STATE OF MICHIGAN

COURT OF APPEALS

LORRAINE CARSON,

Plaintiff-Appellant,

v

JOHNNY'S NURSERY, INC.,

Defendant-Appellee.

UNPUBLISHED
December 8, 2000

No. 211146
Wayne Circuit Court
LC No. 96-602897-NO

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment in favor of defendant. Plaintiff actually challenges an order denying her motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, new trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At approximately 9:00 a.m. on February 19, 1994, plaintiff, then seventy-two years old, fell in the parking lot of the Lincoln Park Post Office. Defendant had a contract with the post office to clear the parking lot of snow accumulations of two inches or more, and to spread salt at its discretion, depending on existing conditions and the weather forecast.

Plaintiff filed suit alleging that defendant breached its duty to maintain the lot in a reasonably safe condition. At trial, plaintiff testified that she slipped on a large patch of ice in the post office parking lot. Defendant introduced evidence consisting of climatological data showing that the last precipitation fell five days before plaintiff's accident, and that the temperature had not dropped below forty-two degrees for approximately twenty-four hours prior to the accident.

Defendant moved for a directed verdict, arguing that based on the weather conditions as established by the climatological data, it had no duty to salt the post office parking lot on the day of plaintiff's accident. The trial court granted the motion, finding that given the climatological data, reasonable jurors could not disagree as to whether defendant had an obligation to act in a different manner.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff moved for JNOV or, in the alternative, new trial. The trial court denied the motion, finding again that reasonable jurors could not disagree on whether defendant had an obligation to salt the parking lot in light of the temperatures in the hours prior to the accident.

JNOV should be granted only when insufficient evidence existed to create an issue for the jury. If the evidence is such that reasonable people could differ, JNOV is improper. *Pontiac School Dist v Miller Canfield Paddock & Stone*, 221 Mich App 602, 612; 563 NW2d 693 (1997). We review a trial court's decision on a motion for JNOV de novo. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998).

A new trial may be granted if the verdict was against the great weight of the evidence or was contrary to law. MCR 2.611(A)(1)(e). In determining whether to grant a new trial, the trial court must decide whether the overwhelming weight of the evidence favors the losing party. *Phinney v Perlmutter*, 222 Mich App 513, 525; 564 NW2d 532 (1997). We review the decision to grant a new trial for an abuse of discretion. *Setterington v Pontiac General Hosp*, 223 Mich App 594, 608; 568 NW2d 93 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992).

Plaintiff argues that the trial court erred by denying her motion for JNOV or, in the alternative, abused its discretion by denying her motion for new trial. We disagree and affirm. By moving for JNOV, plaintiff was asserting that not only was defendant not entitled to a directed verdict, she was entitled to judgment as a matter of law. This position is inconsistent with plaintiff's assertion that the issue of whether defendant had an obligation to salt the parking lot on the day of her accident was for the jury to decide. The trial court properly denied plaintiff's motion for JNOV.

Furthermore, we find that the trial court did not abuse its discretion by denying plaintiff's motion for new trial. The evidence showed that precipitation had last fallen five days before plaintiff's accident, and that the temperature did not drop below forty-two degrees for approximately twenty-four hours prior to the accident. The trial court correctly found that given this evidence, reasonable jurors could not disagree as to whether defendant was obligated under the contract to salt the parking lot on the day of plaintiff's accident. Plaintiff failed to establish a prima facie case of negligence. *Id*. The overwhelming weight of the evidence did not favor plaintiff. *Phinney*, *supra*.

Finally, although plaintiff does not directly raise this issue on appeal, we find that the trial court did not err by granting defendant's motion for directed verdict. *Locke v Pachtman*, 446

Mich 216, 223; 521 NW2d 786 (1994); *Lamson v Martin (After Remand)*, 216 Mich App 452, 455; 549 NW2d 878 (1996).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber