the same standard as the trial court. Townsend v. Pierre, 221 N.J. 36, 59 (2015). The court should grant summary judgment if the record establishes that there is "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c).

An issue of fact is genuine if "considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the

trier of fact." Ibid. "If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of Rule 4:46-2." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)).

Here, the motion judge noted that under Stewart v. 104 Wallace Street, Inc., 87 N.J. 146, 157 (1981), a commercial landowner must maintain abutting public sidewalks in a reasonably good condition, and the duty was extended in Mirza v. Filmore Corp., 92 N.J. 390, 395 (1983), to include removal of snow and ice. The judge observed, however, that in order to impose liability upon defendant, the plaintiff had to show that the property owner had actual or constructive notice of the dangerous condition. Id. at 395.

The judge determined that a jury could not find defendant negligent because a commercial property owner has a reasonable time after a storm ends in which to remove snow and ice from its walkways. In reaching this conclusion, the judge relied upon Bodine v. Goerke Co., 102 N.J.L. 642 (E. & A. 1926). In Bodine, the plaintiff slipped on slush at the entrance of a store. Id. at 642-43. The plaintiff slipped at approximately 12:30 p.m. and it was undisputed that it had snowed that day from 9:00 a.m. to 3:00 p.m. Id. at 643. The Bodine Court held that, based on these facts, no

jury "could or ought" to find that the defendant property owner was negligent. Id. at 644.

As noted, plaintiff argues that the motion judge erred by concluding that defendant did not owe a duty of care to her. She argues that a commercial landowner has a duty to exercise reasonable care for the safety of invitees to the property, and may be held liable for failing to correct or warn of defects to the property that should have been discovered through the exercise of reasonable care.

We agree with the motion judge that defendant was entitled to summary judgment in this matter, although we differ in part with the judge's analysis. We conclude that defendant had a duty to make the private walkways within his housing complex reasonably safe for known or expected visitors. However, that duty is to act reasonably under the circumstances, and defendant cannot be liable for failing to remove the accumulated snow or ice until a reasonable time after the storm ends.

As the motion judge noted, in Mirza, the Court held that a commercial landlord has a duty to maintain public sidewalks abutting their properties, and the duty includes a duty to remove snow and ice within a reasonable period of time. Mirza, 92 N.J. at 394-95. The Mirza Court stated, "[t]he abutting commercial owner's responsibility arises only if, after actual or

constructive notice, he has not acted in a reasonably prudent manner under the circumstances to remove or reduce the hazard." Id. at 395. The Court explained that the test is whether a reasonably prudent person would have caused the public sidewalk to be reasonably safe within a reasonable period of time after the person knew or should have known of the condition. Id. at 395-96.

In a footnote, the Court noted that N.J.S.A. 40:65-12 permits a municipality to enact ordinances to compel an owner or tenant of lands abutting sidewalks to remove all snow and ice therefrom "within twelve hours of daylight after the same shall fall or be formed thereon . . . ." Id. at 396 n.3 (alteration in original). The Court observed that this time "may be some indication of what is a reasonable period of time within which to act." Ibid.

In Qian v. Toll Bros, Inc., the Court held that a condominium association has a duty to keep the sidewalks within its property reasonably safe. 223 N.J. 124, 142 (2015). The Court stated that a landowner owes a duty to exercise reasonable care to protect visitors from a dangerous condition of private property. Id. at 137 (citing Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 433-34 (1993)). Thus, "[a] residential homeowner has a duty to render private walkways on the property reasonably safe and — to the extent reasonable under the circumstances — to clear snow and ice that presents a danger to known or expected visitors." Ibid.

(citing Lynch v. McDermott, 111 N.J.L. 216, 217-19 (Sup. Ct. 1933)).

Therefore, as a commercial landowner, defendant had a duty to make the private walkways in his housing complex reasonably safe, and that duty included an obligation to clear any snow and ice that presented a danger to known or expected visitors, to the extent reasonable under the circumstances. However, the duty of a commercial landowner is to act within a reasonable period of time after the landowner knows or has reason to know of a dangerous condition caused by the accumulation of snow and ice.

As the motion judge noted, in Bodine, the Court held that a property owner could not be liable for failing to remove slush ice from the entrance to a store while the storm was still ongoing. Therefore, Bodine indicates that the reasonable time in which to act does not begin until after the storm ends.

This holding is consistent with the statement in Mirza that under N.J.S.A. 40:65-12, municipalities may enact ordinances that require all snow or ice to be removed "within twelve hours of daylight" after the snow or ice has fallen or formed. Mirza, 92 N.J. at 396, n.3. This timeframe "may be some indication of what is a reasonable period of time" in which to act. Ibid. Here, the motion judge found that defendant's alleged failure to remove the

snow while the storm was ongoing was not, as a matter of law, unreasonable.

