

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JACQUELINE P. HAYES and :
THOMAS MARK BLEST, : C.A. No. K11C-08-036 WLW
:
Plaintiffs, :
:
v. :
:
ALONZO EAVES, LIBERTY MUTUAL :
GROUP, INC., LIBERTY MUTUAL FIRE :
INSURANCE COMPANY and LIBERTY :
MUTUAL CAPTIVE HOLDINGS, INC., :
:
Defendants. :

Submitted: April 26, 2013

Decided: April 30, 2013

ORDER

Upon Defendant Eaves' Motion for
Summary Judgment. *Granted.*

John J. Sullivan, Jr., Esquire of Morris Hardwick Schneider, Newark, Delaware;
attorney for the Plaintiffs.

David L. Baumberger, Esquire of Chrissinger & baumberger, Wilmington, Delaware;
attorney for Defendant Alonzo Eaves.

Kimberly Meany, Esquire of Marshall Dennehey Warner Coleman & Goggin,
Wilmington, Delaware; attorney for Defendants Liberty Mutual.

WITHAM, R.J.

Hayes & Blest v. Alonzo Eaves, et al.

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The parties appeared before this Court on April 26, 2013 for oral argument on whether the lack of expert testimony establishing that Alonzo Eaves' (hereinafter "Defendant" or "Eaves") alleged negligence was the proximate cause of Plaintiffs' injuries requires entry of summary judgment in Defendants' favor.

Facts

On December 26, 2010, a fire broke out in a garage on Defendant's property. The fire spread to a shed that was shared by Jacqueline Hayes, Thomas Mark Blest (hereinafter "Plaintiffs") and Defendant. The fire destroyed a motorcycle and personal property owned by the Plaintiffs. Plaintiffs instituted this action on June 15, 2011 in the Court of Common Pleas against Eaves; Liberty Mutual Group, Inc.; Liberty Mutual Fire Insurance Company; and Liberty Mutual Captive Holdings, Inc., seeking relief from that damage. The Complaint alleges, principally, that Defendant's failure to properly maintain the electrical wiring in the garage proximately caused the fire.

The parties engaged in mediation on February 9, 2013. It became clear at the mediation conference that the only evidence Plaintiffs plan to present concerning the cause of the fire is the testimony of Richard R. Ward ("the fire marshal"), an assistant state fire marshal. In a report dated January 27, 2011, Ward concluded that the fire resulted from an electrical malfunction in the roof of the garage which ignited nearby combustibles. Defendant thereafter filed the instant motion for summary judgment, in which he argues that Plaintiffs cannot establish a *prima facie* case of negligence without producing additional evidence establishing that Defendant breached a duty of care to the Plaintiffs, and that this breach was a proximate cause of the Plaintiffs'

injuries.

Parties' Contentions

Defendant argues that he is entitled to judgment as a matter of law because a trier of fact could not infer from the fire marshal's testimony alone that he breached a duty of care owed to Plaintiffs. Conversely, Plaintiffs argue that there is sufficient evidence in the record from which a jury could infer that Defendant's failure to maintain the wiring in his garage breached a duty owed to Plaintiffs, and that this breach was a proximate cause of the fire. Plaintiffs conclude that the evidence is reasonably subject to conflicting inferences and, thus, precludes the entry of summary judgment.

Standard of Review

When considering a motion for summary judgment, the Court's function is to examine the record to ascertain whether genuine issues of material fact exist and to determine whether the moving party is entitled to judgment as a matter of law.¹ The facts must be viewed in the light most favorable to the non-moving party.² The moving party bears the initial burden of demonstrating that the undisputed facts support his legal claims.³ If the movant properly supports his claims, the burden shifts to the non-moving party to demonstrate that there are issues of material fact for

¹ Super. Ct. Civ. R. 56(c).

² *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

³ *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. 2005).

resolution by the ultimate fact-finder.⁴ Summary Judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.⁵ However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.⁶

Discussion

Generally, issues of negligence are “not susceptible of summary adjudication,”⁷ but “when the moving party clearly establishes that there is no genuine issue of material fact,” summary judgment may be entered.⁸ Here, Defendant bore a duty to adjoining landowners to maintain his property in a reasonably safe condition in view of all the circumstances.⁹ The record, as it stands, contains no evidence suggesting

⁴ *Id.* at 880.

⁵ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

⁶ *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

⁷ *Ebersole*, 180 A.2d at 469.

⁸ *Id.* (citing *Lightburn v. Delaware Power & Light Co.*, 167 A.2d 64, 66 (Del. 1960)).

⁹ See Restatement (Second) of Torts § 365 (2012). Section 365 provides:

A possessor of land is subject to liability to others outside the land for physical harm caused by the disrepair of a structure or other artificial condition thereon, if the exercise of reasonable care by the possessor or by any person to whom he entrusts the maintenance and repair thereof

(a) would have disclosed the disrepair and the unreasonable risk involved therein;
and

(b) would have made it reasonable safe by repair or otherwise.

Id. See also *Higgins v. Walls*, 901 A.2d 122, 139 (Del. Super. Ct. 2005) (citing the Restatement for

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any breach of the duty of reasonable care on the part of Defendant. Plaintiffs do not intend to present expert testimony suggesting that Defendant's failure to maintain or repair an unsafe electrical condition in his garage caused the fire that damaged Plaintiffs' property, nor do they intend to present any testimony that Defendant was aware of any defect. Simply put, Plaintiffs have introduced no evidence suggesting that the incident in question resulted from any negligent act or breach of any duty owed to Plaintiffs. As such, summary judgment in favor of Defendant on all counts is appropriate.

Conclusion

For the foregoing reasons, Defendant's Motion for Summary Judgment is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

the proposition that a property owner can, under certain circumstances, face liability for the acts of those on his property without his permission or for injuries sustained off his property).