Ruth R. Rotz, Plaintiff vs. Keith L. Hess and Winifred L. Hess, Defendants, Franklin County Branch, Civil Action - Law No. A.D. 1997-70

Rotz v. Hess

Motion for summary judgment granted; plaintiff failed to establish a prima facie case of negligence because she did not know what caused her to fall in defendant's parking lot. Pa.R.C.P. 1035.2

1. A moving party should prevail on a motion for summary judgment when the adverse party who will bear the burden of proof at trial has failed to produce enough evidence of facts essential to the cause of action.

2. In considering the motion, the court must examine the record in the light most favorable to the non-moving party; any and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

3. The mere fact that an accident occurred does not give rise to an inference that the injured person was a victim of negligence.

4. Where the plaintiff repeatedly conceded throughout discovery that she did not know what caused her to fall in the defendant's parking lot, but offered only conjecture and speculation as to why she fell, the plaintiff failed to adduce sufficient evidence of causation, which is an essential element of a negligence action.

5. Where the plaintiff could not point to a particular dangerous condition on the defendant's property which caused her to fall, she failed to show there was a genuine issue of material fact regarding causation and the defendant was entitled to judgment as a matter of law.

Barbara B. Townsend, Esquire, Counsel for Plaintiff
Donald B. Hoyt, Esquire, Counsel for Defendants

OPINION and ORDER OF COURT

Herman, J., April 7, 1998:

INTRODUCTION

Before the Court is defendants' motion for summary judgment in this personal injury case. The parties submitted written briefs and presented oral arguments during the November 1997 term of argument court. This motion is now ready for decision. For the reasons set forth below, defendants' motion for summary judgment is granted.

BACKGROUND AND PROCEDURAL HISTORY

The plaintiff, Ruth Rotz, leased an apartment from the defendants, Keith and Winifred Hess. On February 17, 1995, the plaintiff left her apartment at approximately 5:00 a.m. to place her garbage and

recyclables in the appropriate receptacles before going to work. She walked along a concrete walk, placed her garbage in the can, and returned to her porch. Next, the plaintiff took her recyclables, followed another concrete walk on the defendants' property, and crossed a macadam alley. The plaintiff reentered the defendants' property and walked across a grass and gravel surface to the recycling bins.

The recycling bins were located on a common area of the defendants' property which was used by the tenants of the defendants' buildings. At the time, the common area was dimly lit. It was still dark outside, and the light used to illuminate the area was inoperable. The plaintiff did not see any evidence of ice, snow, water, moisture, or obstructions on any of the ground surfaces over which she crossed.

While attempting to place her recylcables in the bin, the plaintiff fell to the ground and hit her head. When she stood up, she realized that her clothes were wet. Although her clothes were not soaking wet, they were wet enough for her to change them before going to work.

The plaintiff is unable to say what caused her to fall and sustain injuries. However, she offers several possibilities. There could have been ice or water on the ground creating a slippery condition. The plaintiff bases this hypothesis on a weather report she heard the previous evening. The report stated that if there were precipitation overnight, it could be icy in the morning. The plaintiff also suggests that there could have been a slippery surface due to oil. She notes the possibility that oil may have leaked from vehicles which the defendants permit to park in the area. The plaintiff also suggests that the recycling bin may have been unstable and caused her to fall. Finally, she believes that the dim lighting contributed to the cause of her fall.

The plaintiff filed her complaint with the Court on February 14, 1997. Upon completing initial discovery, the defendants filed a motion for summary judgment on September 15, 1997. The parties presented oral argument during the November 1997 term of argument court.

DISCUSSION

The defendants argue the plaintiff fails to provide sufficient evidence of defendants' negligence in allowing a slippery condition to exist in the recycling bin area, in failing to provide adequate and reliable light or illumination, in selecting the container which was provided for recycling, and in allowing vehicles to park next to the recycling area. As such, defendants maintain there is no genuine issue of material fact and they should prevail as a matter of law. The plaintiff, on the other hand, asserts that defendants failed to use reasonable care in making the common area, where the plaintiff fell, a safe area for the tenants as business invitees.

