IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-583

Filed: 6 October 2020

New Hanover County, No. 17 CVS 4168

SAMUEL SEALEY, Plaintiff,

v.

FARMIN' BRANDS, LLC, Defendant.

Appeal by Plaintiff from order entered 17 December 2018 by Judge Andrew Heath in New Hanover County Superior Court. Heard in the Court of Appeals 30 October 2019.

Speaks Law Firm, PC, by R. Clarke Speaks, for plaintiff-appellant.

McAngus Goudelock & Courie, PLLC, by Luke A. Dalton and Walt Rapp, for defendant-appellee.

MURPHY, Judge.

Plaintiff, Samuel Sealey ("Sealey"), appeals an order granting summary judgment for Farmin' Brands, LLC ("Farmin' Brands") in a matter where Sealey was injured performing contractual work for Farmin' Brands. Using the reasonably prudent person standard, our courts have consistently held where a plaintiff's negligence contributes to the injuries suffered, the defendant shall not be held liable.

As Sealey's actions contributed to the injuries he suffered, we affirm the ruling of the trial court granting summary judgment in favor of Farmin' Brands.

BACKGROUND

Farmin' Brands hired Sealey's employer, Sandlin Control Technologies ("Sandlin"), to perform contractual work in the ongoing renovation and construction of their Farmin' Campus ("the Campus") in Wilmington. As a service technician for Sandlin, Sealey was responsible for installing HVAC and refrigeration equipment on top of platform rooms in the meat/seafood/produce processing area of the Campus. Access to these areas required the routine use of ladders.

Three weeks into his tenure at the Campus, one of Sealey's co-workers requested Sealey bring him a pair of pipe benders at the top of a platform room. Sealey testified that because he had packed up the Sandlin ladders for the day, he used a ladder belonging to Farmin' Brands, which had been made available to the various contractors and subcontractors working on Campus. In his deposition, Sealey stated that during his tenure there, he knew the ladder to have been used by multiple subcontractors and moved around, even if remaining within the same general area.

Sealey testified he found the ladder leaning against the base of the platform room where his co-worker was working, and in preparing to ascend it, he merely visually inspected and touched the ladder to make sure it was not wobbling. However, he did not ascertain whether the ladder was secured, or tied off, at the top.

Sealey testified it was common practice for Sandlin employees to secure ladders at the top, consistent with OSHA guidelines when addressing ladder usage in a high-activity area.

Upon reaching the top of the platform, Sealey realized the ladder was, in fact, not properly tied off. Sealey attempted to step off onto the platform, but the ladder began sliding backwards. Sealey stated he attempted to grab the platform, but it gave way under his weight, sending him plummeting to the ground. As a result of the fall, Sealey sustained injuries to his right foot, ankle, knees, and lower body.

Sealey filed a complaint in the Superior Court of New Hanover County, alleging negligence on the part of Farmin' Brands and seeking damages. Following the voluntary dismissal of other named defendants, the trial court granted summary judgment in favor of Farmin' Brands. Sealey timely filed notice of appeal.

ANALYSIS

On appeal, Sealey argues the trial court erred in granting summary judgment for Farmin' Brands, arguing in part that the issue of whether he was contributorily negligent was a question for the jury. Even assuming, *arguendo*, that Farmin' Brands was negligent, an issue we do not reach, we disagree with Sealey.

"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) (internal marks omitted). "The party moving for summary judgment has the burden of showing that there is no triable issue of material fact. On a motion for summary judgment, the forecast of evidence and all reasonable inferences must be taken in the light most favorable to the non-moving party." *Nicholson v. Am. Safety Util. Corp.*, 346 N.C. 767, 774, 488 S.E.2d 240, 244 (1997) (internal citations and marks omitted). While "[i]ssues of contributory negligence . . . are ordinarily questions for the jury and are rarely appropriate for summary judgment[,] . . . where the evidence establishes the plaintiff's own negligence so clearly that no other reasonable conclusion may be reached . . . summary judgment [is] to be granted." *Id.* (citations omitted).

"North Carolina common law also recognizes the defense of contributory negligence; thus, a plaintiff cannot recover for injuries resulting from a defendant's negligence if the plaintiff's own negligence contributed to his injury." *Draughon v. Evening Star Holiness Church of Dunn,* 374 N.C. 479, 483, 843 S.E.2d 72, 76 (2020) (alterations omitted). "With contributory negligence, a plaintiff's actual behavior is compared to that of a reasonable person under similar circumstances." *Id.* at 484, 843 S.E.2d at 77.

> Every person having the capacity to exercise ordinary care for his own safety against injury is required by law to do so, and if he fails to exercise such care, and such failure . . . contributes to the injury complained of, he is guilty of contributory negligence. Ordinary care is such care as an

> ordinarily prudent person would exercise under the same or similar circumstances to avoid injury.

Clark v. Roberts, 263 N.C. 336, 343, 139 S.E.2d 593, 597 (1965). In that vein, "[t]he test of liability for [contributory] negligence . . . is the departure from the normal conduct of the reasonably prudent man, or the care and prevision which a reasonably prudent person would employ in the circumstances." *Dawson v. Seashore Transp. Co.,* 230 N.C. 36, 39, 51 S.E.2d 921, 922-923 (1949).

In his deposition, Sealey testified that before ascending, he visually inspected the ladder to make sure it was positioned at the right angle. He stated he also touched the ladder to ensure it was not wobbling and the legs were not "out of whack." However, he did not take any action to determine whether the ladder was secured at the top:

> [DEFENSE:] You didn't know whether it was secured?
>
> [SEALEY:] No, sir.
> . . . .
> [DEFENSE:] [T]he ladder wasn't so big that you couldn't have moved it to make sure it was secure, right?
>
> [SEALEY:] Yes, sir.
> . . . .
> [DEFENSE:] If I understood your testimony earlier, your inspection of the ladder was you looked at the bottom, and checked how stable it was at the bottom, and visually inspected, I guess, as to the angle?
>
> [SEALEY:] Correct.

> [DEFENSE:] But [you] did not take any action to figure out whether or not it was secured at the top?
>
> [SEALEY:] Correct.

By his own admission, Sealey could have easily moved the ladder to ascertain whether it was tied off, and by his own admission, he did not do so. Further, Sealey was trained and experienced in the use of ladders. His training made it incumbent on him to check to see if the ladder was secured prior to ascending it. He could not have reasonably relied on the actions of his co-workers and other subcontractors in a high-activity area where he knew the ladder had not remained stationary. Given his prior experience, training, and the unexercised opportunity to move the ladder, we hold Sealey to be contributorily negligent, as he deviated from the conduct of a reasonably prudent person in his position and failed to show the level of care the circumstances warranted. The uncontroverted evidence clearly establishes Sealey's negligence in this instance. The trial court did not err in granting summary judgment for Farmin' Brands. We need not address the premises liability component of Sealey's argument.

CONCLUSION

The trial court did not err in granting summary judgment for Farmin' Brands where Sealey's actions constituted contributory negligence.

AFFIRMED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).