NO. COA01-1248

NORTH CAROLINA COURT OF APPEALS

Filed: 18 June 2002

RUBY L. STUBBS,
Plaintiff

v.

New Hanover County
No. 00 CVS 2673

NICHOLAS HOLDINGS, L.P.,
and WANDA J. CRANFORD,
dba GRAYSTONE INN,
Defendants

Appeal by plaintiff from judgment entered 10 July 2001 by Judge Ernest B. Fullwood in New Hanover County Superior Court. Heard in the Court of Appeals 22 May 2002.

John K. Burns for plaintiff-appellant.

Anderson, Johnson, Lawrence, Butler & Bock, L.L.P., by J. Stewart Butler, III, for defendants-appellees.

WALKER, Judge.

On 9 August 1997, plaintiff was entering Graystone Inn in Wilmington to assist her husband in a wedding. In the center of the front walkway was a large plant with space to walk around on either side. As plaintiff was approaching the front entrance to the inn, she went to the right of the plant and tripped on the uneven concrete in the walkway. She fractured her left wrist, injured her right elbow, suffered nerve damage in her left arm, and suffered trauma-induced bilateral carpal tunnel syndrome.

Plaintiff filed suit for personal injury alleging negligence on the part of defendants. Defendants motioned for summary judgment which was granted.

Summary judgment should be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Von Viczay v. Thoms*, 140 N.C. App. 737, 738, 538 S.E.2d 629, 630 (2000), *aff'd*, 353 N.C. 445, 545 S.E.2d 210 (2001). The plaintiff must prove that the defendants owed the plaintiff a duty, the defendants breached that duty, the breach by the defendants was a proximate cause of the plaintiff's injury, and the injury was reasonably foreseeable under the circumstances. *Id.* Defendants contend they owed no duty to plaintiff.

"A landowner is under no duty to protect a visitor against dangers either known or so obvious and apparent that they reasonably may be expected to be discovered." *Id.* at 739, 538 S.E.2d at 631. Further, "a landowner need not warn of any 'apparent hazards or circumstances of which the invitee has equal or superior knowledge.'" *Id.* (*quoting Jenkins v. Lake Montonia Club, Inc.*, 125 N.C. App. 102, 105, 479 S.E.2d 259, 262 (1997)). This Court has recently held "a plaintiff may not recover in a negligence action where the hazard in question should have been obvious to a person using reasonable care under the circumstances." *Dowless v. Kroger Co.*, 148 N.C. App. 168, ___, 557 S.E.2d 607, 609 (2001).

Here, in her deposition, plaintiff admitted that prior to the date of the accident, she had been to the Graystone Inn "quite a few times." Prior to the accident, she had noticed "the sidewalk was all cracked up. I knew it was cracked up." She also admitted that "I knew I could go to the left or I could go to the right but I was going right." The cracks in the sidewalk were mainly to the right of the plant.

Where a plaintiff presents evidence of "'some fact, condition, or circumstance which would or might divert the attention of an ordinarily prudent person from discovering or seeing an existing dangerous condition,'" it presents a question of fact for the jury of whether there was an obvious danger to a person using ordinary care for her own safety under similar circumstances. *Id.* at ___, 557 S.E.2d at 610 (*quoting Walker v. Randolph County*, 251 N.C. 805, 810, 112 S.E.2d 551, 554 (1960)).

Here, plaintiff failed to present any such evidence. She did not allege in her deposition that the circumstances were such that her attention was diverted from the sidewalk. She was not attempting to avoid any other conditions such as traffic or people nor did she testify that her view of the ground was obscured in any way. Instead, she testified that she was walking five feet behind her husband and there was no one else on the sidewalk near her. She was not carrying anything in her hands and her vision of the ground was not obscured. She further testified that she knew the planter was in the walkway and that there were cracks in the sidewalk, but she was not looking at her feet. Thus, we find there was no

forecast of evidence of circumstances which present a question of fact on whether there was an obvious danger to someone exercising reasonable care.

We find the trial court did not err in granting defendants' motion for summary judgment. The order of the trial court is

Affirmed.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).