A moving party should prevail on a motion for summary judgment when the adverse party who will bear the burden of proof at trial has failed to produce enough evidence of facts essential to the cause of action. Pa.R.C.P. 1035.2. "The moving party bears the burden of demonstrating that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law." *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983) (citing *Thompson Coal Co. v. Pike Coal Co.*, (Pa. 1979); *Weiss v. Keystone Mack Sales, Inc.*, 456 A.2d 1009 (Pa. Super. 1979)). In deciding summary judgment cases, the Court examines "the record in the light most favorable to the non-moving party, any and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." *Ertel v. Patriot-News Company*, 674 A.2d 1038, 1041 (Pa. 1996) (citing *Pennsylvania State University v. County of Centre*, 615 A.2d 303, 304 (Pa. 1996)). However,

> a non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.

Id. at 1042. Further, "allowing non-moving parties to avoid summary judgment where they have no evidence to support an issue on which they bear the burden of proof runs contrary to the spirit of Rule 1035." *Id.*

Negligence

The plaintiff must allege facts sufficient to establish negligence. The plaintiff has the burden to prove:

1) duty or obligation recognized by law;
2) a breach of the duty;
3) a causal connection between the conduct and the resulting injury; and
4) actual damages.

Swift v. Northeastern Hosp. of Philadelphia, 690 A.2d 719, 722 (Pa. Super. 1997). In light of this, "the pleadings must define the issues and . . . every act or performance essential to that end must be set forth in the complaint." *Id.* at 723 (citing *Santiago v. Pa. National Mutual Casualty Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. 1992)). "The mere fact that an accident occurred does not give rise to an inference that the injured person was a victim of negligence." *Id.*, (citing *McDonald v. Aliquippa Hosp.*, 606 A.2d 1218, 1220 (Pa. Super.)).

In the case at bar, causation is the central issue. The plaintiff points to several possible causes for her fall including a wet, slippery condition on the ground, oil which may have leaked to the ground from vehicles parked in the area, and an inappropriate recycling container. She further alleges that the inadequate lighting in the common area contributed to her fall.

The plaintiff argues that there may have been ice or a slippery condition on the ground which caused her to fall. In the absence of generally slippery conditions, as in the plaintiff's case, the plaintiff must establish the following in order to recover:

1) existence of dangerous accumulation of snow and ice;
2) injuries were proximately caused by the accumulation;
3) accumulation was sufficient to constitute a reasonable obstruction to travel; and
4) defendant had actual or constructive notice of the accumulation.

Williams v. Shultz, 240 A.2d 812, 813 (Pa. 1968) (quoting *Zeig v. Pittsburgh*, 34 A.2d 511 (Pa. 1943)). The plaintiff fails to provide sufficient evidence as to any of these elements.

Throughout her complaint, affidavit, interrogatories, and deposition the plaintiff maintains that she does not know what, if anything, caused her to fall. The plaintiff even concedes that she did not see ice or snow underneath her that morning. As such, she fails to show the existence of ice and snow, not to mention any accumulation. Further, in the absence of any evidence of snow or ice, the plaintiff is unable to show that her injuries were proximately caused by accumulation. It follows that without evidence of accumulation, the plaintiff cannot establish that there was a reasonable obstruction to her travel. In fact, she traversed the area prior to her fall without difficulty and without noticing any snow or ice. In light of this, she is unable to show the defendants had notice, neither actual nor constructive, of any accumulation.

To establish the cause of her fall as an icy or slippery condition, the plaintiff relies solely on circumstantial evidence a weather report from the previous evening stating the possibility of icy conditions (Deposition, pg. 46, lines 7-10) and the moisture on her clothing when she stood up from her fall (Affidavit of Plaintiff, paragraph 25). Throughout the record, the plaintiff is unable to provide any evidence beyond speculation as to what caused her to fall. She states that she thought there was ice because of the weatherman's report. (Deposition, pg. 74, lines 10-13). Additionally, she believes "the gravel on the defendants' property may have contained organic matter such as oil, grass, moss. In addition, the gravel and/or grass surface was wet, moist or icy which condition was not easily visible." (Plaintiff's Answer to Interrogatories #1(j)). Essentially, the plaintiff states that she did not see any evidence of water (Affidavit of Plaintiff, paragraph 17), ice (Affidavit of Plaintiff, paragraph 18), moisture (Affidavit of Plaintiff, paragraph 20), or oil (Affidavit of Plaintiff, paragraph 21). She offers no other evidence to establish that these conditions existed.

> When a party who bears the burden of proof relies on circumstantial evidence and inferences reasonably deductible therefrom, such evidence, in order to prevail, must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion as to outweigh in the mind of the fact-finder any other evidence and reasonable inferences therefrom which are inconsistent therewith.

First v. Zem Zem Temple A.A.O.N.M.S., 686 A.2d 18, 21 (Pa. Super. 1996) (citations omitted). Even if all inferences from the facts presented are drawn in favor of the plaintiff, the Court is left with mere conjecture and guesswork as to what caused the plaintiff's fall. *See, Rinaldi v. Levine*, 176 A.2d 623, 626 (Pa. 1962). The inferences drawn by the plaintiff are not so preponderate that they outweigh inferences drawn from inconsistent evidence in this case. The same is true of the plaintiff's offerings that her fall may have been caused by an unstable recycling bin or by oil that was possibly leaked from a vehicle parked in the area. Without more facts, it is merely speculation to say that either of these caused the plaintiff to fall. As the non-moving party, the plaintiff fails to adduce sufficient evidence of causation for which she would have the burden of proof at trial.

The plaintiff's failure to produce evidence as to the legal cause of her injury establishes that there is no genuine issue of material fact for the trier of fact to resolve. Without evidence of a dangerous condition, the plaintiff cannot present her case to the trier of fact. The absence of a dangerous condition distinguishes the plaintiff's case from other slip and fall cases she cites to in her brief. *See, Treadway v. Ebert Motor Co.*, 436 A.2d 994 (Pa. Super. 1991) (when plaintiff fell on a snow covered metal plate on defendant's property, legal causation was a question for the jury); *Papa v. Pittsburgh Penn Center Corp.*, 218 A.2d 783 (Pa. 1966) (judgment for plaintiff affirmed when plaintiff fell on an accumulation of water on defendant's stairway).

The plaintiff also asserts that the defendants were negligent in failing to provide adequate lighting for the common area. With these facts, the plaintiff presents an obscuration case. Although the inadequate lighting is an obscuration and relieves the plaintiff of contributory negligence, it does not provide evidence of causation. *See, Actman v. Zubrow*, 159 A.2d 30 (Pa. Super. 1960). "Where the dangerous condition is hidden by some substance such as water, snow, paper, or confusing lights, the obstruction is never the cause of the harm. . ." *Loeb v. Allegheny County*, 147 A.2d 337, 339 (Pa. 1959) (quoting *DeClerico v. Gimbel Brothers, Inc.*, 50 A.2d 716, 717 (Pa. Super. 1947)). In the case at bar, the inadequate lighting in

the common area obstructed the plaintiff's view of the alleged dangerous condition that caused her to fall. However, the inadequate lighting does not bolster the plaintiff's claim when she cannot show what the underlying, dangerous condition was.

CONCLUSION

The parties also raise issues of the defendants' duty to the plaintiff with respect to their landlord/tenant relationship and the defendants' notice of the alleged dangerous condition. Since the plaintiff has failed to meet her burden in terms of causation, an element to her prima facie case, these issues need not be addressed by the Court.

After reviewing the record in the light most favorable to the plaintiff, the Court finds that there is no genuine issue of material fact to be presented to the trier of fact, and the defendants should prevail as a matter of law. For the reasons stated herein, an appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW this 7th day of April, 1998, upon consideration of the record, of the briefs submitted by the parties and of oral argument presented before the Court,

IT IS HEREBY ORDERED that defendants' motion for summary judgment is GRANTED.