SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2592-21

CAROL SMITH,

Plaintiff-Appellant,

v.

COSTCO WHOLESALE CORPORATION, NORTH PLAINFIELD UE, LLC, and MICHAEL FREEMAN,

Defendants/Third-Party Plaintiffs-Respondents,

and

COSTCO WHOLESALE CORPORATION and MIKE FREEMAN,

Defendants/Third-Party Plaintiffs-Respondents,

v.

CHUX LANDSCAPING, INC.,
d/b/a ARTISAN LANDSCAPES
AND POOLS,

Defendant/Third-Party
Defendant-Respondent.

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Argued May 23, 2023 – Decided July 3, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-1836-19.

Christopher F. Struben argued the cause for appellant Carol Smith (Percario, Nitti & Struben, attorneys; Christopher F. Struben, on the brief).

Robert A. Ballou argued the cause for respondents Costco Wholesale Corporation, Michael Freeman and North Plainfield, UE, LLC (Garvey Ballou, PA, attorneys; Robert A. Ballou, on the brief).

Frederick E. Blakelock argued the cause for respondent Chux Landscaping, Inc. d/b/a Artisan Landscapes and Pools (Reilly, McDevitt & Henrich, PC, attorneys; Collen M. McCafferty, on the brief).

PER CURIAM

Plaintiff appeals from an order granting summary judgment to defendants, Costco Wholesale Corporation, North Plainfield UE, LLC, and Michael Freeman (collectively, the Costco defendants) and Chux Landscaping, Inc.

(Chux).[1] We agree with the trial court that plaintiff cannot establish defendants owed her a duty of care because the ongoing storm rule adopted by the Supreme Court in Pareja v. Princeton International Properties, 246 N.J. 546 (2021) applies. Plaintiff's argument the ongoing storm rule does not apply to privately-owned commercial property lacks merit, and no exception to the ongoing storm rule applies to the facts of this case. We affirm.

In March 2018, plaintiff slipped and fell outside of a Costco Wholesale store, injuring herself. On the day of the incident, the Governor had declared a state of emergency for all of New Jersey due to inclement weather from a major snowstorm. Between 1:30 a.m. and 12:00 p.m., approximately one half of an inch of snow fell. After 12:00 p.m., as the temperature settled at freezing, snowfall became heavy, accumulating at a rate of one to two inches per hour. By 5:30 p.m., the rate of precipitation started to lessen, ceasing entirely at approximately 8:30 p.m. A total of approximately eight inches of snow accumulated throughout the duration of the storm.

During the storm, plaintiff drove to Costco, parked in the parking lot, and went inside to shop. The storefront was not far from where she parked her

[1] Chux is the company contracted to provide snow and ice removal services to Costco. They provided the snow removal services for this storm.

vehicle. Her receipt demonstrates she left the store at 2:13 p.m. Plaintiff left the store, carrying only her purse, to get her car, intending to drive it back to the entranceway, and load the items she bought into her vehicle before she drove home. She stated she was told by one of the store employees to leave her cart in the exit way of the store. As plaintiff walked to her vehicle, she slipped backwards and fell in the area between the entrance doors and red bollards prior to entering the parking lot, injuring herself. Plaintiff stated there were several inches of snow on the ground when she fell.

Defendants moved for summary judgment, and in March 2022, the trial court granted defendants' motion. Reasoning "[t]he present case is on all fours with Pareja[,]" the trial court found defendants did not owe a duty of care to remove the snow from the area where plaintiff fell because the snowstorm was still ongoing at the time of plaintiff's incident, concluding hours later.

The trial court rejected plaintiff's argument that Pareja only applies to public property, finding whether the sidewalk was public or private is immaterial to the holding in Pareja, and the plaintiff in Pareja fell on a driveway apron owned by the defendant, which was private property. In the trial court's view, to limit the ongoing storm rule in this manner would be inapposite to its purpose

of relieving commercial landowners from the impracticability of clearing snow and ice during an ongoing storm.

The trial court also found no exception to Pareja was applicable, finding no evidence existed to prove either defendants "exacerbated the risk of harm to the plaintiff" other than the risk presented by the snowstorm itself, or "a pre-existing condition, such as uncleared remnants of prior snow events, caused or contributed in any way to the [p]laintiff's accident."

We review orders granting summary judgment de novo and apply the same standard as the trial court. Lee v. Brown, 232 N.J. 114, 126-27 (2018). "[S]ummary judgment will be granted if[,]"viewing the evidence in the light most favorable to the non-moving party, "there is no genuine issue of material fact and 'the moving party is entitled to a judgment or order as a matter of law.'" Conley v. Guerrero, 228 N.J. 339, 346 (2017) (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016)); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2(c). To determine whether there are genuine issues of material fact, we 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." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill, 142 N.J. at 540).

"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 v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). The trial court did not err in granting summary judgment to defendants, and we find no reason to disturb the trial court's ruling.

