SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1186-21

DARON GOINS,

Plaintiff-Appellant,

v.

GLENN WILSON and PLYMOUTH ROCK ASSURANCE,

Defendants,

and

PARKWAY ASSOCIATES, LLC,[1]

Defendant-Respondent.

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Argued November 9, 2022 – Decided January 11, 2023

Before Judges Messano, Rose and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-2367-20.

[1] Parkway Associates, LLC improperly pled as The Maple Gardens Apartments and Parkway Associates.

John D. Gagnon argued the cause for appellant (Rabb, Hamill, PA, attorneys; Edward K. Hamill, of counsel and on the brief).

Jill A. Mucerino argued the cause for respondent (Wood Smith Henning & Berman LLP, attorneys; Kelly A. Waters, of counsel and on the brief; Sean P. Shoolbraid, on the brief).

PER CURIAM

Plaintiff Daron Goins was injured in an altercation with Glenn Wilson after discovering Wilson sitting in the front seat of his car without permission. The car was parked in the parking deck of the Maple Gardens Apartments (Maple Gardens or complex), an apartment complex in Irvington, where both plaintiff and Wilson lived. Defendant Parkway Associates, LLC, owned and operated the complex. Plaintiff filed suit, claiming defendant was negligent in their maintenance of the property. Defendant moved for summary judgment, which the Law Division granted, dismissing plaintiff's complaint with prejudice.

I.

We summarize the facts from the motion record, viewing them as we must in a light most favorable to plaintiff, the non-moving party. R. 4:46-2; Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Maple Gardens consists of a series of twelve-story buildings with twelve apartments per floor. Notably, a manned security gate guards its entry, and residents access a parking

deck with a swipe card. There is a separate parking lot for visitors. The complex is staffed by an eighteen-person security team that patrols the complex, parking deck and parking lot and provides twenty-four-hour security every day of the year. Specifically, security teams patrol the parking deck at least twice every night between 12:00 a.m. and 8:00 a.m.

At around 3:00 a.m. on April 10, 2019, while plaintiff was spending the night at his girlfriend's house in Paterson, he received a call from the Maple Gardens security that went to plaintiff's voice mail. When he returned the call, security informed plaintiff that the door of his car, which was parked at the Maple Gardens parking deck, was found open. Security informed plaintiff that they had closed the door and nothing else seemed awry. Nonetheless, about three hours later when he was on his way to work that morning, plaintiff returned to Maple Gardens to check on his car.

When plaintiff arrived at the front gate of the complex, he spoke with the head of security who told plaintiff to check on his car and notify security if anything was amiss. Plaintiff did not ask for an escort and proceeded unaccompanied to his car where he observed Wilson sitting in the driver's seat smoking a cigarette. Plaintiff testified during his deposition that he asked an unidentified woman in the parking deck to call security.

Without waiting for any assistance, plaintiff approached his car and attempted to stop Wilson from fleeing by blocking his exit from the vehicle. Plaintiff alleged that in the physical altercation that ensued, he sustained multiple injuries, including disc bulges, herniations and a sprained rotator cuff. Security guards soon arrived and separated plaintiff and Wilson until Irvington police officers arrived a few minutes later. The record contains the incident reports prepared by both the Maple Gardens security and Irvington police. The Maple Gardens incident report reflects that plaintiff's car had been ransacked, "documents scattered all over, and glove box and console opened with all [plaintiff's] stuff . . . out." The rear fender of plaintiff's car was dented.

Wilson was known to security as he had been involved in five other documented incidents at the complex in the prior two months. On February 5, 2019, Wilson was observed smoking marijuana and defecating inside an elevator; on February 9, Wilson reported to security that he believed people had been entering his apartment when he was not there; on February 17, he was found smoking marijuana in the lobby of a building wearing only boxer shorts; and on March 11 and March 13, Wilson was playing a radio loudly throughout the complex. There had been an attempted break-in of plaintiff's apartment two

or three years earlier, but there was no apparent connection to Wilson or the April 2019 incident at plaintiff's car.

After discovery, defendant moved for summary judgment.[2] In her written opinion explaining her reasons for granting the motion, the judge recognized the general proposition that landlords "have 'a responsibility to take reasonable steps to curtail the dangerous activities of tenants of which [they] should be aware and that pose a hazard to . . . other tenants.'" (quoting Scully v. Fitzgerald, 179 N.J. 114, 122 (2004) (citing Williams v. Gorman, 214 N.J. Super. 517, 523 (App. Div. 1986))). The judge found "nothing in the record that would have led . . . [d]efendant to either know or discover that there was any dangerous condition in the parking area that needed to be addressed." She observed that the incident between plaintiff and Wilson was "isolated and random" because Wilson's prior incidents were "essentially noise and nuisance[-]type complaints," and "nothing . . . suggest[ed] that [p]laintiff and . . . Wilson had any interactions prior to the incident in question." The judge concluded the incident was not "foreseeable."

The judge considered plaintiff's argument that because of the earlier discovery of the open car door, the later assault was foreseeable. The judge

[2] Plaintiff's complaint against defendants Wilson and Plymouth Rock Assurance was dismissed for lack of prosecution. R. 1:13-7.

disagreed that defendant should have anticipated someone would be in the vehicle three hours later. The judge concluded that because the incident was unforeseeable, defendant did not owe a duty to plaintiff and was entitled to judgment as a matter of law.

Before us, plaintiff challenges the grant of summary judgment, arguing the motion judge failed to view the evidence in the light most favorable to him, and whether the altercation was foreseeable is a jury question that should not have been resolved on summary judgment. Having considered these arguments in light of the record and applicable legal standards, we affirm for reasons slightly different than those expressed by the motion judge. See e.g., Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (where the Court "note[d] that 'it is well-settled that appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion'" (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001))).

II.

We review de novo the grant of summary judgment to defendant, applying the same standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (citing Barila v. Bd. of Educ. of Cliffside Park, 241 N.J.

595, 611 (2020), and Townsend v. Pierre, 221 N.J. 36, 59 (2015)). That standard requires us to "determine whether '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.'" Ibid. (quoting R. 4:46-2(c)). "To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (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.'" Town of Kearny v. Brandt, 214 N.J. 76, 92 (2013) (quoting Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"[A] negligence cause of action requires the establishment of four elements: (1) a duty of care, (2) a breach of that duty, (3) actual and proximate causation, and (4) damages." Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 594 (2013). We disagree with the motion judge to the extent she found defendant did not owe a duty to plaintiff.

"The existence and scope of a duty are legal questions." Broach-Butts v. Therapeutic Alternatives, Inc., 456 N.J. Super. 25, 34 (App. Div. 2018) (citing Peguero v. Tau Kappa Epsilon Loc. Chapter, 439 N.J. Super. 77, 88 (App. Div. 2015)); accord McGlynn v. State, 434 N.J. Super. 23, 31 (App. Div. 2014) ("Whether a legal duty exists, as well as the scope of the duty, are questions of law for the court to decide." (citing D'Alessandro v. Hartzel, 422 N.J. Super. 575, 579 (App. Div. 2011))). "To make th[ose] determination[s], as in all duty-of-care determinations, a 'court must first consider the foreseeability of harm to a potential plaintiff and then analyze whether accepted fairness and policy considerations support the imposition of a duty.'" Coleman v. Martinez, 247 N.J. 319, 338 (2021) (quoting Jerkins v. Anderson, 191 N.J. 285, 294 (2007)). "Foreseeability of injury, as it affects the existence of a duty, refers to 'the knowledge of the risk of injury to be apprehended.'" Jerkins, 191 N.J. at 294-95 (quoting Clohesy v. Food Circus Supermarkets, Inc., 149 N.J. 496, 503 (1997)). But foreseeability is only one of several factors that a court must "evaluate 'under all of the circumstances'" in determining whether a duty exists. Coleman, 247 N.J. at 338 (quoting Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993)). "Fairness, not foreseeability alone, is the test" in this regard. Kuzmicz v. Ivy Hill Park Apartments, Inc., 147 N.J. 510, 515 (1997).

Our courts have held that a landlord has a duty "to take reasonable steps to curtail the dangerous activities of tenants . . . that pose a hazard to the life and property of other tenants." Scully, 179 N.J. at 122 (citing Williams, 214 N.J. Super. at 523); see also Trentacost v. Brussel, 82 N.J. 214, 222 (1980) (holding landlord could be liable for criminal acts of a third party by failing "to install a lock on the front door").

The motion judge seemingly concluded that because defendant received no reports that Wilson had engaged in prior assaultive or violent conduct, or any conduct specifically directed toward plaintiff, defendant owed no duty to plaintiff because the physical altercation between plaintiff and Wilson was unforeseeable. However, the Court has specifically rejected the need to demonstrate "prior similar incident[s]" in charging a premises owner with a duty to exercise reasonable efforts to provide for tenant or customer safety. See, e.g., Clohesy, 149 N.J. at 514 (noting that in determining the existence of a duty, New Jersey courts "reject the prior similar incident rule in favor of the totality of the circumstances approach").[3]

[3] We distinguish, in this regard, the issue of foreseeability as it relates to proximate cause. "Foreseeability that affects proximate cause . . . relates to . . . 'whether the specific act or omission of the defendant was such that the ultimate injury to the plaintiff' reasonably flowed from defendant's breach of duty.

Imposing a general duty on defendant in this case to maintain a safe parking deck for its tenants against potential dangers posed by other tenants or third parties falls within already established common-law duties requiring landlords to "keep areas within [their] control in a reasonably safe condition so as not to endanger the lives or property of [their] tenants." Scully, 179 N.J. at 118. We therefore disagree with the motion judge's conclusion that defendant owed no duty to plaintiff.

Rather, the critical inquiry centers on the scope of the duty that defendant owed to plaintiff, a legal issue that we decide de novo. Broach-Butts, 456 N.J. Super. at 34; see also Kelly v. Gwinnell, 96 N.J. 538, 552 (1984) (observing that "[d]eterminations of the scope of duty in negligence cases has traditionally been a function of the judiciary."). "The scope of a duty is determined under 'the totality of the circumstances,' and must be 'reasonable' under those circumstances." J.S. v. R.T.H., 155 N.J. 330, 339 (1998) (quoting Clohesy, 149 N.J. at 514, 520). "In the final analysis, the 'reasonableness of action' that constitutes such a duty is 'an essentially objective determination to be made on

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Foreseeability in the proximate cause context relates to remoteness rather than the existence of a duty." Clohesy, 149 N.J. at 503 (internal quotation and citation omitted).

the basis of the material facts' of each case." Id. at 340 (quoting Weinberg v. Dinger, 106 N.J. 469, 484 (1987)).

Here, defendant did not breach its general duty to provide safe parking for its residents. It employed a guarded entry gate to the complex and required residents to use a swipe card to access the parking deck reserved for them alone. Security guards patrolled the complex every day, and they specifically patrolled the parking deck twice each night. These security measures resulted in guards observing that plaintiff's car door was open, and plaintiff was so notified in the middle of the night. When plaintiff arrived at the complex later that morning, security advised him to contact them if there was anything further amiss at the vehicle. When plaintiff arrived at his car, he failed to heed the advice provided by the security guards. Instead of calling for assistance, plaintiff took it upon himself to confront Wilson and tried to keep him in the car until further help arrived. On these undisputed facts, no reasonable factfinder could conclude defendant breached the general duty owed to plaintiff to provide a reasonably safe place to park his vehicle.

During oral argument before us, plaintiff's counsel contended that defendant had breached its duty because a security guard should have accompanied plaintiff to his car. In other words, plaintiff contends the scope of

the duty owed by defendant under the totality of these circumstances included a personal escort to his vehicle.

Nothing in case law or fairness convinces us that defendant's duty to provide reasonable security measures on its premises included an obligation to accompany plaintiff to his car when he arrived at the complex that morning. In defining the scope of a duty owed, "[w]hat precautions are 'reasonable' depends upon the risk of harm involved and the practicability of preventing it." Weinberg, 106 N.J. at 484.

Nothing in the record demonstrates that plaintiff was at risk of bodily injury when he proceeded to check his vehicle. When security guards earlier had discovered the open car door, no one was in the vehicle. When plaintiff arrived later that morning and spoke with security guards at the gate, nothing had placed security on notice of the "likelihood of conduct on the part of [a] third person[]' that was 'likely to endanger the [property]' of another." J.S., 155 N.J. at 338 (alterations in original) (quoting Clohesy, 149 N.J. at 507). Moreover, plaintiff never sought to have security accompany him to his car and, importantly, plaintiff need not have approached Wilson in the first instance.

Plaintiff seeks to expand the duty owed by landlords to their tenants even though there was no indication he was in danger by proceeding unaccompanied

to his car. We conclude the duty owed to plaintiff could not in fairness or reason have included an obligation to accompany him, or any other tenant, to cars parked in a secure, resident-only parking lot absent notice of some extenuating circumstance.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION