ANTHONY CAMMAROTA, JR v. ANTHONY CAMMAROTA, SR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0

ANTHONY CAMMAROTA, JR.,

Plaintiff-Appellant,

v.

ANTHONY CAMMAROTA, SR., and
CARMELA CAMMAROTA,

Defendants/Third-Party
Plaintiffs-Respondents,

v.

JOSEPH CAMMAROTA and
CAMMAROTA CONSTRUCTION, INC.,

Third-Party Defendants-Respondents.

February 28, 2014
Argued Telephonically: February 7, 2014 Decided:

Before Judges Simonelli, Fasciale and Haas.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-4756-10.

Edward P. Capozzi argued the cause for appellant (Seigel Capozzi Law Firm LLC, attorneys; Douglas S. Grossbart, on the brief).

Stephen C. Cahir argued the cause for respondents Anthony Cammarota, Sr. and Carmela Cammarota (Law Office of William E. Staehle, attorneys; Mr. Cahir, on the brief).

Frank J. Kunzier argued the cause for respondents Joseph Cammarota and Cammarota Construction, Inc. (Zimmerer, Murray, Conyngham & Kunzier, attorneys; Mr. Kunzier, of counsel; Kathleen Ginder, on the brief).

PER CURIAM
Plaintiff Anthony Cammarota, Jr. appeals from the February 19, 2013 order of the Law Division granting defendants' motion for a directed verdict at the conclusion of testimony. We reverse and remand for a new trial.

We discern the following facts from the record, viewed in the light most favorable to plaintiff as the non-moving party. Besler v. Bd. of Educ. of W. Windsor-Plainsboro Reg'l Sch. Dist., 201 N.J. 544, 572 (2010).

Defendants Anthony Cammarota, Sr. (Senior) and Carmela Cammarota (Carmela)1 own a home in Hawthorne, New Jersey. They reside there with their son, plaintiff. Plaintiff paid his parents approximately $300 a month to help cover his living expenses.

Now in his mid-40s, plaintiff has worked in construction since shortly after graduating from high school. He has held a number of different jobs, including performing renovation work, installing windows and siding, and working on his own as a handyman. For a few years, he worked for his brother, third-party defendant Joseph Cammarota (Joseph). However, the two brothers did not get along and each went their own way.

For about six months in the 1990s, plaintiff worked for a roofing company. He described the work as "[r]ipping off roofs and shingling." In other words, he removed shingles from an existing roof and replaced them with new shingles. Plaintiff testified that he did not "sheath" roofs, which involves installing plywood between the rafters of the roof of a building to serve as the base for the shingles. He had not done any roofing work for "[a]t least four or five years" before the incident at issue in this case.

Immediately prior to the incident, plaintiff worked as a union "form carpenter." In this position, he built "plywood boxes" that were used to "set the concrete on high-rises" that were being built "in the City." While plaintiff described this as "heavy work," it was not considered "fine carpentry." At the time of the incident, however, plaintiff was working only sporadically in that field.

In Fall 2008, Senior bought a house in North Haledon. The house needed work on its foundation, together with a new roof, windows and siding. Senior, who testified he was a tailor by trade, obtained blueprints for the renovations from his brother-in-law. He then discussed the project with Joseph. Joseph had worked in construction for twenty-five years and was the owner of Cammarota Construction. According to Joseph, he had no employees, but did work with "subcontractors." Joseph filled out the building permit application for Senior, but Joseph did not sign it. Instead, on November 3, 2008, Senior took the permit application to the municipal "building department" where he signed it.

The permit described the work to be performed as: "FOUNDATION AT FRONT PORCH AND [FRAMING] OF PITCH ROOF WITH ATTIC SPACE[,] SIDING[,] NEW WINDOWS." The permit also contained a certification page, where Senior checked "Box A," which indicated that the house would be occupied by Senior and he "attest[ed] that all construction, plumbing or electrical work will be done, in whole or in part, by me or by subcontractors under my supervision, in accordance with all applicable laws[.]" With regard to "Box A," the permit stated:

I UNDERSTAND THAT [BY] MARKING BOX A, I ACKNOWLEDGE THAT I AM ASSUMING RESPONSIBILITY FOR THE WORK DONE ON SAID PROPERTY, THE CONDITION OF THE PROPERTY PRIOR TO, DURING, AND AFTER ANY WORK PERFORMED, AND FOR THE PERFORMANCE OF THE SUBCONTRACTORS I HIRE, EMPLOY, OR OTHERWISE CONTRACT OR WITH WHOM I MAKE AGREEMENTS TO PERFORM WORK. I AM VOLUNTARILY AND KNOWINGLY ASSUMING THIS RESPONSIBILITY.

Senior also certified "that I will perform or supervise" the "Building" work on the house. Senior and Carmela were listed as the "Contractor" on the permit. However, another page of the permit listed "HOME OWNER JOE" as the "Principal Contractor," with Joseph being named as the "Responsible Person in Charge once Work has Begun." Joseph testified that this meant that "the homeowner . . . is in charge of the application and when the building department has a question, he [doesn't] know what to answer, so he's going to call me."

Joseph denied that he was the general contractor for Senior's renovation project. Joseph explained that, in order for him to be "responsible for the work and performing the work," he would have had to sign the permit. Senior was the only party who signed the permit. Senior was at the work site every day.

When asked if he was "in charge" of the project, Joseph did not directly answer and testified that "I'm the one who knows about the project." He read the plans and "direct[ed] people what to do based on the plans." Joseph denied that his construction company was involved in the project. Although he placed a company sign on the property, he did so only at Senior's request so that he could "market" his services. Joseph testified that he did not feel that he was responsible for ensuring the safety of any of the individuals who worked on the project.

Senior told Joseph that he wanted to "do this job inexpensively." Joseph worked on the house, together with two other individuals, Eddie and Miguel. Joseph described Eddie as someone who had worked with him in the past. Miguel was a day laborer, who had been found at a home improvement supply store. Another individual, who was nicknamed "Snaggletooth," was a roofer who ultimately did the shingling of the roof. Senior paid all of the workers in cash. Joseph would tell Senior what supplies were needed and Senior paid those expenses as well.

Senior "told" plaintiff "to help if he could" on the project. Plaintiff agreed to help, stating "I was helping them out. I wouldn't call it a favor [to my parents]. It was called helping them out." Joseph made clear that plaintiff did not work for him and that he did not provide direction to plaintiff. Plaintiff stated that he was "working for my father." Senior did not pay plaintiff for the work he performed.

Joseph initially described plaintiff as someone who "can work" and who was "skilled." However, he then used an extremely derogatory term to describe plaintiff, which implied that he had intellectual or emotional limitations.

Joseph testified at a pre-trial deposition that Senior and plaintiff "took care of the inside stuff with the basement, they framed the closet, which I wish I would have took . . . a picture of. They did whatever the[y] could to not need me anymore." Joseph stated that the closet had been improperly constructed and that he "wouldn't have paid for that closet." Plaintiff also testified that Senior pitched in and even carried lumber at the work site. Senior denied performing any work on the project.

Joseph testified that, on the evening before the incident, November 13, 2008, he placed a tarp over the roof of the house because rain had been forecast. The parties dispute whether it rained the next day, November 14, and whether the tarp remained in place. Plaintiff testified it was only "[o]vercast" that day. However, Joseph stated that it rained in the morning. Even with a tarp covering the roof, however, Joseph testified that the roof was still wet on the day of the incident.

Apparently because of the weather, the workers "had nothing to do" on the morning of November 14. Accordingly, Senior told them, "I've got an idea" and told them to "build the overhang" on the garage of the house. Joseph stated that he "tried to talk them out of it but then I just followed along. They wanted to do something that day, so they built the [overhang]." Joseph did not assist with this task. Instead, plaintiff and Eddie built the overhang.

When this work was completed, Senior and plaintiff left the work site to go to the bank and then stopped at a pizza shop to order pizza for lunch. The shop was only two blocks from the work site, so they returned to the site to wait for the pizza to be ready. At the site, the next task to be performed was the sheathing of the roof. However, Joseph had "called it quits" for the day because he "couldn't take the tarp off. It was raining."

Plaintiff decided that he would begin the sheathing project on the roof of the house while he waited to pick up the pizza. He testified that the tarp had been removed from where it had been placed and the supplies for the job had been laid out. Plaintiff "went on the roof to place plywood where [it] had to be put because there was a half [hour] between the pizza and lunchtime."

Joseph testified that the roof of the house was very steep and it was "extremely dangerous" to work on the roof. He stated that Senior was in the garage as plaintiff began going up a ladder to the roof with a piece of plywood. From the driveway, Joseph saw his brother and said, "where are you going up - - while he was going up the ladder." He did not tell plaintiff not to go on the roof and he did not

tell him that the roof was wet. Plaintiff did not recall whether Joseph said anything to him as he went up the ladder.

Plaintiff took his tool belt with him onto the roof. He was not wearing, and had never been provided, a harness or any other type of safety equipment. Plaintiff testified that he began to put the piece of plywood down on the roof where it needed to be installed. He stated that the roof appeared to be safe and that he "wouldn't have walked out [on the roof] if I didn't think it was safe." Suddenly, plaintiff testified that "[o]ut of nowhere I slipped and fell." Senior stated that plaintiff fell approximately twenty-five feet to the ground. An ambulance took plaintiff to the hospital. He suffered fractures of his elbow, wrist, tailbone, and pelvis.

The next day, Joseph finished the sheathing job on the roof. He explained that he did not fall because "I know what I'm doing."

Plaintiff filed suit against Senior and Carmela and claimed that their negligence caused the injuries he sustained and the resulting damages. Senior and Carmela filed a third-party complaint against Joseph and Cammarota Construction, alleging that Joseph was the person "in charge of the proper use of the construction equipment" at the work site. After a period of discovery, plaintiff filed an amended complaint adding Joseph and Cammarota Construction as defendants. On April 27, 2012, the trial judge granted Joseph and Cammarota Construction's motion for summary judgment on the ground that plaintiff's claims against them were barred by the statute of limitations.2

The matter was tried before a jury on January 28, 30, and 31, 2013. After the completion of testimony, Senior and Carmela moved for a directed verdict in their favor. The judge granted the motion in an oral opinion.3

The judge ruled that Senior did not owe a duty of care to plaintiff in the performance of his work on the roof. While the judge found that plaintiff "did in fact provide contractual services along with his brother on the . . . work for . . . that property," he stated that "no one directed [plaintiff] to do that particular job [on the roof] on that particular day at that particular time." Instead, the judge stated that plaintiff "had a history of working in the construction field" and that, because he was a tailor, Senior lacked the experience necessary to supervise plaintiff's work. Under these circumstances, and relying upon our decisions in Slack v. Whalen, 327 N.J. Super. 186 (App. Div.), certif. denied, 163 N.J. 398 (2000), and Longo v. Aprile, 374 N.J. Super. 469 (App. Div. 2005), the judge found that the evidence did not support plaintiff's contention that Senior owed a duty of care to him. This appeal followed.

On appeal, plaintiff argues that the trial judge erred in dismissing his complaint. He asserts that Senior accepted responsibility for the condition of the property, together with all aspects of the work performed, when he signed the permit application attesting to same. Plaintiff contends that Senior was present at the work site each day, paid all the workers who received monetary compensation, and paid for all of the supplies. Plaintiff argues that our decisions in Slack and Longo are readily distinguishable from the case at hand and that he submitted sufficient evidence to defeat Senior's claim that he did not owe plaintiff a duty of care while he worked on the project. After reviewing the record in light of the contentions advanced on appeal, we reverse the judge's decision to grant Senior's motion to dismiss plaintiff's complaint and remand for a new trial.

Under Rule 4:40-1, "[a] motion for judgment . . . may be made by a party . . . at the close of the evidence offered by an opponent." The standard of review is the same as that for a motion under Rule 4:37-2(b) for a dismissal of an action at the conclusion of plaintiff's proofs. Rena, Inc. v. Brien, 310 N.J. Super. 304, 311 (App. Div. 1998).

In deciding the motion, the trial court "'must accept as true all evidence supporting the position of the party defending against the motion and must accord that party the benefit of all legitimate inferences which can be deduced [from the evidence].'" Besler, supra, 201 N.J. at 572 (alteration in original) (quoting Lewis v. Am. Cyanamid Co., 155 N.J. 544, 567 (1998)). If reasonable minds could reach different conclusions, the motion must be denied. Rena, supra, 310 N.J. Super. at 311. If the

evidence "'is so one-sided,'" however, "'that one party must prevail as a matter of law,'" then a directed verdict is appropriate. Frugis v. Bracigliano, 177 N.J. 250, 269 (2003) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). The court may not consider issues of witness credibility in making the determination. See Rena, supra, 310 N.J. Super. at 311.

An appellate court must review a trial judge's decision to grant involuntary dismissal de novo, applying the same standard as the trial court. Epperson v. Wal-Mart Stores, Inc., 373 N.J. Super. 522, 527 (App. Div. 2004). Accordingly, the "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"[A] negligence cause of action requires the establishment of four elements: (1) a duty of care, (2) a breach of that duty, (3) actual and proximate causation, and (4) damages." Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 594 (2013). The first element, duty, is a question of law to be decided by the trial judge. Carvalho v. Toll Bros. & Developers, 143 N.J. 565, 572 (1996). "[N]o bright line rule . . . determines when one owes a legal duty to prevent a risk of harm to another." Wlasiuk v. McElwee, 334 N.J. Super. 661, 666 (App. Div. 2000). The imposition of a duty depends on the interplay of many factors, including: (1) the relationship of the parties; (2) the nature of the attendant risk; (3) the ability and opportunity to exercise care; and (4) the public interest in the proposed solution. Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993). "Ultimately, [New Jersey] Supreme Court cases repeatedly emphasize that the question of whether a duty exists is one of 'fairness' and 'public policy.'" Wlasiuk, supra, 334 N.J. Super. at 666-67 (quoting Hopkins, supra, 132 N.J. at 439).

Applying these factors here, and viewing the evidence presented at trial in the light most favorable to plaintiff, we conclude that the record supports a finding that Senior owed plaintiff a duty of care. As to the nature of the relationship between Senior and plaintiff, we agree with the trial judge's finding that plaintiff provided "contractual services" for Senior on the property. Senior "told" plaintiff "to help if he could on the project" and plaintiff agreed to do so without monetary compensation. As we have observed in the context of actions between friends and neighbors, the fact that plaintiff was Senior's son and did not receive compensation

is a factor completely irrelevant to the underlying problem of liability. Certainly, the duty of a person to exercise reasonable care in working with another on a job which may be dangerous to the other if reasonable care is not exercised, should not be less because the other person happens to be a neighbor or social friend rather than a stranger.

Where one requests another, no matter what the so-called "status" of that other person might be, to assist him voluntarily in performing a task for the requesting party's benefit, and if the task is one which involves the risk of some danger to the assisting party should the requesting party not exercise ordinary care in performing that part of the task resolved to be done by him, he owes the assisting party a duty of reasonable care in the circumstances present.

[Cropanese v. Martinez, 35 N.J. Super. 118, 123-24 (App. Div. 1955).]

With regard to "the nature of the attendant risk," all of the parties agreed that working on a steep roof is hazardous. Plaintiff had "ripped off" and installed shingles on roofs for a six-month period in the late 1990s, but had not done sheathing work at that time. His most recent job involved building simple, wooden boxes to hold concrete. Joseph criticized the quality of plaintiff's work on the project. Therefore, the record does not support the judge's finding that plaintiff's "history of working in the

construction field" equipped him to handle this type of dangerous work on his own without care provided by Senior.

Senior clearly had "the ability and opportunity to exercise care" over the work performed by plaintiff. Senior was the owner of the house that was being renovated. He obtained the building permits for the project. Significantly, he certified in the permit application that he "voluntarily and knowingly . . . assum[ed] responsibility for the work done on [the] property, the condition of the property prior to, during, and after any work performed, and for the performance of the subcontractors I hire, employ or otherwise contract . . . ." Senior paid the other workers and paid for all of the supplies.

Senior was at the work site every day. While he claimed that he was not "in charge" and knew nothing about construction, Joseph testified that Senior and plaintiff worked on the inside of the house and "did whatever the[y] could to not need me anymore." Plaintiff testified that Senior also performed other tasks at the site.

