SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0247-16T3

ODALIS MEJIA,

Plaintiff-Appellant,

v.

MICHAEL EUBANKS and
CITY OF NEWARK,

Defendants-Respondents.

Submitted November 30, 2017 – Decided January 30, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. L-7807-14.

Amy L. Peterson, attorney for appellant.

Kenyatta K. Stewart, Acting Corporation Counsel, attorney for respondents (Emilia Perez, Assistant Corporation Counsel, on the brief).

PER CURIAM

Plaintiff, Odalis Mejia, sustained neck and back injuries when the car she was travelling in as a passenger was struck in

the rear by a sanitation truck owned by defendant, City of Newark, and driven by its employee defendant, Michael Eubanks. Plaintiff filed suit for damages arising from her injuries and defendants filed a motion for summary judgment, arguing that plaintiff's injuries failed to vault the threshold required by New Jersey's Tort Claims Act (TCA), N.J.S.A. 59:1-1 to -13-10. Judge Thomas R. Vena entered an order on September 2, 2016,[1] granting defendants' motion and setting forth his reasons in a written memorandum opinion after finding that plaintiff failed to establish that she sustained a "permanent loss of a bodily function that [was] substantial." On appeal from that order, plaintiff argues that Judge Vena erred because there were material questions of fact and her proofs "satisfied the [TCA's] threshold." She also argues the judge erred by "prejudging the motion for summary judgment." We disagree and affirm.

We review a trial court's order granting summary judgment de novo, applying the same standard as the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). In our de novo review, the trial court's determination that a party is entitled to summary judgment as a matter of law is "not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140

[1] The date stamp affixed to the order incorrectly stated it was filed on September 1, 2016.

N.J. 366, 378 (1995). We view the motion record in a light most favorable to the non-moving party, "keeping in mind '[a]n issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion . . . would require submission of the issue to the trier of fact.'" Schiavo v. Marina Dist. Dev. Co., 442 N.J. Super. 346, 366 (2015) (alteration in original) (quoting R. 4:46-2(c)). We examine "the competent evidential materials submitted by the parties to identify whether there are genuine issues of material fact and, if not, whether the moving party is entitled to summary judgment as a matter of law." Ibid. "Summary judgment should be denied unless" the moving party's right to judgment is so clear that there is "no room for controversy." Akhtar v. JDN Props. at Florham Park, LLC, 439 N.J. Super. 391, 399 (App. Div. 2015) (quoting Saldana v. DiMedio, 275 N.J. Super. 488, 495 (App. Div. 1994)).

In order to succeed on a claim against a public entity for pain and suffering, a plaintiff must prove both: "(1) an objective permanent injury, and (2) a permanent loss of a bodily function that is substantial." Toto v. Ensuar, 196 N.J. 134, 145 (2008) (emphasis added) (quoting Knowles v. Mantua Twp. Soccer Ass'n, 176 N.J. 324, 329 (2003)); see also N.J.S.A. 59:9-2(d). Proof of injury to a neck or back accompanied by continual pain and lack

of a range in motion alone is not enough to establish the permanent loss of a bodily function required by the TCA. See Gilhooley v. Cty. of Union, 164 N.J. 533, 541 (2000) (citing Brooks v. Odom, 150 N.J. 395, 406 (1997)).

Here, there was no dispute that plaintiff was injured in the accident. The medical evidence she filed in opposition to defendant's summary judgment established she sustained permanent injuries to her cervical and lumbar spine. Viewing the evidence in the light most favorable to plaintiff, her medical records indicated that while she was treated by a chiropractor and a pain management doctor, who administered epidural and similar injections to help relieve plaintiff's pain, there was no evidence that she suffered a permanent loss of a bodily function that was substantial. See Brooks, 150 N.J. at 406.

We therefore conclude that Judge Vena correctly determined that defendants were entitled to summary judgment dismissing plaintiff's complaint, substantially for the reasons stated in the judge's cogent decision.

We find plaintiff's remaining argument about Judge Vena prejudging the motion to be without sufficient merit to warrant discussion in a written decision. R. 2:11-3(e)(1)(E). Suffice it to say, plaintiff's argument was premised on a mistaken assertion that the judge did not entertain oral argument before

deciding the motion and entering his order. The record clearly indicates counsel for both parties appeared before the judge for oral argument on September 2, 2016, when he considered their contentions before placing a summary of his findings on the record that day and supplying counsel with the court's order and a written memorandum of his decision.

Affirmed.