NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1095-16T3

THOMAS G. LECHLER, and
ULRIKE LECHLER, his wife,

Plaintiffs-Appellants,

v.

303 SUNSET AVENUE CONDOMINIUM
ASSOCIATION, INC., and
TOWNSMEN PROPERTIES, LLC,

Defendants-Respondents.

APPROVED FOR PUBLICATION

December 29, 2017

APPELLATE DIVISION

Argued November 28, 2017 – Decided December 29, 2017

Before Judges Reisner, Hoffman and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-0466-15.

Richard P. Krueger argued the cause for appellants (Krueger & Krueger and The Blanco Law Firm, LLC, attorneys; Richard P. Krueger, on the brief; Pablo N. Blanco, of counsel and on the brief).

Patrick B. Minter argued the cause for respondents (Donnelly Minter & Kelly, LLC, attorneys; Patrick B. Minter, of counsel; Seth A. Abrams, on the brief).

Ronald B. Grayzel argued the cause for amicus curiae New Jersey Association of Justice (Levinson Axelrod, PA, attorneys; Ronald B. Grayzel, on the brief).

The opinion of the court was delivered by

HOFFMAN, J.A.D.

In this premises liability case, plaintiffs Thomas and Ulrike Lechler[1] appeal from the October 24, 2016 Law Division order granting a directed verdict to defendants, 303 Sunset Avenue Condominium Association, Inc. (Association) and its property manager, Townsmen Properties, LLC (Townsmen), and dismissing plaintiffs' negligence claim with prejudice. We hold that the Association had a statutory duty to maintain the common areas, including a duty to identify and correct dangerous conditions, and that duty extended to residents of the condominium building, regardless of their characterization as licensees or invitees. While a condominium association has a statutory right to adopt a by-law precluding residents from suing the association for negligence, the Association did not adopt such a by-law. Because plaintiff's evidence, if credited by the jury, established a prima facie case of negligence, we reverse and remand for a new trial.

I

We discern the following facts from the trial record. In October 2008, plaintiffs purchased a unit from the developer of

[1] In this opinion, we refer to Thomas and Ulrike Lechler collectively as "plaintiffs," and Thomas Lechler individually as "plaintiff." Plaintiff's wife sues per quod.

The 303 Sunset Avenue Condominium (The Condominium), a three-story building containing twenty-four residential units in Asbury Park. The developer established The Condominium in accordance with the provisions of the Condominium Act (Act), N.J.S.A. 46:8B-1 to -38. The Master Deed for The Condominium delegates to the Association "all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of [T]he Condominium."

Plaintiff's accident occurred when he stumbled down the center of The Condominium's wide exterior stairs that led from the building to a walkway. Despite the width of the stairs — 158 inches — they lacked a center handrail, with hand railings only going down the sides. A photograph introduced at trial showed bolt holes in the center of the stairs, indicating a railing previously went down the middle of the stairway. Plaintiff's expert also observed that there were bolts inside the drill holes.

Plaintiff testified that on August 24, 2014, he started to stumble near those holes, could not catch his balance, and thus began to run down the staircase trying to recover his balance; however, he hit the last step with the edge of his left heel and fell to the ground, screaming in pain. Plaintiff described his left heel as "completely deformed." A passerby called an

ambulance, which transported plaintiff to a nearby hospital. There, doctors diagnosed plaintiff's injury as a displaced fracture of the calcaneus of the left foot. Later that day, plaintiff underwent internal fixation surgery, with the installation of hardware to repair the fracture.

The balcony of plaintiffs' unit overlooks the stairs where his accident occurred. Plaintiff admitted he had used the stairs "on many occasions prior" to that day. He usually walked "down the stairs in the middle." He never experienced a problem using the stairs before his accident.

Plaintiffs also presented the testimony of the Association's president. She lived in The Condominium since the summer of 2010, and became the Association's president that same year. She agreed the By-Laws stated, "The [B]oard of [D]irectors shall have the powers and duties necessary or appropriate for the administration of the affairs of the [A]ssociation and shall include but shall not be limited to the following: the operation, care, upkeep, maintenance, repair, and replacement of the property and the commons elements." She also agreed that "under the [B]y-[L]aws, the [A]ssociation shall discharge its powers in a manner that protects and furthers the health, safety, and general welfare of the residents of the community." She recognized these By-Laws established "an

obligation that the [A]ssociation . . . owes to the members of the community."

Regarding the stairs where plaintiff's accident occurred, the president said she knew people walked down the center without using the handrails, and she had done so herself. Before plaintiff's accident, she had never received a complaint about the stairs and its lack of a center handrail. She further testified that the State inspected The Condominium in 2012, and the inspector did not advise that the stairway needed a center handrail.

On October 19, 2013, Townsmen entered into an agreement with the Association to serve as The Condominium's project manager. The agreement required Townsmen to coordinate "all daily property management issues, such as repairs, maintenance, landscaping, snow removal, [and] security" for the Association. Plaintiff's counsel also read from the deposition of Townsmen's owner, who acknowledged that, under the agreement, his company was responsible "for the coordination of all daily property . . . maintenance, landscaping, snow removal, security, and all other issues including contracting, negotiating, and monitoring." When asked if his company was responsible "to make recommendations to the [B]oard as to safety concerns on the premises," he replied, "Could be."

Plaintiff also presented the expert testimony of a licensed architect and professional planner. Defendants did not object to his qualifications as an expert in these fields. The expert testified the Building Officials & Code Administrators International, Inc. (BOCA) code was established in the 1950s, and then updated every three years. He further explained that, before 1977, different municipalities could adopt different model codes, but most adopted the BOCA code.

The expert measured the distance between the handrails on either side of the stairs, determining they were 158 inches apart. He testified that in 1975, the year The Condominium building was constructed,

> the BOCA basic building code . . . required a central handrail for any stairway greater than [eighty-eight] inches wide. . . . A center handrail was, in fact, installed. Somebody removed it. . . . [W]hen they removed this railing, they made the stairway less safe[,] [b]ecause they removed a very important safety feature . . . .

He added the New Jersey subcode that applies to renovations prohibited the removal of any "previously-installed item in a building that was installed in accordance with the code." Accordingly, defendants should have replaced the handrail with "a code compliant handrail."

The expert reviewed The Condominium's "architectural exhibits," which were "used as part of the public offering

statements" and were presumably "given to . . . [prospective] purchaser[s] so they could then review all the components within the building including their unit . . . ." The exhibits showed a handrail going down the center of the stairs. The expert said the architect would have only drawn a handrail if the stairs actually had one. He therefore concluded the stairs had a handrail when the architect drew the exhibit.

The expert explained that, in 2012, the State inspected The Condominium for maintenance code violations, not building code violations; while the maintenance code only requires handrails on either side of the stairs, the building code also requires one down the center.

The expert further testified, "And if the property manager were to visit that building, [the manager] would see bolts sticking out — you know, bolts in the threads, which . . . begs the question, why are those bolts there, why was that handrail there." He added:

> [I]f they had called upon a professional or somebody else to look at that and give them an opinion, that professional — it is reasonably probable that the professional would have told them, well, that was . . . a center handrail, and previous codes and standards required a center handrail. And I don't know who removed it, but it's not safe.

The expert also testified that Townsmen "should have recommended to the [A]ssociation that the handrail be reinstalled because it's a safety feature." He concluded, "[I]f the center handrail was there when [plaintiff] lost his balance, he could have grasped the handrail and regained his balance. . . . The lack of a center handrail was the substantial contributing factor to the fall."

After plaintiffs presented their case, defendants moved for a directed verdict, arguing plaintiff knew the stairs lacked a center handrail. The trial court agreed, concluding plaintiff was a licensee aware of the missing handrail. While the court acknowledged N.J.S.A. 46:8B-14 requires condominium associations to "maintain, repair, replace, clean, and sanitize the common elements," it found the record lacked proof defendants knew they needed to replace the handrail. As a result, the court granted defendants' motion for a directed verdict and dismissed plaintiffs' complaint with prejudice.

This appeal followed.

II

The same evidential standard governs motions for judgment, whether made under Rule 4:37-2(b) at the close of the plaintiff's case, under Rule 4:40-1 at the close of evidence, or under Rule 4:40-2(b) after the verdict, namely: "[I]f, accepting

as true all the evidence which supports the position of the party defending against the motion and according [that party] the benefit of all inferences which can reasonably and legitimately be deduced therefrom, reasonable minds could differ, the motion must be denied . . . ." Verdicchio v. Ricca, 179 N.J. 1, 30 (2004) (citations omitted) (quoting Estate of Roach v. TRW, Inc., 164 N.J. 598, 612 (2000)). A judge is not to consider "the worth, nature or extent (beyond a scintilla) of the evidence," but only review "its existence, viewed most favorably to the party opposing the motion." Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969).

An appellate court must essentially adhere to the same standard when reviewing the judge's order. Frugis v. Braciqliano, 177 N.J. 250, 269 (2003). We review the ruling de novo, using the same standard applied in the trial court. See Turner v. Wonq, 363 N.J. Super. 186, 198-99 (App. Div. 2003). Although we defer to the trial court's feel for the evidence, we owe no special deference to the trial court's interpretation of the law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Guided by this standard, we address plaintiffs' argument that the trial judge erred in granting defendants' motion for a directed verdict. Plaintiffs contend the evidence at least

raised a fact issue as to whether defendants breached the duty of care they owed plaintiff. Defendants argue the trial judge correctly granted their motion for a directed verdict because "the absence of a handrail down the center of the staircase — the sole alleged dangerous condition — was open, obvious, and known to [plaintiff]."

To establish a prima facie case of negligence, a plaintiff must set forth evidence that: (1) the defendant owed him or her a duty of care; (2) the defendant breached that duty; and (3) the defendant's breach of duty proximately caused plaintiff damages. See D'Alessandro v. Hartzel, 422 N.J. Super. 575, 579 (App. Div. 2011). The traditional approach to determining the duty of a landowner in a negligence case is dependent on whether the plaintiff is an invitee, licensee, or trespasser. Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 433 (1993) (citation omitted). In Hopkins, our Supreme Court stated that a premises liability analysis should no longer depend exclusively on those categorizations, but focus also on "whether in light of the actual relationship between the parties under all of the surrounding circumstances the . . . duty to exercise reasonable care . . . is fair and just." Id. at 438. The inquiry should be fact-sensitive and consider "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." Id. at 439 (citation omitted).

While the Court in Hopkins appeared to reject the traditional common law analysis of whether the plaintiff is an invitee, licensee, or trespasser, the Court later clarified that these categories continue to inform the duty analysis and "are a shorthand, in well-established classes of cases, for the duty analysis." Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 45 (2012). These shorthand categories, and their attendant standards of care, represent the application of the same four factors Hopkins considers; however, they allow the court to curtail the "full duty analysis" in cases where the injured party "falls squarely" into one of the categories. Id. at 44-45. Only in the cases where a plaintiff does not fit into the common law categories must a court perform the full duty analysis described in Hopkins. Estate of Desir ex rel. Estiverne v. Vertus, 214 N.J. 303, 317 (2013) (citation omitted).

The "common law classifications bear with them established duties on a sliding scale; 'as the legal status of the visitor improves, the possessor of land owes him [or her] more of an obligation of protection.'" Rowe, 209 N.J. at 43-44 (quoting Prosser and Keeton on Torts § 58, at 393 (5th ed. 1984)). Therefore, "[t]he duty of care owed to a [licensee] is greater

than that owed to a trespasser, but less than that owed to a business visitor." Parks v. Rogers, 176 N.J. 491, 497 (2003).

As the Court summarized in Rowe,

> The duty owed to a trespasser is relatively slight. A landowner, under most circumstances, has a duty to warn trespassers only of artificial conditions on the property that pose a risk of death or serious bodily harm to a trespasser. To the social guest or licensee, the landowner owes a greater degree of care. Although the owner does not have a duty actually to discover latent defects when dealing with licensees, the owner must warn a social guest of any dangerous conditions of which the owner had actual knowledge and of which the guest is unaware.
>
> Only to the invitee or business guest does a landowner owe a duty of reasonable care to guard against any dangerous conditions on his or her property that the owner either knows about or should have discovered. That standard of care encompasses the duty to conduct a reasonable inspection to discover latent dangerous conditions.
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> [209 N.J. at 44 (quoting Hopkins, 132 N.J. at 434) (internal citations omitted).]

Statutes are evidence of a defendant's duty of care. Eaton v. Eaton, 119 N.J. 628, 642 (1990). In Eaton, our Supreme Court addressed the issue of whether a violation of N.J.S.A. 39:4-97, the careless driving statute, constituted negligence or merely evidence of negligence. Id. at 632. In determining that proof of a N.J.S.A. 39:4-97 violation established negligence itself, the Court held that the very language of the careless driving

statute prohibited negligent driving. Id. at 643. Therefore, anyone violating the statute by driving carelessly is, by definition, negligent because negligence is defined as the absence of due care. Dolson, 55 N.J. at 10-11.

The Court in Eaton noted, however, that rarely will a violation of a statute establish negligence per se. The Court observed:

> Ordinarily, the determination that a party has violated a statutory duty of care is not conclusive on the issue of negligence, it is a circumstance which the jury should consider in assessing liability. . . . The reason is that statutes rarely define a standard of conduct in the language of common-law negligence. Hence, proof of a bare violation of a statutory duty ordinarily is not the same as proof of negligence.
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> [Eaton, 119 N.J. at 642 (internal citations omitted).]

"If a 'plaintiff does not fall within the class of persons for whose benefit the statute was enacted,' such statute is 'not applicable either as evidence of a duty or as evidence of negligence arising from a breach of such alleged duty.'" Badalamenti v. Simpkiss, 422 N.J. Super. 86, 101-02 (App. Div. 2011) (quoting Fortugno Realty Co. v. Schiavone-Bonomo Corp., 39 N.J. 382, 393 (1963)).

In this case, plaintiff clearly falls within the class of persons for whose benefit the statute was enacted. Pursuant to

the Act, the Association here had the responsibility for "[t]he maintenance, repair, replacement, cleaning, and sanitation of the common elements." N.J.S.A. 46:8B-14(a). As our Supreme Court previously recognized, "The most significant responsibility of an association is the management and maintenance of the common areas of the condominium complex." Thanasoulis v. Winston Towers 200 Ass'n, 110 N.J. 650, 656-57 (1988). In addition, this responsibility belongs exclusively to the Association because the Act statutorily prohibits unit owners from repairing or altering the common elements. N.J.S.A. 46:8B-18.

The Act specifically states that a condominium "association, acting through its officers or governing board, shall be responsible for the performance of the following duties, the costs of which shall be common expenses: (a) The maintenance, repair, replacement, cleaning and sanitation of the common elements." N.J.S.A. 46:8B-14. In addition, a condominium "association provided for by the master deed shall be responsible for the administration and management of the condominium and condominium property, including but not limited to the conduct of all activities of common interest to the unit owners." N.J.S.A. 46:8B-12.

Amicus New Jersey Association of Justice reminds us that the Association could have adopted a by-law immunizing it against negligence actions by unit owners. N.J.S.A. 2A:62A-13(a). Thus, as the Court noted in Qian v. Toll Bros., 223 N.J. 124, 127 (2015), the Legislature was aware that unit owners might sue condominium associations for accidents occurring in the common areas. In fact, the Act requires condominium associations to maintain liability insurance for personal injuries occurring due to accidents in the common areas. N.J.S.A. 46:8B-14(e).

We do not view plaintiff's status as a licensee or an invitee as the controlling issue. Instead, a statute establishes the Association's duty to plaintiff. Specifically, N.J.S.A. 46:8B-14(a) states that a condominium association shall be responsible for the performance of "the maintenance, repair, replacement, cleaning and sanitation of the common elements." Moreover, our Supreme Court has held that a condominium association "has a statutory obligation to manage the common elements . . . ." Qian, 223 N.J. at 127. We further note the Hotel and Multiple Dwelling regulations also require a center handrail for stairways of this width. N.J.A.C. 5:10-7.7(a)(1).

Based upon our review of the record and applicable law, we conclude the Association had a duty to the unit owners to

maintain the stairs, and that included a duty to replace the missing center handrail. Although the absence of a center handrail was obvious and not hidden, the Association and Townsmen were in a better position to know that the absence of a center handrail presented a safety issue and the need to correct it. Presumably, one of the reasons for the requirement of a center handrail on a wide staircase is because pedestrians will naturally tend to walk down the middle of the staircase, especially if a door opens onto the middle of the staircase; thus, without a center handrail, they have nothing to grasp if they should lose their balance. For this reason, the obviousness of the condition does not necessarily preclude liability.

Accordingly, we hold the Act establishes a duty of care that the Association owed to plaintiff. The testimony from plaintiff's expert fully supported their contention that defendants owed plaintiff a duty of care, they breached that duty, and their breach constituted a proximate cause of plaintiff's injuries. Whether the Association and Townsmen fulfilled the duty of care owed to plaintiff under the facts of this case remains a question for the jury.

Reversed and remanded. We do not retain jurisdiction.