SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4155-16T4

EILEEN CAPOZZI,

Plaintiff-Appellant,

v.

MICHAEL KILENSKI and TRACY KILENSKI,

Defendants-Respondents.

Submitted March 6, 2018 – Decided March 23, 2018

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-5973-15.

Lombardi & Lombardi, PA, attorneys for appellant (Paul R. Garelick, on the brief).

Law Offices of Marie A. Carey, attorneys for respondents (John M. Malaspina, on the brief).

PER CURIAM

Plaintiff Eileen Capozzi filed this action against defendants Michael and Tracy Kilenski, claiming she was injured when she tripped on a defective sidewalk abutting defendants' Dunellen

residence. Following discovery, summary judgment was entered dismissing plaintiff's complaint.

Plaintiff appeals, arguing in two points that defendants had a duty to maintain the abutting sidewalk and a duty to abate a known nuisance. We find insufficient merit in her arguments to warrant further discussion, R. 2:11-3(e)(1)(E), and add only a few comments.

First, we reject the contention that a Dunellen ordinance, which requires that residents maintain abutting sidewalks so they "will not constitute a hazard," provides a basis for imposing liability on defendants. Such ordinances have no bearing on whether tort liability may be imposed. Luchejko v. City of Hoboken, 207 N.J. 191, 200-01 (2011) (recognizing that an ordinance's inability to impose a tort duty has "remained unaltered for more than one hundred years").

Second, there is no significance to plaintiff's assertion that a prior owner rented the property to others rather than reside there himself. It is the use to which the property is put, not the nature of its ownership, that is relevant to the imposition of sidewalk liability. Id. at 201; see also Brown v. Saint Venantius Sch., 111 N.J. 325, 333 (1988). So long as the property was used as a residence by its occupants when the incident occurred – and there is no evidence to suggest otherwise – sidewalk liability

would not attach simply because years earlier a prior owner leased the premises to others.

Third, we reject plaintiff's argument that it is now time for our jurisprudence to further "evolve." The Supreme Court drew a clear line thirty-seven years ago, holding that "[t]he duty to maintain abutting sidewalks . . . is confined to owners of commercial property," Stewart v. 104 Wallace St., Inc., 87 N.J. 146, 159 (1981), and the Court has not wavered since, see Luchejko, 207 N.J. at 203. Any change to this common-law rule must come from the Supreme Court, not this court.

Affirm.