As further support for her decision, the judge cited North Bergen's municipal ordinance, which requires owners and tenants of land to remove snow and ice from their sidewalks that border a public street within twelve hours of daylight after snow has stopped falling. See North Bergen, N.J., Rec. of Ordinances § 1009-61. The judge recognized that the ordinance only applies to public sidewalks.

Nevertheless, the judge found that the timeframe the municipality allows for the removal of snow shows that defendant has a reasonable opportunity after the storm ended to clear the snow and ice from the walkway where plaintiff allegedly fell. We agree. Although defendant had a duty to maintain the walkways within his apartment complex in a reasonably safe condition, defendant had a reasonable period of time to remove the snow or ice after the storm ended.

III.

Plaintiff argues that the judge erred by finding that there was no genuine issue of material fact with regard to the timing and duration of the snowstorm. Plaintiff contends that the NOAA report pertained to conditions in Newark, which plaintiff contends is approximately fifteen miles away from North Bergen.

Plaintiff asserts that she slipped and fell due to an icy condition on the walkway, which she claims was covered by snow. Plaintiff argues that there was a factual dispute as to when the icy condition abated and how much snow had fallen thereafter.

Plaintiff further argues that R.G.'s statement is inconsistent with the NOAA report. She asserts that the NOAA report does not indicate that there was an accumulation of about one foot of snow, as R.G. claimed. Plaintiff asserts that there was a minimal amount of snow on the walkway when she fell.

We are not convinced that these are genuine issues of material fact. As the motion judge recognized, the key factual issue was whether the snowstorm was continuing when plaintiff slipped and fell. The judge pointed out that the NOAA report showed that the storm began on December 26, 2012, at 2:00 p.m. and continued until 5:00 a.m. the following day. Plaintiff presented no evidence showing that the NOAA report did not reflect conditions in the North Bergen area.

The judge noted that even if she did not consider the NOAA report, other evidence before the court established that the storm was ongoing when plaintiff allegedly slipped and fell. Indeed, at her deposition, plaintiff testified that she left the pizzeria around 7:30 p.m. on December 26, 2012, and that it was snowing at that time. At her deposition, plaintiff testified that she fell

shortly after 8:00 p.m. She further testified that she was aware it was snowing when the accident happened. In addition, R.G. stated it was snowing when she ordered the pizza and snowing when plaintiff delivered the pizza to her apartment.

It is immaterial whether there was a minimal amount of snow on the ground as plaintiff claimed, or about a foot of snow, as R.G. stated. The key question was whether the storm was ongoing when plaintiff fell, and the evidence on that issue clearly established that the storm was continuing.

We note that in the certification that plaintiff submitted in support of her cross-motion for summary judgment, plaintiff stated that she slipped on the ice that had accumulated on the walkway of the apartment complex. She asserted that freezing rain and icy precipitation had continued throughout most of her workday, but it stopped well before she fell. She stated, "I could not see the ice on the walkway because it was covered with snow as the snow had accumulated after the ice storm."

Therefore, plaintiff appears to be claiming there was an ice storm, which ended before she fell. Plaintiff fails, however, to account for the snowstorm, which she testified was continuing when she fell. Plaintiff's unsupported statement is insufficient to raise a genuine issue of material fact as to whether there were two separate and distinct storms, one ice storm and one snowstorm.

Rather, the evidence before the trial court supported the conclusion that there was a single storm, during which snow and ice fell, and the storm was continuing when plaintiff fell. The evidence on that issue was "so one-sided" that defendant was entitled to prevail as a matter of law. Brill, 142 N.J. at 536 (quoting Liberty Lobby, 477 U.S. at 251-52).

IV.

Plaintiff further argues that the judge erred by considering the North Bergen ordinance in determining whether defendant had a duty to plaintiff to exercise reasonable care.

"[M]unicipal ordinances do not create a tort duty, as a matter of law." Smith v. Young, 300 N.J. Super. 82, 95 (App. Div. 1997) (quoting Brown v. St. Venantius Sch., 111 N.J. 325, 335 (1988)). For example, "a plaintiff's cause of action cannot be based upon the specific duty to remove snow and ice imposed by [a] municipal ordinance enacted pursuant to the statute which empowers municipalities to require landowners or tenants 'to remove all snow and ice . . . within twelve hours of daylight.'" Ibid. (alteration in original) (quoting N.J.S.A. 40:65-12).

Instead, such a claim must be premised upon the general duty of a possessor of land to make only reasonable uses of his property, "so as to cause no unreasonable risks of harm to others in the vicinity." Id. at 96. However, a municipal ordinance may

be used as a "basis for persuading the finder of fact that the defendant acted []reasonably in the circumstances." Ibid.

Here, the judge relied upon the ordinance as further support for the conclusion that defendant had a reasonable time after the snowstorm had ended to remove the snow and ice from the walkways in his apartment complex. The North Bergen ordinance supports the judge's determination that defendant could not be held liable in this matter and was entitled to summary judgment.

Affirmed.