IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1031

Filed: 20 September 2016

Columbus County, No. 14 CVS 278

TERESA THOMPSON, Plaintiff

v.

EVERGREEN BAPTIST CHURCH, Defendant

Appeal by plaintiff from order entered 27 April 2015 by Judge James Gregory Bell in Columbus County Superior Court. Heard in the Court of Appeals 10 February 2016.

Mark Hayes, for plaintiff-appellant.

Ennis, Baynard, Morton & Medlin PA, by Stephen C. Baynard, for defendant-appellee.

CALABRIA, Judge.

Plaintiff appeals from the trial court's order granting summary judgment in favor of defendant. Because the record demonstrates that plaintiff's knowledge of a hazard on defendant's property was at least equal to defendant's knowledge, the trial court did not err in granting summary judgment on the basis that defendant was not negligent.

I. Factual and Procedural Background

Teresa Thompson ("plaintiff") was a member of Evergreen Baptist Church ("defendant") for thirty-four years. Her husband, Terry Thompson ("Terry") was a member for his entire life. Their children, and one of their grandchildren, were baptized there. Plaintiff, at various times, assisted with defendant's children's choir, acted as youth director, was a Sunday School teacher, and was Director of Missions. Plaintiff was youth director up until the time of her fall. Additionally, plaintiff was a regular church attendee, observing that, "if the doors is [sic] open and I'm able, I'm there." At the time of the litigation below, Terry was the chairman of the deacons of defendant, and at the time of plaintiff's fall, he was also chairman of the building and grounds committee. The building and grounds committee was responsible for installing railings "at all the doorways, all the steps[.]"

On 28 March 2012, plaintiff was on defendant's property for religious services, seated in the choir loft. After the service, plaintiff fell upon the stairs while descending from the choir loft and sustained injuries as a result of the fall. On 12 March 2014, plaintiff brought the underlying action against defendant, alleging that her injury was the direct and proximate result of defendant's negligence, and seeking damages for the resultant injuries. Specifically, plaintiff alleged that there were no railings on the steps that she took, although Terry acknowledged that there were "actual plans of putting railings up" on the steps prior to her fall.

On 21 April 2014, defendant filed an answer, alleging lack of negligence on defendant's part, intervening and superseding negligence on the part of another, the open and obvious condition of the stairs at issue, contributory negligence by plaintiff, and the existence of a safer alternate route. Defendant also moved to dismiss plaintiff's complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

On 31 March 2015, defendant moved for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure. Arguments were heard on 20 April 2015, and on 27 April 2015, the trial court entered an order granting summary judgment in favor of defendant.

Plaintiff appeals.

II. Standard of Review

"Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' " *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007)). "The movant may meet [its] burden by proving that an essential element of the opposing party's claim is nonexistent, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim or cannot surmount an

affirmative defense which would bar the claim." *Bolick v. Bon Worth, Inc.*, 150 N.C. App. 428, 429, 562 S.E.2d 602, 603 (2002) (citations omitted).

III. Summary Judgment

Plaintiff contends that the trial court erred in granting summary judgment in favor of defendant. We disagree.

A. Negligence

Plaintiff contends that the trial court erred in its summary judgment order in holding that defendant was not negligent.

"[S]ummary judgment is rarely appropriate in the context of negligence; the trial court will grant summary judgment . . . where the evidence is uncontroverted that a party failed to use ordinary care and that want of ordinary care was at least one of the proximate causes of the injury." *Kelly v. Regency Centers Corp.*, 203 N.C. App. 339, 342, 691 S.E.2d 92, 95 (2010) (citations and quotations omitted).

On appeal, the parties do not dispute the fact that plaintiff fell on defendant's stairs, and was injured as a result. The only dispute before us is whether plaintiff's complaint, taken together with the affidavits and proffer of evidence, established a *prima facie* case that defendant owed a duty to plaintiff, and breached that duty, foreseeably resulting in plaintiff's injuries. *See Strickland v. Doe*, 156 N.C. App. 292, 294, 577 S.E.2d 124, 128 (2003).

In an affidavit, Terry made assertions as to the irregular and hazardous character of the stairs at issue. In his deposition, Terry further noted that people had fallen on the steps before, that people had stumbled, and that members of the choir do not wear robes specifically due to the inability to see their feet. He further stated that the stairs were the same ones that members of the choir always used, noting:

> [TERRY] But we've always went [sic] in and up them steps. That's just – every church has got their routine, you know, I reckon.
>
> Q Right.
>
> [TERRY] I mean, you know, just – and that's – and they're still using them now. I mean, they still go up and down there. That's just where they go in and out.

