Circuit Court for Baltimore City
Case No. 24C19002247

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 376

September Term, 2021

SHEREE C. FUQUA

v.

NEW LIFE EVANGELICAL BAPTIST CHURCH

Graeff,
Berger,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: December 22, 2021

This case arises from a premises liability and personal injury lawsuit in the Circuit Court for Baltimore City. Appellant, Sheree Fuqua ("Ms. Fuqua") brought an action for premises liability against Appellee, New Life Evangelical Baptist Church ("New Life") when she tripped and fell over a garden fence on the property where New Life hosts its church services. At the close of discovery, the trial court granted summary judgment in favor of New Life. Ms. Fuqua filed this timely appeal.

Ms. Fuqua presents four questions for our review,[1] which we have rephrased, for clarity, as follows:

[1] Ms. Fuqua's original questions presented are as follows:

1. Whether the Circuit Court erred in granting summary judgment?

2. Whether a lessee of property who directly creates a dangerous condition on the property has sufficient possession and control of the property to be liable for personal injuries caused by the dangerous condition created by the lessee?

3. Whether short black fencing which was low to the ground and which was placed around a dirt area such that the black fencing was transparent and inconspicuous was an open and obvious danger as a matter of law?

4. Whether the plaintiff was contributorily negligent as a matter of law when the plaintiff did not see the black fencing that caused the plaintiff's fall because the plaintiff, who was employed as a security officer, was escorting a confrontational and hostile drug clinic client who was walking fast and was about an arm's length in front of the plaintiff off of the property?

I. Whether the trial court erred in granting summary judgment.

II. Whether New Life had sufficient possession and control of the premises to be liable in an action for premises liability.

III. Whether the condition on the premises that caused Ms. Fuqua's injury was open and obvious as a matter of law.

IV. Whether Ms. Fuqua was contributorily negligent as a matter of law.

For the reasons explained herein, we shall affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

Ms. Fuqua is employed as a security guard for her employer Turning Point Clinic ("Turning Point"). Turning Point is a methadone clinic that treats patients in Baltimore that suffer from opioid addiction. New Life is a religious ministries organization that operates out of Turning Point's facilities. Although New Life brought about the initial founding of Turning Point, the entities are distinct and legally separate.

Turning Point's facilities are located at the intersection of North Avenue and Milton Avenue in Baltimore City. This location, (hereinafter referred to as "the Premises") was originally purchased by New Life in 1990. In June 2015, however, New Life conveyed the entirety of the Premises to Turning Point, and Turning Point has been the sole owner, possessor, and controller of the Premises since that time.

As mentioned previously, New Life conveyed the Premises to Turning Point in June 2015. Nevertheless, New Life has maintained an informal presence on the Premises. New Life utilizes the interior of Turning Point's facilities to host church services and Sunday

school on a weekly basis. Even though New Life and Turning Point bear a close spatial relationship, there is no lease, contract, or other document formalizing New Life's use of Turning Point's facilities on the Premises.

On December 10, 2016, Ms. Fuqua reported for her shift at Turning Point. During her shift, Ms. Fuqua was notified that she needed to escort a Turning Point patient off the Premises. Ms. Fuqua escorted the patient out of Turning Point's building and towards Milton Avenue, and walked behind the patient at approximately an arms-length distance. Ms. Fuqua followed the patient across the Turning Point parking lot towards Milton Avenue and approached a small garden area at the edge of the sidewalk on Milton Avenue. At this time, Ms. Fuqua began to follow the patient through the garden area. While leaving the sidewalk, Ms. Fuqua tripped over a fence on the perimeter of the garden area and fell into her own personal vehicle, sustaining injuries to her left arm.

Ms. Fuqua brought a workers' compensation claim against Turning Point because her injury occurred while she was acting within the scope of her employment. Ms. Fuqua subsequently filed a separate action against New Life and asserted a single claim for negligence on a theory of premises liability. Ms. Fuqua alleged that the garden fence was a dangerous condition and that New Life failed to warn her of the potential hazard. At the close of discovery, New Life moved for summary judgment and advanced three distinct arguments. New Life maintained: (1) "that there was no evidence that it owned or controlled the Premises, and therefore it could not be liable in [the] premises liability action;" (2) that the garden fence was "an open and obvious object that [Ms. Fuqua] could

have seen and avoided;" and (3) that "[Ms. Fuqua] was contributorily negligent as a matter of law because she failed to watch where she was going and perceive the presence of the fence."

