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NO. COA02-203

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

TERESA OAKLEY (wife);
QUINTON OAKLEY (husband);
ANA and JOSIAH OAKLEY (minors);
ESTATE OF MIRACLE OAKLEY,
(deceased infant)
Plaintiffs,

v.

Durham County
No. 98 CVS 04025

LOWE'S FOOD STORES, INC.
formerly known as BYRD
FOOD STORES, INC.,
Defendant.

Appeal by plaintiff from judgment entered 2 June 2000 by Judge Ronald L. Stephens, Superior Court, Durham County. Heard in the Court of Appeals 30 October 2002.

Michael A. Jones, for the plaintiffs-appellants.

Ragsdale Liggett PLLC, by John M. Nunnally and Andrew C. Buckner, for defendant-appellee.

WYNN, Judge.

Following a jury verdict awarding her compensatory damages in her personal injury action against defendant Lowe's Food Stores, Inc., plaintiff Teresa Oakley argues on appeal that the trial court erred by granting summary judgment in favor of Lowe's Food Stores, Inc. on the issue of punitive damages. After carefully reviewing

the record, we hold that, under N.C. Gen. Stat. § 1D-15, Ms. Oakley failed to set forth specific facts showing willful or wanton conduct. Accordingly, we find no error and, therefore, affirm the judgment of the trial court.

On 11 November 1996, while 2½ months pregnant and shopping at a food store operated by Lowe's Food Stores, Inc., Ms. Oakley suffered severe and permanent injuries when a negligently stacked display of canned-goods toppled, striking her in the head, neck, and back areas on her body. On 23 September 1998, Ms. Oakley filed an action against Lowe's Food Stores, Inc. seeking compensatory and punitive damages. On 2 June 2000, the trial court entered summary judgment on the issue of punitive damages¹ in favor of Lowe's Food Stores, Inc. The action proceeded to trial on the issue of compensatory damages, and on 29 October 2001 a jury returned a verdict, and a final judgment was entered, in favor of Ms. Oakley. On appeal, Ms. Oakley contends the trial court committed reversible error by granting Lowe's Food Stores, Inc.'s summary judgment motion on the issue of punitive damages.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a

¹The trial court bifurcated the trial for compensatory damages and punitive damages on Lowe's Food Stores, Inc.'s motion pursuant to N.C. Gen. Stat. § 1D-30. After the trial court entered summary judgement with respect to punitive damages, Ms. Oakley appealed to this Court. In a 3 July 2001 opinion, this Court held Ms. Oakley's appeal was interlocutory. See COA00-1112.

judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c). The party moving for summary judgment has the burden of establishing the absence of triable issues of fact. *Roumillat v. Simplistic Enterprises, Inc.*, 331 N.C. 57, 62-63, 414 S.E.2d 339, 342 (1992). A defendant may meet this burden by proving "either the non-existence of an essential element of the plaintiff's claim or that the plaintiff has no evidence of an essential element of her claim." *Nourse v. Food Lion, Inc.*, 127 N.C. App. 235, 239, 488 S.E.2d 608, 611 (1997). Once a defendant moving for summary judgment meets this burden, plaintiff must "produce a forecast of evidence demonstrating that the plaintiff will be able to make out at least a prima facie case at trial." *Collingwood v. G.E. Real Estate Equities*, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989). Plaintiff, however, "may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or . . . otherwise . . . must set forth specific facts showing that there is a genuine issue for trial." § 1A-1, Rule 56(e). "In determining whether summary judgment is appropriate, '[a]ll inferences of fact must be drawn against the movant and in favor of the nonmovant.'" *Byrd v. Adams*, __ N.C. App. __, __, 568 S.E.2d 640, 642-43 (2002) (quoting *Roumillat*, 331 N.C. at 63, 414 S.E.2d at 342).

In the case *sub judice*, the trial court granted summary judgment with respect to Ms. Oakley's claim for punitive damages. "Our legislature has said that punitive damages may be awarded, in an appropriate case . . . , to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing

similar wrongful acts." *Hutelmyer v. Cox*, 133 N.C. App. 364, 371, 514 S.E.2d 554, 559 (1999) (quoting N.C. Gen. Stat. § 1D-1). "Punitive damages are not awarded as compensation. As the name clearly implies, they are awarded as punishment due to the outrageous nature of the wrongdoer's conduct." *Juarez-Martinez v. Deans*, 108 N.C. App. 486, 495, 424 S.E.2d 154, 159-60 (1993). "To prevail on a claim for punitive damages, plaintiff must show that defendant's established negligence which proximately caused his injury reached a higher level than ordinary negligence; that it amounted to wantonness, willfulness, or evidenced a reckless indifference to the consequences of the act." *Moose v. Nissan of Statesville, Inc.*, 115 N.C. App. 423, 428, 444 S.E.2d 694, 697 (1994); see also N.C. Gen. Stat. § 1D-15.

Here, Ms. Oakley based her punitive damages claim on Lowe's Food Stores, Inc.'s willful and wanton conduct in negligently permitting dangerous stacking.² At summary judgment, Ms. Oakley's forecast of evidence included affidavits from customers injured in

²Specifically, Ms. Oakley alleged in her complaint:

24. The defendant has exhibited blatant, willful, wanton and reckless disregard for the safety of its shoppers by allowing the practice of stacking and maintaining store displays in a negligent and dangerous manner.

25. Indeed, defendant has exhibited such willful and wanton disregard for the safety of the consumer, that it permits benches, oversized cans and jars, and other items to be placed in aisles and on top of other shelving, fixtures and refrigeration units in such a manner that such items pose a real and present threat to the safety of unsuspecting shoppers.

similar accidents, injury reports filed with Lowe's corporate offices, and a store manager's deposition testimony that the canned goods were stacked "pretty tall." Although this evidence does support a claim of negligence, it does not support a reasonable inference that Lowe's conduct was "egregiously wrongful." Indeed, although Ms. Oakley submitted affidavits from each of the injured customers refuting the version of events as reported in the injury reports, she failed to present any evidence tending to show corporate knowledge that the displays were in fact dangerous or that the injury reports regarding those accidents were inaccurate or false. Because of this lack of evidence, Ms. Oakley did not sustain the burden of producing evidence that Lowe's actions in stacking the goods "amounted to wantonness, willfulness, or evidenced a reckless indifference to the consequences of the act." In sum, Ms. Oakley did not make a threshold showing of Lowe's willful and wanton conduct and did not "make out at least a prima facie case" of punitive damages.

Affirmed.

Judges TIMMONS-GOODSON and HUNTER concur.

Report per Rule 30(e).