On the day of the incident, Senior suggested that the workers construct an overhang on the garage, even though Joseph attempted to persuade them not to work because of the weather. Plaintiff went onto the roof to do "what I was supposed to be doing, helping them out." All of these facts support the conclusion that Senior had the opportunity and ability to exercise care and ensure safety at the work site.

Finally, the public interest supports permitting plaintiff to present the issue of whether Senior breached the duty of care owed to him to a jury. Senior represented to the building authorities that he was responsible for the condition of the property and the work performed by the individuals he used on the project. Thus, it is entirely appropriate to hold Senior to his representation. While Senior argues that he knew nothing about roofing and relied upon Joseph to perform the work, it would be contrary to the public interest to permit Senior to avoid his legal duty by shifting responsibility to his more experienced son who, knowing that the roof was wet and not safe to work on, nevertheless did nothing to stop plaintiff from attempting to begin the sheathing project.

In reaching his decision, the trial judge mistakenly relied upon our decisions in Slack and Longo. The facts of each of those cases are plainly distinguishable from those presented here. In Slack, supra, 327 N.J. Super. at 189, the defendants retained a general contractor to build a house on their undeveloped lot. After that contractor "failed to perform," the defendants took over the project, even though they had no construction experience. Ibid. They obtained the required building permits and retained subcontractors to do the work. Ibid. They were not present at the work site on a daily basis and they did not participate in the actual work. Id. at 190. Instead, they undertook only "administrative responsibilities." Id. at 189. One day, the plaintiff went to the house "to spackle the sheetrock" as "part of a two-man spackling team." Ibid. While working on the rafters, the plaintiff "heard the board beneath him break, and he fell approximately ten feet to the floor." Id. at 189-90. Under these specific factual circumstances, we held that the defendants did not owe a duty of care to the plaintiff. Id. at 194.

The facts of the present case are strikingly different. The nature and language of the permits the defendants obtained in Slack are not apparent from the opinion. Here, however, Senior certified in his building permit that he was knowingly and voluntarily assuming responsibility for the condition of the building and for the work to be performed. Unlike the defendants in Slack, Senior was present on site at all times. According to Joseph and plaintiff, Senior was also involved in the work being performed, particularly inside the house. Thus, Senior undertook much more than the "administrative responsibilities" we found the defendants performed regarding their project in Slack.

The facts presented in Longo are also dissimilar from the circumstances of this case. In Longo, supra, 374 N.J. Super. at 471, the plaintiffs and defendants were neighbors who regularly helped one another out with household projects. They were never paid for this neighborly assistance. Ibid. One day, the plaintiff was power-washing the defendants' roof when he tripped backwards on the drip ledge and fell to the ground. Ibid. The defendants were not involved in, nor did they supervise, the

power-washing project. Ibid. We affirmed the trial court's determination that the defendants owed no duty of care to the plaintiff under these circumstances. Id. at 474-75. Here, however, Senior assumed responsibility for the condition of the building and the work performed by plaintiff when he signed the building permit attesting to same. Senior was also present at the work site every day and worked on the project with plaintiff.

Reviewing the facts in the light most favorable to plaintiff, we conclude that the judge did not give enough weight to the distinguishing factors between Slack, Longo, and the current case. Plaintiff presented sufficient evidence to support a finding that Senior owed him a duty of care and, therefore, the judge erred in granting Senior's motion for a directed verdict.

Finally, we note that a directed verdict was also granted in favor of Carmela. On appeal, plaintiff does not seriously contend that his mother was in any way involved in the construction process. Carmela did not sign the building permit as the responsible party, was never present at the work site, and performed no work there. Therefore, the summary dismissal of plaintiff's claims against her is affirmed.

Reversed as to Anthony Cammarota, Sr. and remanded for trial; affirmed as to Carmela Cammarota. We do not retain jurisdiction.

1 Because the parties are all related to each other, we do not refer to them by their surnames. We intend no disrespect in doing so.

2 Plaintiff does not challenge that ruling on appeal.

3 Because plaintiff's claims against Senior and Carmela were dismissed, the judge also dismissed Senior and Carmela's third-party complaint against Joseph and Cammarota Construction.