IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOSEPH ESSILFIE,

Appellant,

v.

JORDAN KEATING; LEAH COLLEY; JOSH DOE, another male worker; RESERVE AT SEATAC PARTNERS, LLP; INDIGO REAL ESTATE SERVICE, INC., a Washington corporation,

Respondents,

PLYMOUTH HOUSING GROUP,

Defendant.

No. 80026-4-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — Essilfie appeals the trial court's orders granting summary judgment dismissal and denying reconsideration of his negligence claim. He alleged below that the respondents, including the owner and manager of the apartment building where he resides, had been pumping toxic fumes into his apartment. He further alleged that these fumes caused him various health problems. On appeal, he argues that there are genuine issues of material fact regarding his negligence claim that preclude summary judgment. We affirm.

FACTS

In November 2018, Joseph Essilfie filed a lawsuit against several defendants, alleging that they pumped toxic fumes into his apartment.[1] He alleged that the toxic fumes exposed him to heavy metals, causing him various health problems. The defendants included Reserve at SeaTac Partners LLP, the owner of the apartment building where he resides, Indigo Real Estate Service Inc., the company that manages the building, and Leah Colley and Jordan Keating, two Reserve at SeaTac employees.[2] Essilfie sought to recover $200 million in damages.

In his complaint, Essilfie stated that he had gathered additional evidence in support of his negligence claim.[3] This statement appears to refer to a heavy metals test he had conducted by The Carlson Company Inc. in August 2018. The test results purport to show the presence of numerous heavy metals in a sample of Essilfie's hair. The results also indicate that "[n]o chemicals or toxins [were]

[1] In February 2018, Essilfie filed a lawsuit against the "Landlord of Reserve at Seatac" making similar allegations. The trial court dismissed that action without prejudice in September 2018.

[2] Essilfie also filed the lawsuit against Plymouth Housing Group and a defendant he identified as "Josh/One Other Male Worker." Plymouth Housing Group's relation to this case is unclear from the record. "Josh/One Other Male Worker" appears to refer to another Reserve at Seatac employee.

[3] Essilfie did not explicitly refer to negligence in his complaint. But, he referred to the defendants' alleged negligence in a responsive pleading below and in his opening brief on appeal. Thus, we construe his claim for damages based on illnesses he allegedly contracted from the defendants pumping toxic fumes into his apartment as a negligence claim.

detected." Further, Essilfie provided test results purporting to show the presence of heavy metals in a sample of dust. He claimed in a pleading that the dust sample came from a room in his apartment.

In January 2019, Reserve at Seatac, Indigo Real Estate, Colley, Keating, and "Josh/One Other Male Worker" filed a motion for summary judgment against Essilfie.[4] They argued that Essilfie lacked sufficient evidence to establish three of the four elements of negligence: breach of duty, proximate cause, and damages.

First, the respondents contended that Essilfie lacked proof that the respondents had ever pumped fumes into his apartment. They provided declarations from Colley and Keating, both of whom stated that they had never caused toxic fumes to be pumped into Essilfie's apartment, and that there is no ductwork in the building that would make that possible. Second, they argued that Essilfie's speculation that the alleged fumes caused him physical harm was inadmissible under ER 702. Last, they asserted that the test results from Carlson were inadmissible under ER 702 and Frye v. United States, 293 F. 1013 (D.C. Cir. 1923). They relied on a declaration from Dr. Scott Phillips, a physician specializing in internal medicine and medical toxicology. Phillips opined that the laboratory tests were not evidence of toxicity or harm. He explained that metal poisoning is

[4] For clarity, we refer to Reserve at Seatac, Indigo Real Estate, Colley, Keating, and "Josh/One Other Male Worker" collectively as "the respondents" throughout the remainder of the opinion. Plymouth Housing Group did not join in the motion.

diagnosed clinically in conjunction with blood or urine tests, neither of which was done in this case.

Essilfie opposed the respondents' motion. He argued that the laboratory tests from Carlson supported his claim. Further, he provided a medical record from his November 2018 medical examination. The medical record does not address whether he suffers from metal poisoning. Essilfie also provided copies of letters he wrote to Plymouth Housing Group, Colley, and Reserve at Seatac. The letters detail his concerns regarding the alleged toxic fumes in his apartment. His letters to Colley specifically ask her to stop pumping fumes into his apartment, and to assist him in getting others to stop pumping fumes.

The trial court granted the respondents' motion and dismissed Essilfie's negligence claim against them with prejudice. At the hearing on the motion, the court explained to Essilfie that even if the laboratory tests were true,

> [they] don't link the defendants with those lab results. And taking all of the evidence in the light most favorable to you, which I'm required to do at this position, I don't find that the defendants in this case actually are creating fumes and then secondly that they're actually causing negative effects in your body. So I have to dismiss the case for the defendants that have filed this action.

Essilfie then filed a motion for reconsideration. He again argued that toxic fumes in his apartment were causing him health problems. He also attached new medical records to the motion. In the new records, Dr. Hildegarde Staninger, an industrial toxicologist and doctor of integrative medicine, analyzed Essilfie's test

results from Carlson and his current symptomatology. Staninger opined that Essilfie's symptoms "and the metal parameters found to be extremely high in value correlate to systemic target organ toxicity." Essilfie then filed another pleading to supplement his motion for reconsideration. He provided even more medical records as an attachment to that pleading. The trial court denied Essilfie's motion.

Essilfie appeals.[5]

DISCUSSION

Essilfie makes two arguments. First, he argues that the trial court erred in granting the respondents' motion for summary judgment and dismissing his negligence claim against them with prejudice. Second, he argues that the trial court erred in denying his motion for reconsideration. He specifically asserts that genuine issues of material fact regarding his negligence claim preclude summary judgment.[6]

[5] The respondents argue that we should not consider Essilfie's appeal because his negligence claim has not been dismissed as to Plymouth Housing Group. Under RAP 2.2(d), we will hear an appeal on less than all claims only if the trial court expressly enters findings illustrating that there is no just reason for delay, or in the exercise of our discretion under RAP 2.3. The trial court did not enter such findings in its order granting summary judgment, and Essilfie did not move for discretionary review. However, in January 2020, the trial court granted Plymouth Housing Group's motion to dismiss Essilfie's claim against it with prejudice. Thus, we decline to dismiss Essilfie's appeal on the basis that his claim against Plymouth Housing Group is still pending.

[6] As an initial matter, the respondents argue that we lack a sufficient basis to consider these arguments because Essilfie did not comply with RAP 9.1 and 9.2(b) by not providing "enough of a record to review the purported issues on appeal." An appellant bears the burden of perfecting the record on appeal so that "the reviewing court has before it all the evidence relevant to deciding the issues

We review summary judgment orders de novo, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Id. If a plaintiff "'fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial,'" summary judgment is proper. Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)), overruled on other grounds by 130 Wn.2d 160, 922 P.3d 69 (1996).

To prevail on a negligence claim, a plaintiff must prove (1) the existence of a duty owed to the plaintiff, (2) a breach of that duty, (3) a resulting injury, and (4) the breach as the proximate cause of the injury. N.L. v. Bethel Sch. Dist., 186 Wn.2d 422, 429, 378 P.3d 162 (2016). The parties dispute whether Essilfie can establish breach of a duty, proximate cause, or a resulting injury.

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before it." Rhinevault v. Rhinevault, 91 Wn. App. 688, 692, 959 P.2d 687 (1998). We may decline to reach the merits of an issue if this burden is not met. Id. Essilfie did not meet his burden by providing us with only his response to the respondents' motion for summary judgment and his motion for reconsideration. However, the respondents supplemented the record by providing us with the other pleadings necessary to resolve Essilfie's arguments. "Washington law shows a strong preference for deciding cases on the merits." Luckett v. Boeing, 98 Wn. App. 307, 313, 989. P.2d 1114 (1999). We therefore reach the merits of Essilfie's appeal.

I. Summary Judgment Dismissal

Essilfie contends that the trial court overlooked the seriousness of the diseases caused by heavy metals in dismissing his negligence claim on summary judgment. He cites the various health problems he suffers from, as well as the laboratory tests he had done showing the presence of heavy metals. The respondents counter that Essilfie's laboratory tests do not constitute qualified expert testimony.

Even if we were to assume the accuracy of the laboratory tests, Essilfie has not provided any evidence connecting the respondents to his exposure to heavy metals. The respondents provided declarations below from both Colley and Keating. In their declarations, Colley and Keating stated that they had never caused toxic fumes to be pumped into Essilfie's apartment, and that there is no ductwork in the building that would make that possible. Essilfie did not provide any evidence to contradict those statements. Thus, there is no genuine dispute of material fact regarding the breach of duty and causation elements of his negligence claim. Essilfie does not make a showing sufficient to establish the existence of either element.

The trial court did not err in dismissing Essilfie's negligence claim against the respondents on summary judgment.

II. Denial of Reconsideration

Essilfie argues next that the trial court erred in denying his motion for reconsideration. He states that the court's decision was wrong "for the very fact I have stated." We construe this statement as repeating his earlier argument that the court overlooked the seriousness of the diseases caused by heavy metals.

We review an order denying a motion for reconsideration for an abuse of discretion. See Rivers v. Wash. State Conf. of Mason Contractors, 145 Wn.2d 674, 684-85, 41 P.3d 1175 (2002). On reconsideration, Essilfie provided additional medical records, including a letter from an industrial toxicologist analyzing his test results from Carlson and his current symptomatology. Staninger, the industrial toxicologist, opined that Essilfie's symptoms "and the metal parameters found to be extremely high in value correlate to systemic target organ toxicity."

Again, even if we were to assume the accuracy of Staninger's letter, Essilfie has not provided any evidence connecting the respondents to the above described organ toxicity. Specifically, he did not provide any evidence to contradict Colley's and Keating's statements that they had never caused toxic fumes to be pumped into his apartment, and that there is no ductwork in the building that would make that possible. Accordingly, Essilfie's motion for reconsideration did not change his failure to make a showing sufficient to establish the existence of the breach of duty and causation elements of negligence.

The trial court did not abuse its discretion in denying Essilfie's motion for reconsideration.[7]

We affirm.

Appelwick, J.

WE CONCUR:

Leach, J.

Dwyer, J.

[7] Essilfie also argues for the first time on appeal that his right to equal protection while living in his apartment has been violated. He does not explain how the respondents have violated this right, or how this violation relates to his negligence claim. To raise this claim for the first time on appeal, Essilfie must show manifest error affecting a constitutional right. RAP 2.5(a)(3). He fails to do so here. He also did not support his argument with any citation to legal authority or reference to the record, as required under RAP 10.3(a)(6). We hold pro se litigants to the same standard as attorneys. Kelsey v. Kelsey, 179 Wn. App. 360, 368, 317 P.3d 1096 (2014). As a result, we decline to reach Essilfie's equal protection argument.