SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5507-14T1

KATHRINE NEILSON,

Plaintiff-Appellant,

v.

ANTOINETTE DUNN,

Defendant-Respondent.

Submitted October 17, 2016 – Decided December 5, 2016

Before Judges Sabatino and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-2322-14.

Franzblau Dratch, P.C., attorneys for appellant (Brian M. Dratch, on the brief).

Amy F. Loperfido & Associates, attorneys for respondent (Harold H. Thomasson, on the brief).

PER CURIAM

In this appeal, we consider whether a landowner is liable for a pedestrian's injury caused by slipping on spiky seed pods that had fallen from a sweetgum tree onto the sidewalk adjacent to the

landowner's property. A review of the applicable legal principles leads us to conclude that the trial judge properly granted summary judgment to the landowner, and we therefore affirm.

In February 2013, plaintiff Katherine Neilson was walking on a sidewalk adjoining the residential property owned by defendant Antoinette Dunn when she fell on a spiky seed pod, sustaining injury. Defendant has sweetgum trees located on her property, which drop its fruit in the form of spiky seed pods onto her property and sidewalk. She employs a lawn maintenance contractor whose services include fall and spring clean-ups. The last clean-up before plaintiff's fall was in December 2012. Plaintiff lives next door to defendant and was aware as she began her walk that there were seed pods on the sidewalk.

Defendant moved for summary judgment, arguing that she had no liability for the seed pods on her sidewalk as she had not created or exacerbated a dangerous condition. She contended the seed pod accumulation was a natural condition over which she had no control, and she had acted as a reasonable landowner in hiring a lawn maintenance service to periodically clean up any debris on her lawn and sidewalk. Plaintiff opposed the motion, arguing that defendant had a duty to ensure her property was free of the seed pods that fell from her trees onto her property and the adjacent sidewalk, and her failure to do so created a hazardous condition.

Following oral argument, the motion judge cited to Luchejko v. City of Hoboken, 207 N.J. 191 (2011), finding that a residential homeowner was only responsible for an accident on the adjoining sidewalk if they created or exacerbated a dangerous condition. The judge stated he could not conclude as a matter of law that the presence of the seed pods constituted a dangerous condition, and therefore he granted summary judgment to defendant.

On appeal, plaintiff presents the same arguments she did to the trial court; that the seed pods created a dangerous condition for pedestrians using the sidewalk and that defendant's failure to maintain her yard caused that hazardous condition. We disagree.

We review a grant of summary judgment under the same standard as the motion judge. Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41 (2012). We must determine whether there are any genuine issues of material fact when the evidence is viewed in the light most favorable to the non-moving party. Id. at 38, 41. "The inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)) (internal quotation marks omitted). "[T]he legal conclusions undergirding the summary judgment motion itself [are reviewed] on

a plenary de novo basis." Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 385 (2010).

As referenced by the motion judge, Luchejko affirmed the common law principle exempting residential homeowners from liability for a failure to maintain the public sidewalks in front of their homes in a safe condition. Id. at 208-10. The exemption from liability applies unless the owner, by his or her affirmative conduct, has negligently built or repaired the sidewalk in a manner that makes it dangerous. Id. at 210. The Court reasoned: "Residential homeowners can safely rely on the fact that they will not be liable unless they create or exacerbate a dangerous sidewalk condition." Ibid.

Although helpful in clarifying general propositions of the applicable law, Luchejko factually involved a plaintiff who slipped on ice on a sidewalk. We find Deberjeois v. Schneider, 254 N.J. Super. 694 (Law Div. 1991), aff'd o.b., 260 N.J. Super. 518 (App. Div. 1992) to be more instructive.

In Deberjeois, the property owner was sued by a pedestrian who had fallen on a defective sidewalk; the defect was caused by tree roots coming from a tree located on his property. Id. at 696. The judge determined that a homeowner may be liable in limited circumstances to a pedestrian who trips on a raised slab of a public sidewalk in front of his or her home, where such

condition was caused by roots growing from a tree on the owner's property. Id. at 703-04. The judge reasoned that the defendant's potential liability for the plaintiff's injuries turned upon "whether the defect in the sidewalk was caused by a natural condition of the land or by an artificial one." Id. at 698. He cited to principles from the Restatement (Second) of Torts §363 (1965), instructing that if the hazardous condition is natural, the property owner generally has no liability for the hazard, whereas if the condition is artificial, the property owner may face potential liability. Id. at 699-700; see also Scannavino v. Walsh, 445 N.J. Super. 162, 168 (App. Div. 2016). If the condition is precipitated by the property owner's affirmative act such as planting the tree that caused the root condition on the sidewalk, the non-liability rule no longer applied and the landowner could be liable. Id. at 703.[1]

In applying these principles, we are satisfied the grant of summary judgment was appropriate. The sweetgum trees existed on defendant's property when she and her husband purchased it fifty

[1] More recently, the American Law Institute has promulgated the Restatement (Third) of Torts: Liability for Physical and Emotional Harm (2005) addressing principles of premises liability in a revised manner. See id. at §§49-54. Because our Supreme Court has not adopted or discussed those Restatement provisions, we do not apply them to this case. We instead continue to refer to the Restatement (Second) provisions cited in Deberjeois and other precedents in our state.

years earlier. The trees' natural cycle includes the growth of its fruit in the nature of the spiky seed pods, which then fall naturally to the ground below. Defendant did not take any affirmative action to cause or exacerbate the natural condition. On the contrary, she arranged for a lawn service to maintain her property, including the periodic removal of the pods. As a result, under our well-settled principles of landowner liability, defendant was not liable for any consequences of the natural occurrence of the seed pods being scattered on the ground.

Affirmed.