Bell v. Housing Authority of Monroe County

Slip-and-fall — Immunity — Real estate exception — Dangerous condition — Notice

A factual issue existed as to whether an alleged dangerous defect on real property would have been discoverable through reasonable inspection, so the court denied summary judgment.

Plaintiff Sandra Bell tripped and fell on an uneven edge of pavement as she was going from a parking lot to attend a yard sale at an apartment complex. Defendant owned and managed the apartment complex. The complaint against defendant sought to recover for injuries by Bell in this accident, as well as a claim by her husband for loss of consortium. Defendant filed a motion for summary judgment.

First, defendant argued the doctrine of sovereign immunity barred plaintiffs' claims. Plaintiffs responded that the real estate exception to the sovereign immunity applied in this case. They contended that a jury could find that defendant had constructive notice of a dangerous condition on the subject property.

Case law held that housing authorities were commonwealth agencies that were generally entitled to the protections of sovereign immunity. However, the Sovereign Immunity Act contained an exception for dangerous conditions involving commonwealth real estate and sidewalks. 42 Pa.C.S.A. §8522(b)(4). The court noted that exceptions to sovereign immunity were strictly construed. To qualify for the real estate exception, plaintiffs were required to show actual or constructive notice of a dangerous condition. Plaintiffs relied on their own deposition testimony, a handwritten incident report, and a photograph of the alleged defect. Defendant claimed this was inadequate to invoke the exception. The question of whether a landowner had constructive notice of a dangerous condition and should have known of the defect was a question of fact. Such factual issues were generally for the jury to decide.

The court found that a jury could determine that defendant had constructive notice of the alleged defect here. The photograph depicted the uneven pavement on the side of the apartment complex's parking lot. It did not appear to the court that the accident occurred in a remote or hidden area of the property. Instead, this was a common area that people would foreseeably cross. The area was also readily visible to defendant's maintenance workers as well as to the general public. Accordingly, the court denied summary judgment because it concluded that the question of whether the alleged defect was discoverable through reasonable inspection was for the jury to decide.

C.P. of Monroe County, No. 4495 CIVIL 2015

WILLIAMSON, *J*., Dec. 17, 2017—This matter comes before the Court on the Motion for Summary Judgment of the Housing Authority of Monroe County (hereinafter "Defendant"). On July 6, 2013, Sandra Bell (hereinafter "Plaintiff Sandra Bell") and her husband Fred Bell (hereinafter "Plaintiff Fred Bell") attended a yard sale at an apartment complex on West Main Street, Stroudsburg, PA. The apartment complex is owned and managed by Defendant. At that time, Plaintiff Sandra Bell claims she tripped and fell on an uneven edge of pavement into a hole on the side of a parking lot. She further claims the fall resulted in an ankle fracture and post-traumatic arthritis. Plaintiff Sandra Bell is suing to recover damages for her injuries. Plaintiff Fred Bell's cause of action involves a loss of consortium claim.

Plaintiffs filed a Complaint in this matter on June 23, 2015. Defendant filed a Motion for Summary Judgment on August 16, 2017. Plaintiffs were directed to file a responsive brief within forty-five days of the motion. Plaintiffs requested a number of continuances and extensions of time to file their brief due to a change in counsel. The Court set the final response date as November 30, 2017. The record shows Plaintiffs brief was time stamped by the Prothonotary's Office two minutes after the Courthouse opened on December 1, 2017. It is unknown if the brief was timely filed and was simply not time stamped until the following morning or if it was filed immediately on December 1st. Based upon the early morning time stamp, we will assume it is the former and not the latter. As such, Plaintiffs' brief was timely filed and will be considered in our decision.

Discussion

The purpose of summary judgment is to resolve matters based upon pleadings when a trial would be unnecessary because "a party lacks the beginnings of evidence to establish or contest a material issue." *Ertel v. Patriot-News Co.*, 544 Pa. 93, 674 A.2d 1038, 1042 (1996). Summary judgment is appropriate when, at the closing of pleadings there is 1) no genuine issue as to material fact or 2) when the party bearing the burden of proof has failed to prove sufficient evidence to prove the facts of the case. Pa.R.C.P. No. 1035.2. Evidence is viewed in the light most favorable to the non-moving party. *Grandelli v. Methodist Hosp.*, 2001 PA Super 155, ¶ 10, 777 A.2d 1138, 1144 (2001). The party moving for summary judgment has the burden of proving no issue of merit exists. *Kafando v. Erie Ceramic Arts Co.*, 764 A.2d 59, 61 (Pa. Super. 2000). In order to grant summary judgment the non-moving party must have failed to adduce sufficient evidence on an issue essential to his case upon which he bears the burden of proof such that no jury could return a verdict in his favor." Grandelli at 1143. Summary judgment is only appropriate when after pleadings have closed there remains no question that a jury would return a verdict contrary to the moving party.

Defendant believes summary judgment is appropriate at this time because Plaintiffs' claims are barred by the doctrine of sovereign immunity. Defendant argues Plaintiffs' claims fail to establish an exception to sovereign immunity because they have not established through witness testimony or expert report that the Authority had actual or constructive notice of a dangerous condition on real estate owned by the Authority. In response, Plaintiffs asserts that the real estate exception to sovereign immunity

applies in this instance, and that a jury could reasonably find that Defendant had constructive notice of the defect's existence.

The Sovereign Immunity Act "limits the instances in which an individual may sue the Commonwealth to a set of specific situations enumerated in 42 Pa. C.S.A. §8522." *Finn v. City of Philadelphia*, 541 Pa. 596, 664 A.2d 1342, 1344 (1995). Housing authorities are Commonwealth agencies entitled to the protections of sovereign immunity. *Battle v. Philadelphia Hous. Auth.*, 406 Pa. Super. 578, 594 A.2d 769, 771 (1991). The Sovereign Immunity Act includes an exception for "a dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency, Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency." 42 Pa. C.S.A. § 8522(b)(4). However, exceptions to sovereign immunity must be strictly construed. Finn at 1344. In order to invoke the real estate exception, the plaintiff must show actual or constructive notice of the dangerous condition. *Com., Dep't of Transp. v. Patton*, 546 Pa. 562, 686 A.2d 1302, 1305 (1997). Constructive notice requires the dangerous defect to have been apparent upon reasonable inspection by the defendant. *Id.*

Defendant argues that because the only evidence of notice comes from Plaintiffs themselves, they have failed to meet their burden. In response, Plaintiffs cite their own depositions, in addition to a hand written incident report and a photograph of the alleged defect that illustrates Defendant should have been aware of its existence.

"The question of whether a landowner had constructive notice of a dangerous condition and thus should have known of the defect... is a question of fact. As such, it is a question for the jury, and may be decided by the court only when reasonable minds could not differ." *Id.* at 1305 citing *Carrender v. Fitterer*, 503 Pa. 178, 185, 469 A.2d 120, 124 (1983). Viewing the evidence in the light most favorable to the non-moving party, we find that a jury could determine Defendant had constructive notice of the alleged defect. The photograph attached to Plaintiffs response as Exhibit "B" shows the alleged defect directly on the side of apartment complex's parking lot and a number of cars parked in its vicinity. Further, the incident report states Plaintiff Sandra Bell exited her vehicle in the parking lot and crossed the area to reach the front of the apartment building where the yard sale was taking place. It does not appear that the alleged accident occurred in a remote, hidden area of the apartment complex, but rather, in a common area people would foreseeably cross. It is in an area where maintenance workers for Defendant, and the general public, could reasonably view the defective condition. Therefore, we find that the question of whether the alleged defect would have been discoverable through reasonable inspection is a question for the jury to decide. Defendant's Motion for Summary Judgment is denied.

ORDER

AND NOW, this 27th day of December, 2017, Defendant's Motion for Summary Judgment is DENIED.