SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1462-21

ALEJANDRA PADILLA,

Plaintiff-Appellant,

v.

YOUNG IL AN and
MYO SOON AN,

Defendants-Respondents.

Submitted November 1, 2022 – Decided January 4, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-1538-20.

Hegge & Confusione, LLC, attorneys for appellant (Michael Confusione, of counsel and on the brief).

Holston, MacDonald, Uzdavinis & Myles, attorneys for respondents (Samuel J. Myles, on the brief).

PER CURIAM

Plaintiff Alejandra Padilla slipped and fell on the sidewalk abutting a vacant lot in Camden (the property) owned by defendants Myo Soon and Young Il An. Claiming she suffered severe serious bodily injuries that left her with permanent disabilities impeding her ability to work, plaintiff sued defendants, alleging their negligence in failing to maintain the sidewalk created an unreasonable risk of harm to pedestrians.

Following discovery, the trial judge entered an order granting defendants' summary judgment motion on the basis that they did not owe a duty to plaintiff. See R. 4:46-2; Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). The judge agreed with defendants that, based upon the binding precedent of Abraham v. Gupta, 281 N.J. Super. 81 (App. Div. 1995), they had no duty to maintain the sidewalk because it abutted a vacant lot which was not generating any income. The judge also rejected plaintiff's argument that defendants could have generated income by either developing or selling the property. The judge distinguished plaintiff's reliance on Gray v. Caldwell Wood Prods., Inc., 425 N.J. Super. 496 (App. Div. 2012) and Stewart v. 104 Wallace St., Inc., 87 N.J. 146 (1981). The judge pointed out that the plaintiff's accident in Gray occurred on a property with a vacant commercial building which could have generated income. See Gray, 425 N.J. Super at 501-02. The judge stressed that, while

Stewart held the owner of a commercial property had a duty to the plaintiff to safely maintain an abutting sidewalk, Abraham found that duty to not apply where the property could not generate income to purchase liability insurance, which is the case here. See Abraham, 281 N.J. Super. at 85-86.

Before us, plaintiff argues the judge erred in relying on Abraham and, instead, should have applied the Stewart standard. Plaintiff maintains Abraham construed Stewart too narrowly. Plaintiff renews her argument that Gray, 425 N.J. Super at 498-503, which involved sidewalks abutting vacant buildings, should apply because the property "was capable of generating income by operation of a commercial activity on it" and defendants "bought then sold the property for commercial profit." Plaintiff further reiterates that due to a Camden municipal ordinance[1] requiring defendants to maintain the property's abutting sidewalk, summary judgment was not proper because Luchejko v. City of Hoboken, 414 N.J. Super. 302, 319 (App. Div. 2010), commands that a jury

[1] Camden, N.J., ch. 735, art. II, § 735-5 (2012) provides:

> The sidewalks in the streets of the City shall be kept in repair by the owner or owners of the abutting property at the cost and expense of the owner or owners of the lands in front of which any such sidewalk is constructed. Such owner or owners are hereafter in this article referred to as "the owner or owners of the land."

consider whether defendants had a duty under the ordinance to maintain the sidewalk.

Applying the same standard governing the motion judge's summary judgment order, RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)), we affirm substantially for the reasons set forth by the trial judge in his oral decision. We add the following brief comments.

Abraham remains good law that an owner of a non-income producing vacant lot owes no duty to the public to maintain the lot's abutting sidewalk in a safe condition. Plaintiff has pointed to no reason why we should deviate from that ruling, which was rendered almost three decades ago. Plaintiff's reliance upon the municipal ordinance stating that landowners are responsible for maintaining their abutting sidewalks is misplaced. In Luchejko, our Supreme Court reaffirmed the longstanding precedent regarding a private citizen's breach of an ordinance:

> First, it has long been the law in this state that breach of an ordinance directing private persons to care for public property
>
> > shall be remediable only at the instance of the municipal government . . . and that there shall be no right of action to an individual citizen especially injured in

> consequence of such breach. The most conspicuous cases of this sort are those that deny liability to private suit for violation of the duty imposed by ordinance upon abutting property-owners to maintain sidewalk pavements or to remove ice and snow from the walks.
>
> [207 N.J. at 200 (emphases in original) (quoting Fielders v. N. Jersey St. Ry. Co., 68 N.J.L. 343, 352 (E. & A. 1902)).]

Here, plaintiff failed to demonstrate defendants violated the municipal ordinance and, even if they had, a violation could not provide the basis for liability in this sidewalk slip-and-fall case. Ibid. Simply put, the ordinance does not impose a duty on defendants to protect plaintiff from a sidewalk's dangerous condition. See Robinson v. Vivirito, 217 N.J. 199, 208 (2014) (holding whether a party owes a duty to another party is a question of law for the court to decide, not the fact finder).

To the extent we have not specifically addressed any of plaintiff's arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.