

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Joanne Coykendall

Court of Appeals No. L-11-1111

Appellant

Trial Court No. CI0201002216

v.

James R. Schings, et al.

DECISION AND JUDGMENT

Appellee

Decided: March 29, 2013

* * * * *

Alan L. Mollenkamp, for appellant.

Robert J. Bahret and Paul R. Bonfiglio, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which granted the summary judgment motion of defendant-appellee, Mary Rickard, and thereby dismissed the negligence action filed by plaintiff-appellant, Joanne

Coykendall. Coykendall now challenges that judgment through the following assignment of error:

The trial court erred in granting summary judgment for defendant Mary L. Rickard. More specifically, the trial court erred in finding that defendant Rickard owed no affirmative legal duty to plaintiff, Joanne Coykendall.

{¶2} This case arises out of an accident that occurred at the home of Doris Ziegler on March 5, 2009. Coykendall, Rickard, Ziegler and others were involved in a Pinochle club that met approximately once a month, rotating at the homes of the various members. As of March 2009, Coykendall had been to Ziegler's home a least once a month for approximately ten years. Coykendall stated in her deposition that usually, when she went to Ziegler's home, she entered through the front door, although occasionally she would enter through the garage. She further testified that she often had problems climbing the front step. Coykendall is five feet tall and as of March 2009, was 81 years old. She stated in her deposition that she had previously complained to Zeigler about the step and had suggested to Ziegler that she install a railing.

{¶3} On March 5, 2009, Coykendall picked up Rickard and drove to Ziegler's for Pinochle. They arrived at about 9:15 a.m. and both entered Ziegler's home through the garage. The group spent the day playing Pinochle, finishing at around 3:00 p.m. Coykendall then exited the house through the front door. She stated that in order to step

down from the front porch onto the driveway, she held onto the brick siding of the house. She then waited for Rickard, who followed shortly thereafter. Rickard is approximately four feet eleven inches tall and as of March 2009, was 76 years old. Coykendall testified that as Rickard walked to the edge of the porch, Rickard asked for her hand. In contrast, Rickard stated in her deposition that Coykendall offered her hand to help Rickard off the porch. Regardless, as Coykendall was holding on to Rickard's hand and as Rickard was stepping off of the porch, Rickard fell against Coykendall and the two women fell to the asphalt driveway. As a result of that fall, Coykendall sustained an injury to her right leg which required a two-week hospital stay and further follow-up care.

{¶4} On February 23, 2010, Coykendall filed an action in the lower court against James R. Schings¹, the executor of the estate of Doris Zeigler, who had died in November 2009, and Rickard. The claims against Rickard sounded in basic negligence. Relevant to the issues on appeal, Coykendall alleged that as a direct and proximate result of Rickard's negligence, Rickard fell on Coykendall as Coykendall was helping Rickard off the porch, thereby causing Coykendall's injuries. Rickard filed a motion for summary judgment supported by the deposition of Coykendall. In that motion, she asserted that because Coykendall had acted as a volunteer in assisting Rickard, Rickard did not owe her a duty of care. Rickard further asserted that Coykendall's claim was barred by the doctrine of

¹ On February 23, 2011, Coykendall filed a notice voluntarily dismissing, without prejudice, all claims against James R. Schings, Executor of the Estate of Doris Zeigler, pursuant to Civ.R. 41.

primary assumption of the risk because she elected to help a friend navigate a step that she knew was inherently unsafe. Coykendall responded with a memorandum in opposition supported by the deposition of Rickard. Coykendall asserted that genuine issues of material fact remained regarding whether she had voluntarily extended her hand to help Rickard or whether Rickard asked for Coykendall's hand, and whether the doctrine of primary assumption of the risk was applicable to this case.

{¶5} On April 13, 2011, the lower court issued an opinion and judgment entry granting Rickard summary judgment. The court concluded that regardless of whether Coykendall offered her hand or Rickard requested it, Coykendall had not provided any authority from which the court could find that Rickard owed Coykendall an affirmative, legal duty to not fall on her. The court further held that even if Coykendall could demonstrate a legal duty, she had assumed the risk of injury by helping her friend. The court, therefore, dismissed Coykendall's claims against Rickard and, thus, dismissed the case. It is from that judgment that Coykendall appeals.

{¶6} In her sole assignment of error, Coykendall asserts that the lower court erred in finding that Rickard did not owe her a legal duty and, therefore, erred in granting Rickard summary judgment.

{¶7} Appellate review of a trial court's grant of summary judgment is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Accordingly, we review the trial court's order of summary judgment independently and

without deference to the trial court's determination. *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 711, 622 N.E.2d 1153 (4th Dist.1993). Summary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). The burden of showing that no genuine issue of material fact exists falls upon the party who moves for summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 294, 662 N.E.2d 264 (1996). However, once the movant supports his or her motion with appropriate evidentiary materials, the adverse party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E).

{¶8} To establish actionable negligence, it is well-settled that "the plaintiff must show the existence of a duty, a breach of the duty, and an injury proximately resulting therefrom." *Trexler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 81 Ohio St.3d 677, 680, 693 N.E.2d 271 (1998). The issue of whether or not a duty exists in a negligence action is one of law for the court to determine. *Gin v. Yachanin*, 75 Ohio App.3d 802, 804, 600 N.E.2d 836 (8th Dist.1991). "Under the law of negligence, a defendant's duty to a plaintiff depends upon the relationship between the parties and the foreseeability of injury to someone in the plaintiff's position." *Simmers v. Bentley Constr. Co.*, 64 Ohio

St.3d 642, 645, 597 N.E.2d 504 (1992). “The common law duty of care is the degree of care that is ordinarily exercised by a reasonable and prudent person under the same or similar circumstances to avoid injuring others.” *Gauci v. Ryan’s Family Steak Houses, Inc.*, 6th Dist. Nos. L-03-1248, L-03-1322, 2004-Ohio-3803, ¶ 10, citing *Mussivand v. David*, 45 Ohio St.3d 314, 318-319, 544 N.E.2d 265 (1989).

{¶9} Appellant asserts that because Rickard needed assistance stepping down from the porch, her falling upon and injuring Coykendall was foreseeable and, therefore, she owed Coykendall a duty to not put Coykendall in a position where Rickard could fall on top of her. Regarding this argument, Coykendall contends that a genuine issue of material fact exists regarding whether Rickard asked for Coykendall’s hand or whether Coykendall offered it, and that this issue precludes summary judgment.

{¶10} Whether Coykendall volunteered to help Rickard off the step or Rickard asked for her hand, it is undisputed that Coykendall did extend her hand in assistance. In our view, it is immaterial what prompted that assistance. The fact remains that it was given. Regardless, the issue before us is whether there is any evidence in the record that Rickard failed to exercise that degree of care that a reasonably prudent person under similar circumstances would have exercised so as to avoid injuring Coykendall as Rickard was stepping down off of the porch step. Rickard testified that she first lowered her left foot onto the asphalt driveway, but then when she attempted to bring her right foot down, it became caught on the cement and she fell toward Coykendall. Rickard

testified that she had not ingested any alcohol that day, had not taken any medication that would have made her light-headed, and was wearing soft-soled tennis shoes. There was no inclement weather and the lighting was good. In opposition, Coykendall has not identified any evidence in the record that would indicate Rickard violated any duty of care to her. Coykendall's argument seems to be simply that because Rickard fell on her, she must have been negligent. This is not the law. Sometimes accidents are just that, accidents.

{¶11} Upon a thorough review of the record, we cannot find any evidence to support a finding that Rickard breached a duty of care that resulted in Coykendall's injury. Accordingly, the trial court's order granting Rickard summary judgment was appropriate and the sole assignment of error is not well-taken.

{¶12} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Court costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

Joanne Coykendall
v. James R. Schings, et al.
L-11-1111

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.