SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1033-15T1

LIBIA M. PRICE and
PETER PRICE, her husband,

Plaintiffs-Appellants,

v.

HOWARD COLODNE and
LOUISE COLODNE,

Defendants-Respondents.

Argued January 11, 2017 – Decided March 27, 2017

Before Judges Accurso and Manahan.

On appeal from Superior Court of New Jersey, Law Division, Union County, Docket No. L-712-14.

Gavin I. Handwerker argued the cause for appellants.

Kevin F. Colquhoun argued the cause for respondents (Colquhoun & Colquhoun, PA, attorneys; Mr. Colquhoun, on the brief).

PER CURIAM

Plaintiffs Libia M. Price and Peter Price[1] appeal from an order for summary judgment entered in favor of defendants Howard Colodne and Louise Colodne dismissing their complaint. The motion judge, in a fifteen-page written opinion, found that "under the totality of circumstances, it would be unfair to impose liability upon the defendants." After consideration of the motion record, and in light of our standard of review and applicable law, we affirm.

Viewing the evidence most favorably to plaintiffs, Rule 4:62–2(c); Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995), we find the following facts. On March 31, 2013, plaintiffs were among the guests at defendants' home celebrating Easter. The parties had been friends for approximately eight years. During the course of the friendship, Libia had visited the defendants' home on between fifteen to twenty prior occasions. During those times, Libia entered and left the defendants' home by use of the front door. On the date of the incident, as Libia was leaving defendants' home, she caught the heel of her shoe on the metal weather-strip of the door threshold and fell into a sunken vestibule. Peter crossed the same threshold just prior to

[1] We refer to the plaintiffs by their first names for ease of reference and mean no lack of respect by the usage.

her fall without incident. The vestibule had a chandelier for illumination.

The door threshold consisted of metal atop the wood saddle which resulted in a height of one to one-and-a-half inches above the floor. According to plaintiffs' engineering expert, the threshold was "towering" over the floor level and was approximately ten-and-a-quarter inches vertically above the entry foyer floor which created a vertical drop as one stepped over the threshold. Plaintiffs' expert noted that the threshold edge was exposed to pedestrian contact and served as a point of entrapment capable of catching a person's foot which, when combined with the vertical drop, created a hazardous condition.

At the time of the incident, Libia noted that the area was a "bit dark," and that on a prior occasion she intimated this to defendants. Libia did not observe any other guests leaving from the gathering, and was unaware whether the lighting conditions that she was presented with were the same for other guests. According to Libia, the chandelier in the vestibule was not lit. According to the expert, the lack of illumination at the time of the incident precluded Libia from viewing the hazardous condition presented by the threshold.

On prior occasions when Libia was a social guest in defendants' home, she did not complain about the entranceway or

its condition. On those occasions, Libia always entered and exited over the same threshold.

Defendants owned the home for thirty-seven years. During their ownership, the condition of the threshold was unchanged, and neither they nor anyone else tripped over it in the manner that Libia did.

The motion judge granted summary judgment in favor of defendants. In his decision, the judge noted that there was no dispute as to Libia's status as a social guest. In furtherance of that status, the judge recited the standard of care involving a homeowner concerning inspection of the property, the correction or disclosure of dangerous conditions of which the homeowner is aware, and whether the guest could be aware of that same condition through a reasonable use of his or her faculties. Moreover, the judge further noted that the determination of liability is guided by a weighing and balancing of factors concerning the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution.

The judge then engaged in a discussion of decisions which he determined were pertinent to his determination. At the conclusion of his analysis, the judge found that it defied notions of reasonableness to regard Libia as being unaware of the threshold

given the number of times she visited defendants' home, including the very day of the incident. The judge also found the cases cited by plaintiff in opposition to the motion to be unpersuasive.

Concerning the issue in dispute as to whether the vestibule was adequately lit, the judge held that plaintiff could readily observe that condition and could have remedied the situation of her own accord or by requesting defendants do so. Finally, the judge held that Libia had actual knowledge of the threshold.

Plaintiffs filed a motion for reconsideration. In a seven-page written opinion, the judge denied the motion.[2]

On appeal, the plaintiffs raise the following argument.

POINT I

THE COURT ERRED IN DETERMINING THERE WERE NO TRIABLE ISSUES OF FACT AND GRANTING SUMMARY JUDGMENT TO DEFENDANTS.

A. THE LAW

1. SUMMARY JUDGMENT STANDARD.
2. THE LAW OF PREMISES LIABILITY.

B. THE LAW APPLIED TO THE FACTS OF THIS CASE.

We review a trial court's grant of summary judgment de novo, applying the same standard as the trial court. Turner v. Wong,

[2] Plaintiffs do not appeal the denial of the reconsideration motion.

363 N.J. Super. 186, 198-99 (App. Div. 2003). 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 Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). The court first decides whether there was a genuine issue of material fact. If not, the court then decides whether the trial court's ruling on the law was correct. Walker v. Alt. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987).

Under the common law of premises liability, the scope of the landowner's duty to a person on his property is defined by the person's status as a business visitor, social guest, or trespasser. Parks v. Rogers, 176 N.J. 491, 497 (2003). As to social guests such as plaintiff, a homeowner has a duty to warn "of a condition of the premises that the homeowner knows or has reason to know creates an unreasonable risk of injury." Id. at 494. Although our courts continue to apply the common law rules of premises liability, especially, as here, when the plaintiff fits easily into one of the traditional status categories, Estate of Desir ex. rel. Estiverne v. Vertus, 214 N.J. 303, 317 (2013), we are mindful

that those categories are undergoing gradual change in favor of "a broadening application of a general tort obligation to exercise reasonable care against foreseeable harm to others." Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 435-36 (1993).

Accordingly, we also consider the relationship of the parties in light of all the surrounding circumstances to determine whether it is fair and just to impose upon the landowner a duty of reasonable care commensurate with the risk of harm. Brett v. Great Am. Recreation, Inc., 144 N.J. 479, 509 (1996). In assessing whether imposition of such a duty is appropriate under that standard, courts weigh and balance four factors: (1) the relationship of the parties, (2) the nature of the attendant risk, (3) the opportunity and ability to exercise care, and (4) the public interest in the proposed solution.

The motion judge considered Libia to be defendants' social guest. According her that status under the common law, defendants were required to warn her of any dangerous condition known to them and unknown to her. Hopkins, supra, 132 N.J. at 434; Campbell v. Hastings, 348 N.J. Super. 264, 267 (App. Div. 2002); Hanna v. Stone, 329 N.J. Super. 385, 389 (App. Div. 2000). "A homeowner has a duty to warn the unwary social guest of a condition of the premises that the homeowner knows or has reason to know creates an unreasonable risk of injury." Parks, supra, 176 N.J. at 494;

Sussman v. Mermer, 373 N.J. Super. 501, 505 (App. Div. 2004). However, "[i]f the guest is aware of the dangerous condition or by a reasonable use of his faculties would observe it, the host is not liable" because of the guest's failure to use due care. Berger v. Shapiro, 30 N.J. 89, 99 (1959).

As this court noted, in Sussman:

> The common law on premises liability in New Jersey, however, has undergone transition toward a broadening application of a general tort obligation to exercise reasonable care against foreseeable harm to others. Although the common law premises liability rules continue to provide guidance in determining whether a duty of reasonable care should be imposed in particular circumstances, the task now is to consider all of the surrounding circumstances to determine whether it is fair and just to impose upon the landowner a duty of reasonable care commensurate with the risk of harm.
>
> [Sussman, supra, 373 N.J. Super. at 505 (citations omitted) (quotation marks and internal quotation marks omitted)].

We initially address whether there existed sufficient evidence in the discovery record to raise a jury question concerning a breach of duty owed to Libia. As social hosts, the defendants were required to warn of dangerous conditions which defendants were or should have been aware and of which Libia was unaware.

It is without dispute that at the time of the incident defendants had owned the home for thirty-seven years, and that during their ownership, the condition of the threshold was unchanged. During those thirty-seven years, no one tripped or stumbled in the doorway at issue here. Even inferentially, the record lacks support that the defective condition was patent to a layperson or was visible or palpable such that it created an unreasonable risk of injury to guests. Saliently, prior to this incident, defendants used the doorway more frequently than any guests and did not themselves experience what Libia alleges occurred to her.

