IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-728

Filed: 15 September 2020

Henderson County, No. 16 CVS 1001

PAULA SAUNDERS, Plaintiff,

v.

HULL PROPERTY GROUP, LLC and BLUE RIDGE MALL, LLC, Defendants.

Appeal by Plaintiff from judgment entered 21 March 2019 by Judge William H. Coward in Superior Court, Henderson County. Heard in the Court of Appeals 7 January 2020.

White & Stradley, PLLC, by J. David Stradley, and Lakota R. Denton, P.A., by Lakota R. Denton, for the Plaintiff-Appellant.

Roberts & Stevens, P.A., by Jacqueline D. Grant, for the Defendants-Appellees.

McGEE, Chief Judge.

Paula Saunders ("Plaintiff") appeals from the trial court's judgment entering a jury verdict finding her contributorily negligent in sustaining injuries at Blue Ridge Shopping Mall (the "Mall") in Hendersonville, North Carolina, owned by Hull Property Group, LLC, and Blue Ridge Mall, LLC ("Defendants"). At trial, Plaintiff requested that the trial court instruct the jury to assign fault and apportion damages

using the doctrine of comparative negligence. The trial court denied Plaintiff's request.

Although Plaintiff acknowledges that contributory negligence is the law of North Carolina, she argues nonetheless that it is time for the Supreme Court of North Carolina to exercise its authority to adopt comparative negligence. We are bound to affirm the trial court's judgment based on existing Supreme Court precedent but recognize that Plaintiff's arguments were properly presented to this Court and therefore are preserved should Plaintiff seek further review in the Supreme Court.

I. Factual and Procedural Background

Defendants own and operate the Mall and its adjoining parking lot. Duke Energy performed maintenance on utility lines underneath the Mall parking lot in 2015, which required it to dig up and replace an approximately 3.5 feet by 8.5 feet area of pavement (the "patched area"). The patched area was a little over half an inch lower than the surrounding pavement, creating a short, unbeveled drop-off.[1] The patched area covered a handicapped parking space and extended out into the driving lane.

Plaintiff arrived at the Mall on 10 May 2016 and parked in a space adjacent to the patched area, which was occupied by another vehicle at the time. It was a clear,

[1] Under the Americans with Disabilities Act, any drop-off more than one-fourth inch steep must be beveled or ramped to mitigate the risk of pedestrian falls. 2004 Americans with Disabilities Act Accessibility Guidelines § 303.

sunny day and the vehicle parked in the patched area cast a shadow which partially obscured the unbeveled drop-off. Plaintiff walked behind the vehicle in the handicapped space and through the shadowy part of the patched area as she approached the Mall. Plaintiff then "suddenly . . . just fell" as she stepped on the unbeveled edge of the patched area. Plaintiff suffered a concussion and a fractured left knee as a result of her fall, which required treatment for a brain injury and total knee replacement surgery.

Plaintiff filed a complaint against Defendants for negligence to recover medical costs for injuries suffered as a result of her fall. Defendants filed an answer alleging that Plaintiff's injury was a result of her own contributory negligence because the unbeveled edge of the patched area was open and obvious. Plaintiff requested at the close of evidence that the trial court instruct the jury to determine fault and apportion damages by applying the doctrine of comparative negligence. The trial court denied Plaintiff's request and instructed the jury on contributory negligence. Plaintiff objected to the jury instructions. The jury found Defendants negligent and Plaintiff contributorily negligent and awarded Plaintiff no recovery. Plaintiff appeals.

II. Analysis

Plaintiff contends the trial court erred in denying her request that the jury be instructed on comparative negligence instead of contributory negligence. Plaintiff

states that, although contributory negligence is the law of this state, our courts should adopt a system of comparative negligence.

Contributory negligence has been recognized as the common law of North Carolina beginning with our Supreme Court's 1869 opinion in *Morrison v. Cornelius*, 63 N.C. 346 (1869). The doctrine of contributory negligence states that "a plaintiff cannot recover for injuries resulting from a defendant's negligence if the plaintiff's own negligence contributed to [the plaintiff's] injury." *Draughon v. Evening Star Holiness Church of Dunn*, 374 N.C. 479, ___, 843 S.E.2d 72, 76 (2020). The alternative doctrine of comparative negligence allows a plaintiff to recover a percentage of the plaintiff's damages equal to the defendant's share of fault, even if the injury is caused in part by the negligence of both the plaintiff and the defendant. *See Cashatt v. Asheville Seed Co.*, 202 N.C. 383, 383, 162 S.E. 893, 894 (1932).

Contributory negligence remains the law of North Carolina and this Court adheres to precedent. *Copeland v. Amward Homes of N.C., Inc.*, ___ N.C. App. ___, ___, 837 S.E.2d 903, 907 (2020) ("As we have often explained, 'this Court is not in the position to expand the law. Rather, such considerations must be presented to our Supreme Court or our Legislature.'" (citation omitted)). This Court has also recognized that it is "beyond this Court's authority to abandon the doctrine of contributory negligence." *Jones v. Rochelle*, 125 N.C. App. 82, 89, 479 S.E.2d 231, 235 (1997) (citation omitted).

We acknowledge that Plaintiff has presented many arguments for why the time has come to abandon contributory negligence and to adopt comparative negligence. Although this Court has no authority to act on those arguments, we acknowledge that they were presented to us and thus are preserved should Plaintiff seek further appellate review in the Supreme Court.

NO ERROR.

Judges DIETZ and YOUNG concur.

Report per Rule 30(e).