SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1330-16T1

GRACE URRACA,

Plaintiff-Appellant,

v.

ANGEL MONTANEZ and
JACQUELINE MONTANEZ,

Defendants-Respondents,

and

CHRISTOS PAPAPETROU,
HELEN PAPAPETROU, KATHERINE
ZUCKERMAN, CITY OF LITTLE
FALLS and COUNTY OF PASSAIC,

Defendants.

Argued December 7, 2017 – Decided January 31, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-1195-15.

Vincent A. Coletti argued the cause for appellant (Law Office of Gerard A. Nisivoccia, LLC, attorneys; Gerard A. Nisivoccia, on the brief).

Harry D. Norton, Jr. argued the cause for respondents (Norton, Murphy, Sheehy & Corrubia, PC, attorneys; Harry D. Norton, Jr. and Jessica J. Centauro-Petrassi, on the brief).

PER CURIAM

In this slip and fall action, plaintiff, Grace Urraca, appeals from the Law Division's order granting summary judgment in favor of defendants, Angel Montanez and Jaqueline Montanez, the owners of the property where plaintiff fell. Plaintiff filed suit against defendants after she fell when her foot became caught in a crack between defendants' driveway and the sidewalk in front of their house. The motion judge granted defendants' summary judgment, dismissing the complaint, after she found that there was no evidence that defendants created the crack by causing damage to either the sidewalk or their driveway. On appeal, plaintiff argues that the judge "applied the improper legal standard of care" to her claim and failed to "articulate the legal standard being applied to plaintiff's status" in relation to defendants' premises. We affirm.

The facts relating to plaintiff's fall, viewed in the light most favorable to plaintiff, see Angland v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995)), are not in dispute. On April 15, 2013, plaintiff was walking past defendants' home, as

she had every day when she went to and from work for at least the previous four months. According to plaintiff, on the day she fell it was sunny and clear. As she was walking, she saw a large hole in the sidewalk outside defendants' home and attempted to avoid stepping into it by walking on defendants' driveway. Plaintiff fell and sustained injuries when her left foot was caught in the crack between the sidewalk and the driveway.

The motion judge considered the parties' oral argument before entering an order on October 20, 2016, granting the motion for the reasons set forth in the judge's nine-page written statement of her findings of fact and conclusions of law. Citing to Stewart v. 104 Wallace St., Inc., 87 N.J. 146 (1981) and Nash v. Lerner, 157 N.J. 535 (1999), the motion judge concluded that, absent any evidence that defendants' actions "caused or exacerbated" the defective condition in either the driveway or the adjoining sidewalk that surrounded the crack where plaintiff fell, they could not be held liable.

The judge also addressed plaintiff's argument that, as a licensee on defendants' premises, defendants had a duty to warn her of the danger created by the defect. The judge cited to the Court's opinion in Parks v. Rogers, 176 N.J. 491 (2003) and observed that because the defect was not latent, defendants did not have any duty to warn the plaintiff about the crack, even if

she were a licensee as compared to a trespasser, especially since plaintiff was familiar with the area where she fell.

This appeal followed.

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). Thus, 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. When no issue of fact exists, and only a question of law remains, we afford no special deference to the legal determinations of the trial court. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). "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)). Because there is no genuine issue of material fact before us, we review de novo the motion judge's conclusion that the defendants were not liable to plaintiff.

We conclude from our de novo review the motion judge correctly determined that defendants were entitled to judgment as a matter

of law. We affirm substantially for the reasons expressed by the judge in her cogent written decision.

We find plaintiff's arguments to the contrary to be without merit. The judge correctly determined that a residential property owner is generally immune from liability for accidents resulting from naturally-caused conditions of public sidewalks abutting the property, Luchejko v. City of Hoboken, 207 N.J. 191, 195, 211 (2011), even if they were caused by the owners' use of their driveway. Id. at 204-05 (citing Nash, 157 N.J. at 535 (adopting dissent in Nash v. Lerner, 311 N.J. Super. 183, 193-94 (App. Div. 1998))).

The judge also considered and rejected plaintiff's argument that plaintiff was a licensee on defendants' property, and therefore they had a duty to warn plaintiff of the crack in their driveway. As the judge determined, the duty of care that a landowner owes to third persons who are upon his property "is generally governed by the status of the third person—guest, invitee, or trespasser[.]" Robinson v. Vivirito, 217 N.J. 199, 209 (2014) (citing Monaco v. Hartz Mountain Corp., 178 N.J. 401, 414-15 (2004)). An owner has a duty to warn a licensee of a dangerous condition that poses an unreasonable injury only when it is known to the owner and not known to the licensee. See Parks, 176 N.J. at 499; Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 434

(1993); see also Tighe v. Peterson, 175 N.J. 240, 241 (2002) ("A host's duty to a social guest includes an obligation to warn of a known dangerous condition on the premises except when the guest is aware of the condition or by reasonable use of the facilities would observe it.") As the judge found, the alleged defect in the driveway was patent and observable by plaintiff on a regular basis as she walked to and from work each day. Regardless of whether plaintiff was a trespasser or a licensee, see Hopkins 132 N.J. at 434, defendants did not breach any duty owed to her.

Even if plaintiff did not fit into any of the "pre-determined categories" of status that a person might fall into when entering onto the property of another, "under all the surrounding circumstances," there was no basis to find defendants liable for plaintiff's injuries. Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 44-45 (2012) (quoting Hopkins, 132 N.J. at 438).

Affirmed.