NO. COA11-449
NORTH CAROLINA COURT OF APPEALS

Filed: 1 November 2011

SHOLONDA HADDOCK,
Plaintiff,

v.

Wake County
No. 10 CVS 10797

BARKER REALTY, INC. and
CHRISCO PROPERTIES, LLC,
Defendants.

Appeal by Plaintiff from order entered 18 January 2011 by Judge Lucy N. Inman in Wake County Superior Court. Heard in the Court of Appeals 28 September 2011.

Daniel F. Read, for Plaintiff-Appellant.

City Attorney Thomas A. McCormick, by Deputy City Attorney Hunt K. Choi, for Defendant-Appellee Barker Realty, Inc.

Law Offices of Kenneth J. Steinberg, P.A., by Kenneth J. Steinberg, for Defendant-Appellee Chrisco Properties, LLC.

BEASLEY, Judge.

Sholonda Haddock (Plaintiff) appeals from a 18 January 2011 order dismissing her complaint alleging negligence pursuant to N.C. Gen. Stat. §1A-1, Rule 12(b)(6). For the forgoing reasons, we affirm.

This appeal is based on a motion to dismiss for failure to state a claim upon which relief can be granted, so we treat the factual allegations in the complaint as true. *See Thompson v. Waters*, 351 N.C. 462, 462-63, 526 S.E.2d 650, 650 (2000). Plaintiff's complaint states that she was the designated mail carrier for a multi-unit apartment property located at 6700 Magnolia Court in Raleigh (the property). Barker Realty, Inc. and Chrisco Properties, LLC (Defendants) are the primary managers of this property. On or about 2 May 2009, Plaintiff was delivering mail to the property, and in doing so opened the cluster door for the residents' mailboxes. As Plaintiff opened the door, it fell onto her foot and fractured her left second toe. Plaintiff, along with other mail carriers and Postal Service supervisors, informed the property managers repeatedly over the several years prior to 2 May 2009 that the mailbox cluster door was dangerous and in need of repair.

On 30 August 2010, Defendant Barker Realty filed a motion to dismiss and answer to Plaintiff's complaint pursuant to N.C. Gen. Stat. §1A-1, Rule 12(b)(6). Defendant Chrisco Properties filed an answer on 1 September 2010 asserting the same defense. The rationale for this defense was that Plaintiff's complaint admitted that she was contributorily negligent. By order filed

18 January 2011, the trial court found that Plaintiff's complaint alleged facts that defeated the only cause of action and granted Defendants' motions pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6).

Generally, "[i]n order to prevail on a claim of negligence, the plaintiff must establish the defendant owed her a duty of reasonable care, that the defendant breached this duty, and that such breach was the proximate cause of the plaintiff's injuries." *Love v. Singleton*, 145 N.C. App. 488, 491, 550 S.E.2d 549, 551 (2001). However, "[u]nder North Carolina law, contributory negligence generally will act as a complete bar to a plaintiff's recovery." *Thompson v. Bradley*, 142 N.C. App. 636, 640, 544 S.E.2d 258, 261 (2001). Contributory negligence occurs when a plaintiff fails to exercise due care for her own safety, "such that the plaintiff's failure to exercise due care is a proximate cause of his or her injury." *Id.*

We review the grant of a motion to dismiss *de novo*. *Lea v. Grier*, 156 N.C. App. 503, 507, 577 S.E.2d 411, 414 (2003). Dismissal of a complaint pursuant to Rule 12(b)(6) is proper

> when one or more of the following three conditions is satisfied: (1) when the complaint on its face reveals that no law supports plaintiff's claim; (2) when the complaint reveals on its face the absence of fact sufficient to make a good claim; (3)

> when some fact disclosed in the complaint necessarily defeats the plaintiff's claim.

Oates v. JAG, Inc., 314 N.C. 276, 278, 333 S.E.2d 222, 224 (1985) (citations omitted). Defendants note the third condition, and assert that Plaintiff disclosed in her complaint her knowledge of the dangerous condition of the door, and thus her contributory negligence necessarily defeats her claim. We agree.

Plaintiff contends that she was required to deliver the mail to the property, despite the dangerous conditions. This Court has found that when an employee is ordered by a superior to "undertake an obviously risky job, a finding of contributory negligence depends on whether a reasonably prudent person under similar circumstances would comply with the order." *Stilwell v. General Ry. Servs., Inc.,* 167 N.C. App. 291, 294, 605 S.E.2d 500, 503 (2004). Defendants allege that Plaintiff was not required to deliver mail if she felt the conditions were dangerous, as she was not ordered to expose herself to this danger by a superior. In support of this assertion, Defendants refer to the United Postal Service's *Handbook EL-814, Postal Employee's Guide to Safety*, Sec. IX(b)-(c) which states in pertinent part that employees are not required to risk personal

injury from hazardous delivery conditions, and that they should not try to force entry into defective collection boxes. Plaintiff does not assert that she complained to her supervisors and they ordered her to continue to deliver mail to the property. In fact, Plaintiff makes no allegation that contradicts Defendants' argument. Accordingly, we affirm the trial court's grant of summary judgment.

Affirmed.

Judges STEPHEN and ERVIN concur.

Report per Rule 30(e).