SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3198-20

TAMMY NATALE,

Plaintiff-Appellant,

v.

RICHARD NIGRO,
CAMDEN COUNTY,
and THE TOWN OF
BLACKWOOD,

Defendants-Respondents,

and

THE STATE OF NEW JERSEY
and GLOUCESTER TOWNSHIP,

Defendants.

Argued May 5, 2022 – Decided May 18, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-0468-16.

Allan J. Ageldinger, III, argued the cause for appellant (Law Offices of Craig A. Altman, PC, attorney; Craig A. Altman, on the briefs).

Roberto K. Paglione argued the cause for respondent (Law Office of Patrick J. Hermesmann, attorneys; Roberto K. Paglione, on the brief).

PER CURIAM

Plaintiff Tammy Natale appeals from two July 8, 2021 orders denying her motion for a new trial and denying her motion for judgment notwithstanding the verdict. We affirm.

We incorporate the facts and procedural history from our prior unpublished decision, which held that defendant Richard Nigro had a duty to "properly clear the ice and snow pursuant to the parties' agreement." Natale v. Nigro, No. A-1175-17 (App. Div. Apr. 2, 2019) (slip op. at 14). After our reversal of summary judgment, a virtual jury trial was held between June 1, 2021 and June 4, 2021. Plaintiff testified that on February 6, 2014, at approximately 9:15 a.m., she slipped and fell on a patch of ice located behind her car. Plaintiff testified that her left leg slid out from under her and she landed on her right knee. Plaintiff suffered a distal third patella fracture and a quadriceps tendon tear, requiring multiple surgeries.

Plaintiff testified that on the day before the incident, a lot of the snow from the prior day's storm had melted because the sun came out, but by the evening, it had turned bitter cold. Although plaintiff did not describe the exact conditions on the morning of the fall, she stated "on February 6th the temperature apparently dropped . . . significant to where . . . a lot of stuff refroze." Plaintiff also testified that defendant had removed some snow on February 5, 2014, but to her knowledge, he had not laid down any salt at any time prior to the incident. Plaintiff admitted on the morning of the incident, defendant had not left the house yet and she had not asked defendant to take care of the snow or ice that morning.

Defendant admitted he did not remove any snow on the day of the incident and never laid down any salt. Additionally, defendant testified that he had not gone out yet on the day of the incident.

During the trial, both parties moved for a direct verdict on the issue of liability, but the judge denied both motions and submitted the issue to the jury. The judge instructed the jury that defendant "had the duty to exercise reasonable care in cleaning and maintaining the parking area in question, including reasonable care in removing and treating snow and ice in the parking area" and

that it was the jury's job "to determine if [d]efendant . . . was negligent in complying with that duty."

On June 4, 2021, the jury rendered a verdict of "not negligent" with a vote of seven to zero. On June 7, 2021, the judge issued an order for judgment in favor of defendant.

On June 11, 2021, plaintiff moved for a new trial, arguing the jury's verdict resulted in a miscarriage of justice. On June 14, 2021, plaintiff also moved for judgment notwithstanding the verdict. On July 8, 2021, the judge denied plaintiff's motions in an order and oral decision for "obvious reasons." The judge reasoned that the jury could have found that defendant's snow removal the previous day was enough to satisfy his duty. The judge noted that defendant's breach was a jury issue and the jury decided defendant was not negligent. This appeal followed.

On appeal, plaintiff presents the following arguments for our consideration:

> POINT I
>
> [THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S . . . MOTION FOR A NEW TRIAL]

POINT II

[THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S . . . MOTION FOR JUDMENT NOTWITHSTANDING THE VERDICT]

Our review of a motion for a new trial pursuant to Rule 4:49-1 and of a motion for judgment notwithstanding a verdict pursuant to Rule 4:40-2(b) requires that "we apply the same standard that governs the trial courts." Smith v. Millville Rescue Squad, 225 N.J. 373, 397 (2016); see also Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 522 (2011).

Under Rule 4:49-1(a), a trial court shall grant a motion for a new trial "if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law." Jury verdicts are thus "entitled to considerable deference and 'should not be overthrown except upon the basis of a carefully reasoned and factually supported (and articulated) determination, after canvassing the record and weighing the evidence, that the continued viability of the judgment would constitute a manifest denial of justice.'" Risko, 206 N.J. at 521 (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 597-98 (1977)). We give "considerable deference to a trial court's decision" on a motion

for a new trial because "the trial court has gained a 'feel of the case' through the long days of the trial." Lanzet v. Greenberg, 126 N.J. 168, 175 (1991).

When reviewing a motion for judgment notwithstanding the verdict pursuant to Rule 4:40-2(b), we apply the same standard used for a motion for involuntary dismissal pursuant to Rule 4:37-2(b). Smith, 225 N.J. at 397. Under that standard, "if, accepting as true all the evidence which supports the position of the party defending against the motion and according to him the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied[.]" Ibid. (alteration in original) (quoting Verdicchio v. Ricca, 179 N.J. 1, 30 (2004)).

To sustain a negligence claim, a plaintiff must demonstrate: "(1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages." Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 584 (2008)) (internal quotation marks omitted). A plaintiff must support each of the four elements with "some competent proof." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Overby v. Union Laundry Co., 28 N.J. Super. 100, 104 (App. Div. 1953)).

"Although the existence of a duty is a question of law, whether the duty was breached is a question of fact." Jerkins v. Anderson, 191 N.J. 285, 305

(2007). "[W]hether there was a breach of the duty, foreseeability, and proximate cause are issues 'peculiarly within the competence of a jury.'" Arvanitis v. Hios, 307 N.J. Super. 577, 582 (App. Div. 1998) (quoting Anderson v. Sammy Redd & Assocs., 278 N.J. Super. 50, 56 (App. Div. 1994)). In our prior opinion we noted "[t]he . . . disputes concerning whether defendant cleaned the area of plaintiff's accident after the snowfall and the condition of the property on the date of the accident are fact issues." Nigro, slip op. at 14.

Here, the jury found defendant was not negligent. The jury knew defendant had a duty to remove the snow and ice, and it determined that defendant did not breach that duty. Based on the evidence adduced at trial, the jury could have found that defendant did not breach his duty because defendant's snow removal the previous day was enough to satisfy his duty or because plaintiff left the house on the morning of the incident before defendant had a chance to assess and remove any ice that existed at the time. Accordingly, the judge properly denied plaintiff's motions. We discern no miscarriage of justice and no reason to disturb the verdict.

Affirmed.