SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0010-21

KATHERINE A. O'KEEFE and
HAROLD J. O'KEEFE,

Plaintiffs-Appellants,

v.

GILBERT MARCOVICI,

Defendant-Respondent,

and

THE VILLAGE OF RIDGEWOOD,
THE VILLAGE OF RIDGEWOOD
DEPARTMENT OF PUBLIC
WORKS, THE VILLAGE OF
RIDGEWOOD ENGINEERING
DEPARTMENT, THE VILLAGE
OF RIDGEWOOD PARKS AND
SHADE TREE DEPARTMENT,
and THE VILLAGE OF
RIDGEWOOD STREET
DEPARTMENT,

Defendants.

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Argued December 7, 2022 – Decided December 13, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-0581-19.

Leonard P. Rosa argued the cause for appellants (Hartmann Doherty Rosa Berman & Bulbulia, LLC, attorneys; Leonard P. Rosa and Jay H. Ganatra, on the briefs).

Mario C. Colitti argued the cause for respondent (Law Office of Frank A. Viscomi, attorneys; Mario C. Colitti, on the brief).

PER CURIAM

In this residential sidewalk slip-and-fall case, plaintiffs Katherine A. O'Keefe and her husband Harold J. O'Keefe[1] appeal from the Law Division's July 23, 2021 order granting defendant Gilbert Marcovici's motion for summary judgment and dismissing their complaint with prejudice. Plaintiffs also challenge the trial court's August 27, 2021 order denying their motion for reconsideration. Having considered plaintiffs' contentions in light of the record and the applicable law, we affirm.

Katherine alleged that while she was walking on the sidewalk outside Marcovici's home, she caught her foot on an elevated section of the sidewalk

[1] Because plaintiffs share the same surname, we refer to them by their first names to avoid confusion. In doing so, we intend no disrespect.

and fell. She used her hand to break her fall and suffered a fracture in her hand, two broken teeth, and abrasions to her face and knee. That same day, Katherine returned to the spot where she fell with Harold. Katherine estimated that a corner of a sidewalk panel was raised approximately one inch from the adjoining panel. However, plaintiffs did not take any measurements of the alleged elevation.

Plaintiffs took photographs of the sidewalk that were admitted in evidence. At oral argument, plaintiffs' attorney conceded the photographs were "not the best quality."

Katherine alleged at her deposition that because portions of the sidewalk were a lighter color than the rest of the sidewalk, Marcovici must have attempted to repair the sidewalk. However, plaintiffs presented no evidence indicating the nature of any such repairs, when they were made, or that Marcovici was the person who made them.[2]

Plaintiffs also submitted a copy of a municipal ordinance which stated that the owner of real property on a public street was required to maintain the

[2] It is not clear from the record whether plaintiffs deposed Marcovici or sought written discovery from him. If plaintiffs did, these discovery materials were not submitted as exhibits during the trial court's consideration of the summary judgment motions.

sidewalks in front of or abutting that property. Plaintiffs did not present an expert report opining that Marcovici was in violation of this ordinance, the sidewalk presented a hazard to the general public, or that the condition of the sidewalk indicated it had been repaired at some time before or after Katherine's fall.

Katherine filed a personal injury complaint against Marcovici and several municipal entities. Harold asserted a derivative per quod claim as Katherine's spouse and sought compensation for loss of consortium.

After the end of the discovery period, Marcovici filed a motion for summary judgment.[3] Plaintiffs opposed the motion.

Following oral argument, the trial judge granted Marcovici's motion and dismissed plaintiffs' complaint with prejudice. In a comprehensive oral decision, the judge found that Marcovici was not civilly liable to plaintiffs based on this State's long-settled principles of common law immunity for sidewalk liability for residential property owners. The judge also found that plaintiffs presented no competent evidence that Marcovici negligently constructed or repaired the sidewalk prior to the date Katherine fell. In so ruling, the judge

[3] The municipal defendants also moved for summary judgment. Plaintiffs did not oppose this motion, and the trial court granted it. Plaintiffs do not challenge the dismissal of their case against the municipal defendants in this appeal.

noted that plaintiffs took no measurements of the alleged raised portion of the sidewalk panel, and presented no expert testimony as to whether a raised sidewalk panel presented a dangerous condition.

The trial court thereafter denied plaintiffs' motion for reconsideration and provided a written statement of reasons supporting that decision. This appeal followed.

On appeal, plaintiffs repeat the same contentions they unsuccessfully presented to the Law Division. Plaintiffs argue that the trial court erred by: (1) failing to view the evidence in the light most favorable to them; (2) holding that the municipal ordinance did not create a standard of care; (3) ruling that plaintiffs could only establish liability by providing an expert report and opinion; and (4) denying their motion for reconsideration. We disagree.

Our review of a trial court's grant of summary judgment is de novo, applying the same legal standard as the trial court. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). Under that standard, summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show that there are no "genuine issues of material fact" and that "the moving party is entitled to summary judgment as

a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat, 217 N.J. at 38); see also R. 4:46-2(c).

"An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande, 230 N.J. at 24 (quoting Bhagat, 217 N.J. at 38). We owe no special deference to the motion judge's legal analysis. RSI Bank, 234 N.J. at 472 (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016)).

We have considered plaintiffs' contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant extended discussion in a written opinion. See R. 2:11-3(e)(1)(E). We are satisfied the trial judge properly granted summary judgment to Marcovici, and correctly denied plaintiffs' motion for reconsideration. We affirm substantially for the reasons expressed in the trial judge's thorough oral and written opinions. We add the following comments.

It is well established that "absent negligent construction or repair," a residential property owner like Marcovici "does not owe a duty of care to a pedestrian injured as a result of the condition of the sidewalk abutting the

landowner's property." Mohamed v. Inglesia Evangelica Oasis De Salvacion, 424 N.J. Super. 489, 492 (App. Div. 2012) (citing Stewart v. 104 Wallace Street, 87 N.J. 146, 153 (1981)). Thus, Marcovici enjoyed "blanket immunity" from sidewalk liability. Lodato v. Evesham, 388 N.J. Super. 501, 507 (App. Div. 2006).

Contrary to plaintiffs' contention, there is no evidence in the record that Marcovici made any repairs to the sidewalk or otherwise created a dangerous condition on the pavement outside his home. See Luchejko v. City of Hoboken, 207 N.J. 191, 210 (2011) (stating that absent competent evidence establishing they "create[d] or exacerbate[d] a dangerous sidewalk condition[,]" residential landowners do not owe a duty to pedestrians to maintain the sidewalks abutting their property). Katherine could only speculate from the color of the pavement that a repair was made. She did not describe the alleged repair in any detail and plaintiffs submitted no evidence that even assuming there was a repair, Marcovici was responsible for making it, exactly where it was made on the panel, or when it was made.

Contrary to plaintiffs' argument on appeal, the trial judge did not grant Marcovici's motion solely because they failed to produce an expert to support their claims. However, plaintiffs' decision not to offer expert evidence meant

they had no means of establishing the exact elevation of the sidewalk panel, the cause of that elevation, whether the panel had ever been repaired, the nature of the repair, when any repair may have been performed, or whether the repair was improperly made or caused a hazardous condition.

Plaintiffs' reliance upon the municipal ordinance stating that landowners are responsible for maintaining sidewalks outside their homes is also misplaced. In Luchejko, our Supreme Court reaffirmed the longstanding precedent regarding a private citizen's breach of an ordinance:

> First, it has long been the law in this state that breach of an ordinance directing private persons to care for public property
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> > shall be remediable only at the instance of the municipal government . . . and that there shall be no right of action to an individual citizen especially injured in consequence of such breach. The most conspicuous cases of this sort are those that deny liability to private suit for violation of the duty imposed by ordinance upon abutting property-owners to maintain sidewalk pavements or to remove ice and snow from the walks.
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> [Luchejko, 207 N.J. at 200 (emphasis in original) (quoting Fielders v. N. Jersey St. Ry. Co., 68 N.J.L. 343, 352 (E. & A. 1902)).]

Here, plaintiffs failed to demonstrate that Marcovici violated the municipal ordinance and, even if they had, this violation could not provide the basis for liability in this sidewalk slip-and-fall case. Ibid.

Finally, the trial judge properly denied plaintiffs' motion for reconsideration. We review the denial of a motion for reconsideration to determine whether the trial court abused its discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). "Reconsideration cannot be used to expand the record and reargue a motion." Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008). A motion for reconsideration is meant to "seek review of an order based on the evidence before the court on the initial motion . . . not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record." Ibid. (citation omitted).

For these reasons, reconsideration should only be granted in "those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings, 295 N.J. Super. at 384 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). Therefore,

we have held that "the magnitude of the error cited must be a game-changer for reconsideration to be appropriate." Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010).

In their motion for reconsideration, plaintiffs merely repeated the same arguments they unsuccessfully presented in opposition to Marcovici's motion for summary judgment. Therefore, the trial judge did not abuse his discretion by denying their motion. Cummings, 295 N.J. Super. at 389.

Affirmed.