SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0847-16T2

FRANCIS SCARDILLO,

Plaintiff-Appellant,

v.

DAVID INNACCONE and POOL TOWN,

Defendants,

and

PM CONTRACTORS,

Defendant-Respondent.

Submitted October 31, 2017 – Decided November 15, 2017

Before Judges Fisher and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-3995-13.

Escandon, Fernicola, Anderson & Covelli, attorneys for appellant (Robert M. Anderson, of counsel; Scott M. McPherson, on the brief).

Charles A. Little, Jr., attorney for respondent.

PER CURIAM

Plaintiff Francis Scardillo appeals a summary judgment that dismissed her personal-injury complaint against defendant PM Contractors. We affirm because, as a matter of law, plaintiff could not establish PM's alleged wrongdoing proximately caused her injuries.

It is undisputed that plaintiff contracted with PM to install a new fence on her property. Although apparently disputed, we assume, as required by the applicable standard,[1] that the parties' contract required that PM remove the old fence and that PM failed to do so. The adjoining property owner, defendant David Innaccone asked plaintiff about the removal of the old fence. Plaintiff, unaware the old fence had not been removed, pursued the matter with PM but without immediate success.

Plaintiff then took matters in her own hands. With Innaccone's permission, plaintiff, her nephew, and her daughter's boyfriend, walked around the new fence and onto Innaccone's property for the purpose of removing the old fence. Plaintiff stepped into a hole on Innaccone's property, fracturing an ankle and a toe.

There is no allegation that the hole in Innaccone's property was the result of PM's performance of the contract to install the new fence. Plaintiff instead claims that PM is responsible for her

[1] Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

injuries because she would not have entered Innaccone's property but for PM's failure to remove the old fence.

The trial judge rejected this argument and granted summary judgment in PM's favor. Plaintiff appeals,[2] arguing the existence of a triable issue as to whether it was foreseeable that plaintiff would be injured due to PM's alleged failure to remove the old fence.

We find insufficient merit in plaintiff's argument to warrant further discussion in this opinion, R. 2:11-3(e)(1)(E), and we affirm substantially for the reasons set forth by Judge James Den Uyl in his thorough and well-reasoned written decision.

Affirmed.

[2] Plaintiff's claim against Innaccone was settled, and her claim against defendant Pool Town was dismissed by way of a summary judgment that has not been appealed.