There is no question that both plaintiff and defendant were familiar with the stairs and the hazard they posed. Plaintiff claims that defendant's knowledge of this hazardous condition created in defendant a duty to take action, and that plaintiff's injury demonstrated a failure to take the necessary action, creating a breach of that duty.

Defendant contends, however, that plaintiff was already aware of the hazard. Defendant notes that plaintiff's husband, Terry, was chair of the grounds and building committee, which was responsible for various renovations, including the installation of railings. Defendant further notes that every congregant, including plaintiff, voted on plans to install a railing on the stairs at issue prior to the time of

her fall. Defendant also notes that, during her deposition, plaintiff acknowledged that there was an alternate stairway, with a railing, nearby, which she chose not to take because she "would have had to go by three people and then by the music box to have got out that way."

We hold that the facts of this case are parallel to those of *Bolick v. Bon Worth, Inc.* In *Bolick*, the plaintiff, a customer of the defendant store, asked to use a restroom, and was directed by an employee to a restroom in the back of the store. The plaintiff was able to enter the restroom without incident; however, upon her exit, she fell upon the wooden steps leading into the restroom, and suffered injuries, culminating in a lawsuit against the store. *Bolick*, 150 N.C. App. at 428-29, 562 S.E.2d at 603. The defendant moved for summary judgment, and the trial court granted it in favor of the defendant on the grounds that (1) defendant did not breach any duty owed to plaintiff, and (2) plaintiff was contributorily negligent as a matter of law. *Id.* at 429, 562 S.E.2d at 603.

On appeal, we noted the typical duty of landowners to exercise reasonable care for the safety of invitees, but also held that "[t]here is no duty to protect or warn, however, 'against dangers either known or so obvious and apparent that they reasonably may be expected to be discovered[,]' " and that "a landowner is not required to warn of hazards of which the lawful visitor has 'equal or superior knowledge.' " *Id.* at 430, 562 S.E.2d at 604 (quoting *Von Viczay v. Thoms,* 140 N.C.

App. 737, 739, 538 S.E.2d 629, 631 (2000), *aff'd per curiam,* 353 N.C. 445, 545 S.E.2d 210 (2001)). We then concluded that:

> In the present case, plaintiff admitted that she was able to see the floor and the steps leading to the bathroom. She stated that she did not have any trouble seeing because the bathroom light was on and the bathroom door was open. She testified that she had no trouble getting into the bathroom using the steps. Important to the disposition of this case, plaintiff had full knowledge of the condition of the doorway to the bathroom by virtue of having safely negotiated her way inside the bathroom moments before she fell. On this record, even if the steps leading up to and out of the bathroom created a hazardous condition, plaintiff had knowledge of the alleged hazardous condition.

Id. at 430-31, 562 S.E.2d at 604. We concluded that defendant had no duty to warn plaintiff of an open hazard of which she had at least equal knowledge, and that plaintiff therefore could not establish a *prima facie* case of negligence; we declined to consider the remaining issue of contributory negligence. *Id*. at 431, 562 S.E.2d at 604.

In the instant case, plaintiff was no mere customer. She had been a member of defendant for over three decades. Her husband was on the grounds and building committee. She, as a member, had previously voted to install railings on those stairs, and had herself used the stairs on numerous occasions. If the plaintiff in *Bolick*, having become aware of a hazard after a single visit to the restroom, had at least equal knowledge of that hazard, plaintiff in the instant case was most certainly aware of the risk the stairs posed. As in *Bolick*, therefore, we hold that plaintiff had at least

equal knowledge to defendant of the hazard, and that defendant had no duty to warn her of the risk the stairs posed. We hold that the trial court did not err in granting summary judgment in favor of defendant, on the basis that defendant was not negligent.

This argument is without merit.

B. Quasi-Corporation Theory

Plaintiff also contends that the trial court erred in its summary judgment order in holding that, pursuant to a quasi-corporation theory, plaintiff could not recover from defendant. Because we have held that summary judgment was appropriate on the issue of negligence, we need not address this argument.

AFFIRMED.

Judges DAVIS and TYSON concur.

Report per Rule 30(e).