The duty to warn does not extend to dangerous conditions of which the property owner is unaware. Parks, supra, 176 N.J. at 494. In Quinlan v. Quinlan, 76 N.J. Super. 11 (App. Div. 1962), this court found that the defendant did not breach any duty to his daughter-in-law, who slipped and fell on a patch of ice in the defendant's driveway near a downspout. Id. at 12-14. There was no testimony that the defendant had knowledge of the ice or had previously seen ice near the outlet of the spout, though he was aware that it was raining and sleeting prior to the incident. Id. at 15. Moreover, he did not know that his son and daughter-in-law were coming to his house that night. Id. at 19. In addition, the inference that the defendants must have realized that certain

weather conditions would eventually result in a dangerous patch of ice forming near the downspout was not sufficient to impose a duty. Id. at 18.

In contrast to Quinlan, the Court held that when homeowners have or should have notice of a defective condition that a duty to warn exists. Parks, supra, 176 N.J. at 491. In Parks, the plaintiff fell while descending the stairs from the defendants' deck in the dark and holding onto a handrail that she did not realize ended at the second-to-last step. Id. at 495. Unlike in cases previously discussed, it was the plaintiff's first time visiting the defendants' home. Id. at 502. She had gone up the stairs earlier in the night, also in the dark, but did not notice that the railing failed to extend to the bottom of the stairway. Id. at 495. The Court held that a jury could find that the defendants knew of the inadequate length of the handrail and that this "defective condition posed an unreasonable risk of injury to a social guest unfamiliar with the premises," placing a duty on defendants to provide lighting or a warning to the plaintiff. Id. at 502. Although the plaintiff obviously was aware of the darkness, the Court stated that this only made her more dependent on using the handrail to descend the stairs safely. Id. at 501.

This court has ruled similarly to Parks on a somewhat analogous fact pattern to the one presented here. Sussman, supra,

373 N.J. Super. at 501. In Sussman, the plaintiff injured himself as he left the defendants' home through the front door, descending one step to an exterior porch, and then falling as he descended the second step leading to a cement pathway. Id. at 503. It was dark outside at the time and the front porch area was not illuminated. Ibid. We reversed summary judgment for the defendant in part because there was a genuine issue of material fact as to whether plaintiff ever used the front porch steps during previous visits to the defendants' home, and thus was aware of the dangerous condition. Id. at 507. But we also concluded that even if the plaintiff had previously used the steps, "given the unevenness in riser heights and the lack of a handrail, a trier of fact could reasonably find that they presented a foreseeable and unreasonable risk of harm when unilluminated." Ibid. We added that "the modest effort that would satisfy reasonable care to guard against dangers caused by darkness" made imposition of such a duty on the defendants neither unjust nor unfair. Ibid.; see also Campbell, supra, 348 N.J. Super. at 266, 269-72 (reversing summary judgment for defendant where plaintiff, who had never visited defendants' home before, fell into a sunken foyer).

The motion judge placed significant weight on the fact that Libia was a frequent guest at defendants' home prior to the incident. The judge noted:

> Unlike the social guests in Parks, [] and Sussman, [] it is undisputed in this case that [p]laintiff was familiar with [d]efendants' home and its layout and knew the dimensions and location of the threshold. Indeed, [p]laintiff admits that she crossed the door's threshold many times before. Yet, even if [p]laintiff were unaware of the spatial dimensions of the threshold on the day of her accident, the alleged dangerous condition — the alleged tripping hazard presented by the threshold — was open and obvious, and plaintiff could have observed it through a reasonable use of her faculties.

We do not take issue with the judge on these findings as to Libia's familiarity with the doorway, the physical condition of its threshold, and her opportunity to make observations except insofar as it presumes prior knowledge on behalf of defendants of the condition. From our independent review of the record, developed after full discovery, we cannot conclude defendants had knowledge or should have had knowledge of the threshold's alleged dangerous condition such as to impose a duty to rectify the condition or to warn Libia of its presence. As such, the "equality" of Libia's knowledge to that of defendants' concerning the condition is irrelevant.

On the other hand, we view the equality of Libia's knowledge of the lighting conditions to that of defendants' as relevant. Assuming that the area was "dimly lit," we agree with the motion judge that this condition was "readily observable" by Libia and

could have been easily remediated by her, "who merely had to flip a switch or ask the defendants to do so." On this score, we hold the defendants cannot be liable due to Libia's failure to use due care. Berger, supra, 30 N.J. at 99.

Aside from our determination that defendants did not breach their duty to a social guest, when considering traditional notions of premises liability, i.e., reasonable care commensurate with the risk of harm and the lack of foreseeability based upon thirty-seven years without similar incidents, we determine that fairness considerations militate against imposing a duty on defendants.

Affirmed.