It is well settled the plaintiff in a negligence action must prove: defendant owed plaintiff a duty of care, defendant breached that duty, the breach actually and proximately caused the plaintiff's injury, and damages. Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 584 (2008)); Davis, 219 N.J. at 406. With respect to a commercial landowner, its duty to maintain safe premises extends to any area in which invitees are expected to go and requires them to protect an invitee from "known or reasonably discoverable dangers." Moore v. Schering Plough, Inc., 328 N.J. Super. 300, 305 (App. Div. 2000) (quoting Rigatti v. Reddy, 318 N.J. Super. 537, 541 (App. Div. 1999)); Monheit v. Rottenberg, 295 N.J. Super. 320, 325-26 (App. Div.

1996) (quoting Cahill v. Mundet Cork Corp., 70 N.J. Super. 410, 415 (App. Div. 1961)). Specifically, a commercial landowner has a duty to dispose of snow and ice in its parking lots and walkways. Moore, 328 N.J. Super. at 307.

Our Supreme Court adopted the ongoing storm rule in Pareja, 246 N.J. at 558. There, the plaintiff slipped, fell, and injured himself on a driveway apron, which was private property owned by the defendant, Princeton International. Id. at 548. In the early morning hours prior to the incident, freezing rain, light rain, and sleet had fallen. Id. at 549. At the time of plaintiff's injury, precipitation was ongoing. Ibid.

The Court held "commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion of the storm." Id. at 558. In adopting this rule, the Court relieved commercial landowners of the duty to continuously clear snow and ice from their property throughout the duration of an inclement winter weather event. Id. at 557.

> [S]uch a duty does not consider the size, resources, and ability of individual commercial landowners or recognize that what may be reasonable for larger commercial landowners may not be reasonable -- or even possible -- for smaller ones. While we trust juries to uphold their duties to evaluate reasonableness, we do not wish to submit every commercial landowner to litigation when it is not feasible to provide uniform, clear guidance as to what would be reasonable. We

> decline to impose a duty that cannot be adhered to by all commercial landowners.
> [Ibid. (footnote omitted).]

Here, it is undisputed by the parties that plaintiff's slip-and-fall occurred during the snowstorm. In fact, the storm did not end until many hours after plaintiff fell. Thus, the ongoing storm rule applies, relieving defendants of any duty of care they may have owed plaintiff.

Plaintiff argues the ongoing storm rule does not apply because her injury occurred on private property owned by the Costco defendants. In plaintiff's view, Pareja was meant to apply only to incidents occurring on public property, not private property. We find this argument without merit. Based upon a plain reading of Pareja, there is no indication the Supreme Court's ruling was limited in this manner. Plaintiff seems to derive the support for her argument from a single sentence in Pareja: "For the first time, this Court considers the adoption of the ongoing storm rule, under which a landowner does not have a duty to remove snow or ice from public walkways until a reasonable time after the cessation of precipitation." Id. at 548. It is axiomatic "public walkways" are not synonymous with public property. Later in the Court's opinion, it unambiguously holds "under the ongoing storm rule, commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion

of the storm." Id. at 558. The first statement is merely a recitation of the issue. There is no indication anywhere in the opinion that the Court intended to apply the ongoing storm rule only to public property, nor does logic or caselaw support such a conclusion.

The Supreme Court in Pareja recognized removing snow during an ongoing storm is an "impossible burden" and "categorically inexpedient and impractical." Id. at 557-58. It found the ongoing storm rule was "consistent with our case law" "[g]iven the unreasonableness of removing the accumulation of snow and ice while a storm is ongoing." Id. at 558. The "Sisyphean" task, id. at 553, of removing snow while it is still snowing is just as burdensome to commercial landowners on private property as it is on public property. The Court specifically described the ongoing storm rule as suspending a landowner's duty "until a reasonable time after the cessation of precipitation" and said the landowner's duty arises "within a reasonable time after the storm." Id. at 548, 558.

In addition, plaintiff has failed to illustrate an exception to the ongoing storm rule applies. Pareja identified two categorical exceptions to the ongoing storm rule: (1) if the commercial landowner exacerbates the risk of harm; or (2)

when there was a pre-existing risk of harm on the premises prior to the storm. Id. at 559.

Plaintiff contends defendants exacerbated the risk of injury because they did not allow her to take her shopping cart with her to her vehicle. In plaintiff's view, were she allowed to bring her cart with her as she trekked the snow-laden parking lot, she could have used it as a means of support and would not have fallen. Plaintiff also argues defendants exacerbated the risk of harm to her by commencing snow removal operations prior to the storm's conclusion.

Neither of the exceptions to the ongoing storm rule are applicable. The Pareja Court highlighted a case from Rhode Island in discussing what would increase the risk of harm such that the ongoing storm rule would not apply. See Terry v. Cent. Auto Radiators, Inc., 732 A.2d 713 (R.I. 1999). In that case, the defendant took plaintiff's car and moved it far across the premises, forcing the plaintiff to walk a long distance over icy terrain. Id. at 717-18. Here, plaintiff's car was a short distance from the entrance of the Costco, where she parked it during the on-going storm. Plaintiff also did not tell any of the employees she intended to use the shopping cart to support herself as she walked to her car, and she left the cart there purposefully, as admitted at her deposition, because she wanted to pull her car to the front of the red bollards so it would be easier for

her to load the items she had just purchased into the vehicle. Additionally, plaintiff has presented no evidence to establish the snow removal was done in any sort of manner that would have increased the risk of harm to her.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION