

NADINE AWAD, Plaintiff-Appellant,

v.

**FOREST REALTY MANAGEMENT, FERDINAND G. WEISBROD, SHORT HILLS CLUB VILLAGE and
DEBORAH SHOFER, Defendants-Respondents.**

No. A-0870-12T4.

Superior Court of New Jersey, Appellate Division.

Argued May 14, 2013.

Decided July 2, 2013.

Lane M. Ferdinand argued the cause for appellant (Law Offices of Lane M. Ferdinand, P.C., attorneys; Mr. Ferdinand, on the brief).

Gerald Kaplan argued the cause for respondents (**Methfessel & Werbel**, attorneys; Mr. Kaplan, of counsel and on the brief; Amanda J. Sawyer, on the brief).

Before Judges Waugh and St. John.

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PER CURIAM.

Plaintiff Nadine Awad appeals from the order of the Law Division entered on September 28, 2012, granting defendants summary judgment.

I.

The record discloses the following facts and procedural history.

Plaintiff was a tenant in an apartment complex owned and managed by defendants. Deborah Shafer,^[1] the property manager, lived in a neighboring unit. Lint accumulation in an electric clothes dryer caused a fire to erupt in the basement of Shafer's unit and she called 9-1-1.

Plaintiff looked through her window, saw smoke and flashing lights and called to Shafer from her window. She then entered the bedroom to change her clothing. Plaintiff exited her apartment and stood next to Shafer in the street, conversing about the fire. Unfortunately, Shafer's cat was still in the burning apartment. Although plaintiff knew that Shafer had informed the authorities about her cat, plaintiff became concerned that the firefighters had not yet retrieved the pet. She approached them to make inquiries.

As plaintiff spoke to the firefighters, she saw flames shooting out from Shafer's window. She turned to run in the opposite direction, but tripped on a fire hose and sustained injuries.

In an oral decision, Judge Joseph P. Perfilio granted summary judgment to defendants because plaintiff's injuries were not foreseeable given that they resulted from her voluntarily leaving her apartment and approaching the firefighters to inquire about the cat.

II.

On appeal, plaintiff argues that a reasonable factfinder could have found that her injuries were proximately caused by defendant's conduct.

We note first the standard governing our review of a trial court's award of summary judgment. When reviewing such a grant, the Appellate Division employs the same standard as the trial judge. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). First, we must decide whether there was a genuine issue of material fact. If there was not, then we must decide whether the trial judge correctly applied the law. Atl. Mut. Ins. Co. v. Hillside Bottling Co., Inc., 387 N.J. Super. 224, 230-31 (App. Div.), certif. denied, 189 N.J. 104 (2006). Because this case arises on a motion for summary judgment, we consider the facts in the light most favorable to the plaintiff. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2.

The motion judge's conclusion on an issue of law is accorded no deference and is reviewed de novo. Dep't of Envtl. Prot. v. Kafil, 395 N.J. Super. 597, 601 (App. Div. 2007) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

In this case, the facts are not disputed. The legal issue is whether plaintiff's voluntary acts, leaving her apartment and approaching the firefighters to discuss the cat, amounted to intervening factors such that defendants should be absolved of liability.

To prove negligence, a plaintiff must establish: "(1) a duty of care owed by defendant to plaintiff; (2) a breach of that duty by defendant; and (3) an injury to plaintiff proximately caused by defendant's breach." Endre v. Arnold, 300 N.J. Super. 136, 142 (App. Div.), certif. denied, 150 N.J. 27 (1997).

Foreseeability of the risk of harm is the foundational element in the determination of whether a duty exists. Williamson v. Waldman, 150 N.J. 232, 239 (1997). Whether an injury is foreseeable is a "fact-specific" inquiry. Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993). Foreseeability is defined as the "risk reasonably within the range of apprehension." Clohesy v. Food Circus Supermarkets, 149 N.J. 496, 502-03 (1997) (quoting Hill v. Yaskin, 75 N.J. 139, 144 (1977)). It is based upon the defendant's actual or constructive knowledge of the risk of injury. J.S. v. R.T.H., 155 N.J. 330, 337-38 (1998). A defendant is considered to have a duty if he or she is in a position to discover the risk, or would have a reason to know that a particular plaintiff or class of plaintiffs would suffer a particular injury. *Ibid.*

Once the court has determined that an injury was foreseeable, it becomes a fact question for the jury whether the injury was proximately caused by the defendants' negligence. Davis v. Brooks, 280 N.J. Super. 406, 410 (App. Div. 1993). In fact,

there may be any number of causes intervening between a negligent act and a final injurious occurrence. If they are reasonably foreseeable, each intermediate cause may be deemed a proximate result of the first wrongful act. The original negligence is deemed to continue and operate contemporaneously with all intervening acts of negligence that might reasonably be foreseeable, so that the original negligence is regarded as a concurrent cause of the final resulting injury. The causal connection may be broken by a superseding intervening cause. Such a cause must be one that so entirely supersedes the operation of the first tortfeasor's negligence that it alone caused the injury, without the first tortfeasor's negligence contributing thereto in any material way. But where the original tortfeasor's negligence is an essential link in the chain of causation, such a causal connection is not broken if the intervening cause is one which might, in the natural and ordinary course of things, be anticipated as not entirely improbable.

[*Id.* at 412.]

The burden of proof is on the plaintiff to show negligence and it cannot be met based on conjecture. Long v. Landy, 35 N.J. 44, 54 (1961).

The motion judge determined that plaintiff's injuries were not foreseeable. We agree. Plaintiff's injuries were not foreseeable because her voluntary actions broke the chain of causation between defendants' negligence and her injuries.

First, plaintiff exited her apartment to view the fire. Unlike the plaintiff in Avedisian v. Admiral Realty Corp., 63 N.J. Super. 129, 132-35 (App. Div. 1960), who tripped on a fire hose as she was being evacuated from a burning building, plaintiff was not evacuated because of any danger to her. Rather, plaintiff chose to exit her apartment. She even had time to change her clothing. Plaintiff's decision to exit her apartment and stand near Shafer put her in harm's way. We agree with the motion judge that plaintiff's injuries under these circumstances were not foreseeable to defendants.

However, even if defendants should have anticipated that a tenant might exit her apartment building when a neighboring unit was burning, plaintiff's second voluntary action was clearly not foreseeable. Plaintiff approached the firefighters, while they were engaged in extinguishing the fire, to inquire about Shafer's cat. It was not foreseeable to defendants that plaintiff would approach the firefighters as they were engaged in their emergency effort near a burning building, and then when she saw flames shooting out of Shafer's apartment, turn and attempt to run away, only to trip over a fire hose. The injuries suffered by plaintiff were not foreseeable to defendants.

A fact question as to whether a plaintiff's injuries were proximately caused by a defendant's negligence is only appropriate for a jury after a court has already determined that the injuries were foreseeable. We agree with the motion judge that plaintiff's voluntary actions destroyed the chain of causation and her injuries were not foreseeable by defendants.

Affirmed.

[1] Apparently, her name was misspelled in the caption.

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