The trial court granted New Life's motion for summary judgment on all of New Life's arguments. The trial court determined that the garden fence was an open and obvious condition which Ms. Fuqua could have avoided, explaining:

> It is possible to trip over anything on the ground, but it is not negligence for a property owner to have . . . landscaping items in a garden area or planting bed. [Ms. Fuqua] freely acknowledged that nothing hid the presence of the fence from her. If she had looked, she would have been able to see it. The condition at issue was no way hidden from [Ms. Fuqua's] view.

The trial court further determined that Ms. Fuqua's failure to give attention to where she was walking made her contributorily negligent for her injury:

> [Ms. Fuqua] bluntly acknowledges that she was not paying attention when she was injured and that nothing was preventing her from seeing the fence or realizing it was there. [Ms. Fuqua] could easily see the fence after she fell and admits that she could have seen the fence if she had been looking for it. Reasonable minds could not differ that [Ms. Fuqua] was contributorily negligent in failing to see the fence.

Finally, and most pertinent to our holding, the trial court determined that Ms. Fuqua "failed to establish that [New Life] owned or exercised control over the land where [her] injury occurred." The trial court concluded that -- even though New Life brought about the initial founding of Turning Point -- New Life and Turning Point were distinct and separate legal entities. Further, the trial court determined that New Life conveyed the Premises to Turning Point in June 2015, and that Turning Point has been the sole owner of

the Premises since that time. The trial court reasoned, however, that even though New Life utilizes Turning Point's facilities for church related activities, Turning Point is the entity that has the sole responsibility "for maintaining the subject property, including the area where [Ms. Fuqua] fell." The trial court concluded that Turning Point was the entity that "occupied, controlled, and had the intent to control the [Premises]" and therefore, "[New Life] cannot be liable for [Ms. Fuqua's] injuries." Accordingly, the trial court granted summary judgment in favor of New Life.

DISCUSSION

Standard of Review

The entry of summary judgment is governed by Maryland Rule 2-501, which provides:

> The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

We will review a trial court's grant of a motion for summary judgment *de novo*, and we will construe all "reasonable inferences that may be drawn from the undisputed facts against the moving party." *Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 580 (2020), *cert. denied*, 474 Md. 206 (2021). We will conduct our review independently from the trial court and examine the record "to determine whether a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Davis v. Regency Lane, LLC*, 249 Md. App. 187, 203 (2021) (quoting *Md. Cas.*

Co. v. Blackstone Intern. Ltd., 442 Md. 685, 694 (2015)). Further, "we review only the grounds upon which the trial court relied." *Greenstein v. Council of Unit Owners of Avalon Ct. Six Condo.*, 201 Md. App. 186, 197 (2011) (quoting *Prop. & Cas. Ins. Guar. Corp. v. Yanni*, 397 Md. 474, 480–81 (2007) (internal quotation marks and citations omitted)).

I. The trial court did not err in granting summary judgment in favor of New Life because Ms. Fuqua failed to present a genuine dispute of material fact regarding whether New Life owned, possessed, or controlled the Premises where her injury occurred.

For the reasons stated herein, we hold that the trial court did not err in granting summary judgment in favor of New Life on the basis that New Life did not own, possess, or control the Premises where Ms. Fuqua's injury occurred.

An action in premises liability "is based on common law principles of negligence and derives from an establishment's lack of supervision, care, or control of the premises." *Hansberger v. Smith*, 229 Md. App. 1, 20 (2016) (quoting *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 491 (2011)). Accordingly, to bring a successful action in premises liability, a plaintiff must establish the following elements: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 316 (2019) (quoting *Joseph v. Bozzuto Mgmt., Co.*, 173 Md. App. 305, 314 (2007) (emphasis removed from original)).

To successfully show that a landowner owed a duty of care to an entrant injured by a condition on the land, the plaintiff must establish that: "(1) the [owner] controlled the

dangerous or defective condition; (2) the [owner] had knowledge or should have had knowledge of the injury causing condition; and (3) the harm suffered was a foreseeable result of that condition." *Hansberger, supra*, 229 Md. App. at 21. As we have previously held, "[o]wner is, perhaps, an overly restrictive term. The duty to an [entrant] is imposed on owners, tenants, and occupiers of land, those having sufficient possession and control to be answerable to others for its condition." *Leatherwood Motor Coach Tours Corp. v. Nathan*, 84 Md. App. 370, 381–82 (1990). If the defendant did not own, possess, or control the land where the injury occurred, there can be no duty to the plaintiff, regardless of the plaintiff's status as an entrant. *See Dyer v. Criegler*, 142 Md. App. 109, 118 (2002) ("it is the possession of property, not the ownership, from which the duty flows . . . [p]ossession includes both the present intent to control the object [or property] and some ability to control it.") (internal quotation marks and citations omitted)).

The Court of Appeals has adopted the test from the Restatement (Second) of Torts for determining whether a party possessed the land:

> a possessor of land [is]: (a) a person who is in occupation of the land with the intent to control it or (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

Wagner v. Doehring, 315 Md. 97, 104–05 (1989) (quoting Restatement (Second) of Torts § 328E). Accordingly, our focus in this case is whether New Life had the requisite ownership, possession, or control of the Premises to owe a legal duty to Ms. Fuqua.

It is well settled that a party will owe a duty to an entrant in an action for premises liability only when he owns, occupies, or "[has] sufficient possession and control [of the premises] to be answerable to others for its condition." *Leatherwood*, *supra*, 84 Md. App. at 381–82. Put differently, a defendant will not be liable in an action for premises liability if he does not own, possess, or control the premises where the plaintiff's injury occurred.

The trial court found that New Life neither owned, possessed, nor controlled the Premises at Milton and North Avenue. As an initial matter, the trial court determined that New Life and Turning Point were distinct legal entities, and therefore did not share liability through a legal relationship. Further, the trial court found that although New Life has a presence on the Premises, that there was neither a lease nor other agreement creating a tenancy relationship between the two entities. Finally, the trial court concluded that although New Life uses the Premises for church related activities and services, Turning Point is in fact "the entity solely responsible for maintaining the subject property, including the area where Plaintiff fell."

The record before the trial court reflected that New Life conveyed the Premises to Turning Point in June 2015, and that Turning Point has been the only entity responsible for maintaining the Premises since that time. Reverend Williams, the President of Turning Point, acknowledged in deposition testimony that Turning Point was solely responsible for the exterior maintenance of the Premises, including activities such as sweeping and shoveling snow. The record before the trial court further established that New Life did not exercise possession or control of the garden area where Ms. Fuqua fell. Reverend Williams

testified during deposition that he directed the installation of the garden fence in his capacity as President of Turning Point. Therefore, based on Reverend Williams's deposition testimony, there is no question of material fact concerning Turning Point installing and maintaining the garden fence and area. Accordingly, because there was no evidence presented that New Life owned, possessed, or controlled the Premises, the trial court held that there was no dispute of material fact and therefore, that New Life was entitled to summary judgment as a matter of law.

Ms. Fuqua argues that the trial court should not have granted summary judgment in favor of New Life because there was a dispute of material fact regarding whether New Life installed the garden fence on the Premises. In support, Ms. Fuqua asserted that a similar garden fence was installed on a separate property on the opposite side of North Avenue -- a property that New Life currently owns. Ms. Fuqua maintains that this circumstantial evidence somehow refutes Reverend Williams's deposition testimony that Turning Point installed and maintained the garden fence and area on the Premises. We disagree. The evidence before the motions court unambiguously and conclusively established that Turning Point -- not New Life -- installed the garden fence at issue in this lawsuit. The circumstantial evidence, therefore, fails to create a genuine dispute of material fact concerning New Life's alleged possession or control of the Premises.

A party may be responsible for installing a litany of artificial landscaping conditions on a given property. That same party, however, will not be liable in an action for premises liability unless he also owned, possessed, or controlled the property where the condition

lies. *Leatherwood*, *supra*, 84 Md. App. at 381–82. Accordingly, although there may be a dispute of fact regarding whether New Life installed the garden fence on the Premises, this is not a dispute of *material* fact. This dispute of fact is not material because it is undisputed that New Life did not own, possess, or control the Premises. The record before the trial court established that New Life: (1) did not own the Premises; (2) was not responsible for exterior maintenance of the Premises; and (3) did not control the area where Ms. Fuqua fell. Therefore, as a matter of law, New Life cannot be held liable in an action for premises liability.

Having considered the grounds relied on by the trial court and having drawn all reasonable inferences in favor of Ms. Fuqua, we hold that the trial court did not err when it entered summary judgment in favor of New Life. The record before the trial court established that New Life had neither the requisite ownership, possession, nor intent to control the Premises to be liable to Ms. Fuqua in an action for premises liability. Furthermore, Ms. Fuqua failed to present any genuine dispute of material fact that New Life owned, possessed, or controlled the Premises. New Life, therefore, cannot be liable in an action for premises liability as a matter of law. Accordingly, we affirm the trial court's grant of summary judgment in favor of New Life.[2]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[2] In light of our holding that New Life did not own, possess, or control the Premises, we need not address the remaining contentions by Ms. Fuqua, namely, that the garden fence was not an open and obvious condition and also that Ms. Fuqua was not contributorily negligent.