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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1138-16T4

CORINNE POWERS, as Power of
Attorney for FANNIE MAE
ANDERSON,

Plaintiff-Appellant,

v.

PALACE REHABILITATION AND CARE
CENTER, INC. LLC, JONATHAN
ROSENBERG and ESTHER ROSENBERG,

Defendants-Respondents.

Submitted January 18, 2018 – Decided March 29, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Docket No.
L-1061-14.

Locks Law Firm, LLC, attorneys for appellant
(Karl Friedrichs, on the briefs).

Lewis Brisbois Bisgaard & Smith, LLP,
attorneys for respondents (Lawrence D.
Jackson, on the brief).

PER CURIAM

Plaintiff Fannie Mae Anderson, through her power of attorney, Corinne Powers, appeals from the August 9, 2016 order granting defendants'¹ motion for summary judgment. After a review of the contentions in light of the record and applicable legal principles, we affirm.

Plaintiff was admitted as a resident to a licensed skilled nursing facility, Palace Rehabilitation, in September 2010. At the time of admission, she was eighty-three years old and ambulatory, although she suffered from numerous medical conditions including dementia and diabetes.

On May 8, 2012, at approximately 1:30 p.m., facility staff observed plaintiff walking with a limp and complaining of pain in her leg. The notes in plaintiff's chart from that morning do not reflect any complaints of pain; there were no observations of plaintiff having difficulty walking. Plaintiff was transported by an ambulance to her cardiologist's office that morning for a routine exam and was out of the facility from approximately 7:20 a.m. until 10:30 a.m. Upon her return to the facility, plaintiff was observed to be ambulating normally and she did not express any complaints of pain or injury.

¹ Defendants are Palace Rehabilitation and Care Center LLC and its owners, Jonathan and Esther Rosenberg. We refer to them collectively as defendants.

However, as plaintiff was walking back to her room from the dining room, facility staff observed her limping. There were no reports of a fall or any other occurrence prior to this observation.² Plaintiff was transferred to the hospital where an x-ray revealed that she had fractured her right hip.

In support of her negligence claim, plaintiff retained an expert, Rose Marie Valentine, R.N., L.N.H.A., who issued a report proffering several opinions as to defendants' breach of the applicable standard of care. The expert concluded in her report that defendants' breaches of the standard of care demonstrated they "were negligent in their care of [plaintiff], which was the direct cause of [plaintiff] fracturing her hip."

Defendants filed a motion for summary judgment, arguing that plaintiff had not presented any evidence to establish the requisite element of a causal connection between the breach of the standard of care and plaintiff's injuries. Although, for the purposes of the motion, defendants conceded a breach of the standard of care, they argued there was no evidence presented as to whether plaintiff

² Defendants conducted an internal investigation into the injury and the facility was also investigated by the New Jersey Department of Health and Senior Services on May 16, 2012, and the Office of the Ombudsman for the Institutionalized Elderly on July 30, 2012. The Office of the Ombudsman for the Institutionalized Elderly "determined that there was insufficient information to verify care neglect by the facility resulting in [plaintiff's] injuries."

had fallen, and if so, where she fell.³ In short, there was no evidence as to how plaintiff had sustained the injury to her hip. In opposing defendant's motion, plaintiff argued that she had met her burden of proof as she only needed "to show that all of these breaches of the standard of care were substantial contributing factors that led to her ultimate injury."

On August 9, 2016, Judge Susan L. Claypoole issued a written decision and entered an order granting the motion for summary judgment. The judge reasoned:

There is simply no admissible evidence in the record provided to the court of how Ms. Anderson's injury occurred. Thus, the jury would be left to speculate on the exact circumstances surrounding Ms. Anderson's injury which it cannot do. See *Germann v. Matris*, 55 N.J. 193, 208 (1970) (discussing how a court cannot authorize a jury to decide based on conjecture or speculation). Absent a Certification or testimony from Ms. Anderson or another witness who observed how the injury occurred, the jury will simply be required to give its own theory on how Ms. Anderson's injury came about rather than weighing the credible evidence and arriving at an evidentially based conclusion.

Even assuming that there [was] a breach of the standard of care in that the Defendants

³ A note in the hospital chart stated that in response to a triage nurse's question, plaintiff said "she fell today." Defendants argued that plaintiff was not mentally competent to provide testimony. Plaintiff's counsel did not disagree. The court concluded that the statement constituted inadmissible hearsay. That evidentiary ruling has not been raised as an issue in this appeal.

did not properly implement a plan for fall prevention, the court cannot say there are genuine issues of fact regarding causation as there is simply no admissible evidence in the record to indicate that Ms. Anderson did in fact fall. Rather, there are simply no admissible facts at all regarding how Ms. Anderson was injured. In light of the record before the court, the possibility that Ms. Anderson did in fact fall is just as likely as having walked into something, someone else bumping into her, or any other scenario where she may have fractured her hip. The jury will simply be unable to factually determine what happened other than Ms. Anderson ended up with a fractured hip. The mere fact that injury resulted is insufficient for a finding of negligence.

Plaintiff argues on appeal that the court erred in granting summary judgment because there were genuine issues of material fact in dispute requiring a jury trial. We disagree and affirm substantially for the reasons expressed by Judge Claypoole in her well-reasoned written decision.

We conduct a de novo review, applying the same standard as the trial court. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show 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); see also

Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995). To defeat summary judgment, the non-moving party must bring forth "evidence that creates a 'genuine issue as to any material fact challenged.'" Brill, 142 N.J. at 529 (quoting R. 4:46-2).

To sustain a prima facie cause of action for medical professional liability negligence, a plaintiff must establish by expert testimony the relevant standard of care, a breach of that standard of care and a causal connection between the breach and plaintiff's injuries. Rosenberg v. Tavorath, 352 N.J. Super. 385, 399 (App. Div. 2002). While plaintiff presented expert testimony regarding defendants' alleged breach of the standard of care, the record is devoid of any evidence as to where, when, or how plaintiff suffered the hip injury. Plaintiff has not presented any evidence showing that an act or omission by defendants was the cause of her hip injury or that an act or omission, combined with some other cause, increased the risk of injury so that defendant was a substantial actor in bringing about the injury. See Evers v. Dollinger, 95 N.J. 399, 414-15 (1984); Model Jury Charges (Civil), 5.50A, "Duty and Negligence" (approved Mar. 2002).

To defeat summary judgment, the dispute must be genuine and of a material fact; the non-movant, in this case plaintiff, cannot simply rest on a theory for which she has provided no evidence.

See Brill, 142 N.J. at 529; Puder v. Buechel, 183 N.J. 428, 440-41 (2005). In opposing defendants' motion for summary judgment, plaintiff made only conclusory assertions as to causation, without offering any evidence to support where, when, or how plaintiff sustained the hip injury. Without such evidence, plaintiff failed to create a genuine issue of material fact sufficient to defeat summary judgment.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION