SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2401-20

KARIMAH M. SHARIF,
a/k/a KARIMAH SHARIF,

Plaintiff-Appellant,

v.

DOMINANT DOMAIN, LLC,
and LADYBLIVIN LIMITED
LIABILITY COMPANY, a/k/a
LADY BLIVIN, LLC,

Defendants-Respondents.

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Argued November 29, 2022 – Decided March 14, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6983-18.

Christopher T. Karounos argued the cause for appellant (Davis, Saperstein & Salomon, PC, attorneys; Christopher T. Karounos, on the brief).

Mary Beth Ehalt argued the cause for respondents (Law Offices of Linda S. Bauman, attorneys; Mary Beth Ehalt, of counsel and on the brief).

PER CURIAM

In this slip and fall premises liability action, plaintiff Karimah Sharif appeals two Law Division orders, the first granting summary judgment to defendant and dismissing all claims with prejudice and the second denying reconsideration. We affirm both orders.

In reviewing a grant of summary judgment, we apply the same standard set forth in Rule 4:46-2(c) that governs the trial court. See Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007). We must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Viewed most favorably to plaintiff, the summary judgment record established the following facts.

On the afternoon of March 16, 2017, plaintiff slipped and fell descending the exterior steps of the rear entrance to a commercial building. The exterior consists of five steps and a landing. On the morning of the incident, plaintiff had been visiting her son, who maintained an office in the building. At her deposition, plaintiff testified she had no difficulty ascending the stairs on her

way in and did not notice any ice, but as she left, she "started down the stairs, and ended up on the ground." Plaintiff testified she "saw ice on the bottom steps," although she could not recall exactly how many of the five steps had ice. Plaintiff testified although she saw the ice on the bottom steps, she did not recall seeing ice on the top "couple of steps" which she claimed to have slipped on. Plaintiff also testified she did not recall seeing the ice which she believed caused her to slip and fall, and did not recall how many steps she took, or which step she was on when she fell.

Following the fall, plaintiff could not stand up, but sat upright and called for Jamie Tortorici, one of Bonnie O'Brien's staff members. O'Brien owns Ladyblivin, the proprietor of the building, which leases part of the premises to Transition Professions, a re-entry program run by O'Brien. After seeing plaintiff on the ground and asking what happened, Tortorici alerted O'Brien. When O'Brien came out of the building, plaintiff refused an ambulance and denied being in pain at the time.

It did not snow or rain on the day of the incident, and plaintiff testified she did not recall the last time it snowed, although she did recall seeing some patches of snow on the ground and in the parking lot adjacent to the building. Plaintiff testified the weather was clear. O'Brien testified at her deposition that

the weather was "cool" but not freezing cold on the day of the incident. O'Brien testified there was no precipitation on the steps, although there were leftover piles of snow that had been previously cleared in the parking lot. She testified that after the accident she immediately inspected the area and did not observe any ice on the stairs.

O'Brien did not have written procedures for inspecting the steps in the winter. Instead, she and John Urchak, her operations manager, examined the steps each time they entered or exited the building. They kept salt and a shovel nearby in case they needed to remove snow or ice. O'Brien testified she was careful in maintaining her premises because she and another staff member both suffered from disabilities. Given how often she and Urchak came and went, the stairs were inspected up to twenty times a day. On the day of the incident, however, O'Brien had entered the building only once before plaintiff fell.

Plaintiff's counsel showed O'Brien several photos of the building's rear stairs.[1] When asked about "any problems with either the roof, the soffit, the gutters, or any of the drainage . . . where plaintiff allege[d] she fell," O'Brien denied any existed. At some point during the exchange regarding the various

[1] The fall occurred at the rear of the property. The photos depict a sign stating "ALL VISITORS MUST USE FRONT ENTRANCE ONLY." Neither party addressed this sign in their briefs.

photos, O'Brien testified: "If the weather was cold or anywhere near freezing, I would make sure that we kept [salt] on the steps."

Following the accident, plaintiff filed a three-count complaint alleging negligence against Ladyblivin LLC and Dominant Domain LLC. Both defendants represent Dominant Domain is not involved in the operation of the building. Plaintiff attributes liability to both defendants.

After discovery concluded, defendants moved for summary judgment, asserting there were no disputed issues of material fact, and no evidence to demonstrate they possessed actual or constructive notice of a dangerous condition on the stairs. In opposition, plaintiff asserted defendants caused an inherently dangerous condition, thereby rendering notice unnecessary. Plaintiff claimed there was a leak in the gutter above the steps O'Brien failed to discover and contended whether O'Brien and her staff had an adequate procedure to check the stairs for ice is a jury question.

In granting defendants' summary judgment motion, the trial court rejected plaintiff's claims regarding actual or constructive notice of a dangerous condition. Noting the lack of an expert liability report to establish a standard of care regarding snow removal protocols, and the undisputed fact O'Brien inspected the steps several times a day, the trial court found the record "devoid"

of evidence demonstrating defendant knew of a dangerous condition or there was a dangerous condition at the time of the fall. The court also noted the undisputed facts that there was no precipitation on the day in of the incident, plaintiff ascended the stairs that morning without noticing any ice, and found plaintiff failed to establish a prima facie case of premises liability.

Plaintiff moved for reconsideration, submitting – for the first time – weather reports from the days before and day of the incident. Plaintiff alleged the trial court failed to consider the weather reports and overlooked disputed material facts with respect to duty and notice requirements. On March 22, 2021, after entertaining oral argument, the trial court denied reconsideration.

Plaintiff appealed both trial court orders, arguing there are issues of material fact precluding summary judgment and the trial court failed to properly reconsider whether defendants were negligent in maintaining the property. We disagree.

"[T]he movant must show that there does not exist a 'genuine issue' as to a material fact and not simply one 'of an insubstantial nature'[.]" Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998) (quoting Brill, 142 N.J. at 529-30). Assertions that are unsupported by evidence "[are] insufficient to create a genuine issue of material fact." Miller v. Bank of

Am. Home Loan Servicing, L.P., 439 N.J. Super. 540, 551 (App. Div. 2015) (alteration in original) (quoting Heyert v. Taddese, 431 N.J. Super 388, 414 (App. Div. 2013)). "Competent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments.'" Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 426 (App. Div. 2009) (quoting Merchs. Express Money Order Co. v. Sun Nat'l Bank, 374 N.J. Super. 556, 563 (App. Div. 2005)).

In reviewing whether a party is entitled to summary judgment as a matter of law, an appellate court must keep in mind that "an issue of 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." Bhagat v. Bhagat, 217 N.J. 22, 38 (2014) (quoting R. 4:46-2(c)). "The practical effect of [Rule 4:46-2(c)] is that neither the motion court nor an appellate court can ignore the elements of the cause of action or the evidential standard governing the cause of action."

To establish a prima facie case of negligence, a plaintiff must establish: "(1) a duty of care owed to plaintiff by defendant, (2) a breach of that duty by defendant, (3) proximate cause, and (4) actual damages." Meier v. D'Ambose,

419 N.J. Super. 439, 444 (App. Div. 2011). "The plaintiff bears the burden of proving each of these elements." Ibid. Furthermore, "'[n]egligence is conduct which falls below the standard established by law for the protection of others against an unreasonable risk of harm.'" Pfenninger v. Hunterdon Cent. Reg'l High Sch., 167 N.J. 230, 240 (2001) (quoting Restatement (Second) of Torts § 282 (Am. Law Inst. 1965)). "Negligence is a fact which must be shown and which will not be presumed." Long v. Landy, 35 N.J. 44, 54 (1961).

"Business owners owe to invitees a duty of reasonable or due care to provide a safe environment for doing that which is within the scope of the invitation." Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563 (2003). "The duty of due care to a business invitee includes an affirmative duty to inspect the premises and 'requires a business owner to discover and eliminate dangerous conditions, to maintain the premises in safe condition, and to avoid creating conditions that would render the premises unsafe.'" Troupe v. Burlington Coat Factory Warehouse Corp., 443 N.J. Super. 596, 601 (App. Div. 2016) (quoting Nisivoccia, 175 N.J. at 563).

"No functional basis exists to differentiate" or "apply a different standard of conduct when a dangerous situation arises" from "an accumulation of snow or ice" than "from other hazards." Mirza v. Filmore Corp., 92 N.J. 390, 395

(1983). A commercial defendant has a duty to address snow accumulations in its parking lots and pathways within a reasonable time after a storm. See Pareja v. Princeton Int'l Prop., 246 N.J. 546, 554-56 (2021) (detailing evolution of sidewalk liability in snow and ice accumulation cases).

A plaintiff must propound evidence defendant had actual or constructive notice of an alleged dangerous condition for an injury occurring in a parking lot or exterior pathway. See Nelson v. Great Atl. & Pac. Tea Co., 48 N.J. Super. 300, 306-07 (App. Div. 1958) (reversing dismissal where plaintiff demonstrated defendant was on notice when a parking lot light had been out for a week). A defendant may counter with evidence it conducted regular inspections of the site where the injury occurred. See Szalontai v. Yazbo's Sports Cafe, 183 N.J. 386, 401 (2005) (affirming summary judgment where uncontradicted testimony demonstrated property owner periodically inspected the area and "saw nothing amiss").

Constructive notice is established by proof that the condition existed "for such a length of time as reasonably to have resulted in knowledge and correction had the defendant been reasonably diligent." Troupe, 443 N.J. Super. at 602 (quoting Parmenter v. Jarvis Drug Stores, Inc., 48 N.J. Super. 507, 510 (App. Div. 1957)). "Constructive notice can be inferred in various ways." Ibid. "The

characteristics of the dangerous condition giving rise to the slip and fall or eyewitness testimony may support an inference of constructive notice about the dangerous condition." Ibid. (citations omitted). Plaintiff must also demonstrate actual or constructive knowledge of any alleged structural flaws leading to a dangerous condition. See Brown v. Racquet Club of Bricktown, 95 N.J. 280, 290-91 (1984).

Having carefully reviewed plaintiff's arguments in light of the record and applicable legal principles, we affirm both the summary judgment order and the order denying reconsideration. We agree with the trial court's conclusion there was no genuine issue of material fact with respect to whether O'Brien had actual or constructive notice of an icy condition prior to plaintiff's fall. Plaintiff could not recall seeing ice either prior or after her fall at her deposition. She failed to produce documentary evidence of weather conditions during discovery that could have proven ice accumulated on the steps between the time she went into the building in the morning and some unspecified time in the afternoon, which she cannot recall, when she exited the building. She also produced weather reports for her reconsideration motion only after summary judgment had been granted to defendants. She testified she could not recall the last time it snowed or precipitated, and she did not recall seeing the ice she slipped on. "Bald

assertions [in a certification] are not capable of either supporting or defeating summary judgment." Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 97-98 (App. Div. 2014) (citing Puder v. Buechel, 183 N.J. 428, 440-41 (2005)).

The uncontradicted testimony here, as in Szalontai, 183 N.J. at 401, reveals O'Brien and her staff frequently checked the exterior pathways around the building. O'Brien testified she did not see any ice or precipitation in the frequently inspected area either before or after the accident. Plaintiff's sworn deposition testimony demonstrates she could not recall seeing ice or precipitation upon entering the building and could not recall seeing ice on the steps which caused her to fall either before or after the accident. Plaintiff cannot demonstrate O'Brien had actual or constructive notice of an icy condition and is entitled to judgment as a matter of law.

In Mirza, the plaintiff produced sufficient evidence of the commercial landowner's knowledge of an icy sidewalk, proffering evidence "[i]t had snowed three or four days before [the fall,]" "it had also snowed during the night[,]" and "[t]he defendant had inspected the sidewalk but had neither removed the snow that had fallen initially, nor attempted to remove or lessen the danger when the snow had become ice." Mirza, 92 N.J. at 393.

Unlike Mirza, plaintiff offered no competent evidence to demonstrate actual notice to defendants, and no evidence to demonstrate constructive notice of a dangerous condition. We agree with the motion court's conclusion there was no genuine issue of material fact with respect to defendant's actual or constructive notice of any ice at the top of the steps prior to plaintiff's fall.

Given the lack of competent proofs, reconsideration based on negligible "new" information – a weather report from the surrounding area – was appropriately denied, particularly because this information was available to plaintiff during the discovery period and prior to the court's decision to grant summary judgment but was not proffered until the motion for reconsideration. "[I]f a litigant wishes to bring new or additional information to the Court's attention which it could not have provided on the first application, the Court should, in the interest of justice . . . consider the evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). "Nevertheless, motion practice must come to an end at some point . . . [t]hus, the Court must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration." Ibid.

To the extent plaintiff attempted to allege a structural defect of an adjacent gutter which may have dripped and caused a patch of ice, she proffered no expert

report about the construction, design, condition, or maintenance of the gutter, or its placement in relation to the stairs. See D'A'lessandro v. Hartzel, 422 N.J. Super. 575, 581 (App. Div. 2011) ("mere allegations of a design flaw or construction defect, without some form of evidentiary support, will not defeat a meritorious motion for summary judgment."). Her arguments on this point are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Plaintiff failed to establish a prima facie case of negligence and defendants are entitled to summary judgment as a matter of law.

Affirmed.