

Nicoletti v. Kest

(2023) 97 Cal.App.5th 140

Court of Appeal, Second District, Division 8, California

Apartment complex owner did not owe a duty to injured woman since running rainwater on a concrete driveway was an obvious dangerous condition.

FACTS/PROCEDURE

Plaintiff/Appellant Susan Nicoletti (“Nicoletti”) appeals the trial court’s order granting Defendant/Respondent Dolphin Marina Apartment’s (“Dolphin”) motion for summary judgment.

Nicoletti resided at Dolphin’s apartment complex for thirteen years and was familiar with its premises. On April 9, 2020, Nicoletti took her neighbor’s dog for a walk around Dolphin’s apartment complex. Nicoletti attempted to cross the North Side Gate driveway, a gate she testified that she had gone past “thousands of times” before the incident. Before crossing, Nicoletti observed that the concrete on the North Side Gate driveway was wet, and rainwater formed a current that was running down the driveway. Nicoletti did not observe any caution tape or other warning advisements. Despite noticing the rainwater current that was running down the driveway, Nicoletti proceeded to cross, and the rainwater current knocked her down. Nicoletti fell down the driveway and hit the gate at the bottom of the driveway. Nicoletti sustained injuries to her right shoulder, left knee, and face.

Nicoletti subsequently filed a complaint against Dolphin alleging general negligence and premises liability because, according to her, Dolphin had a duty to warn of the running rainwater on the driveway with caution tape or other warning signals. In response, Dolphin filed a motion for summary judgment arguing that because the running rainwater was open and obvious, Dolphin did not have a duty to warn. The trial court granted Dolphin’s motion for summary judgment, reasoning that Dolphin did not have a duty to warn because the running rainwater was a dangerous condition that was sufficiently obvious. Specifically, the trial court concluded that “[a] reasonably careful person would know that the running water on the driveway was dangerous and thus, the undisputed facts show that she was aware of an open and obvious condition for which the Defendant had no duty of care about which to warn her.”

On appeal, Nicoletti argued that the dangerous condition caused by the lateral force of rainwater was not open and obvious; therefore, Dolphin did have a duty to warn of the dangerous condition. The Court of Appeal disagreed.

HOLDING/DISCUSSION

Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition.¹ For example, in 1996 the Court of Appeal stated that it is obvious and apparent to any reasonably observant person that standing water might create slippery surfaces

¹ *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 447.

and cause one to slip and fall.² Nicoletti contends that while she was aware that it was raining and the ground on the driveway was wet with rainwater, she did not know the current of rainwater posed a danger to her safety. In response, the Court quickly shut down this argument stating that running water is arguably more dangerous than standing water as a reasonable person would observe that running water could create a force that would cause someone to fall over.

Nicoletti further argued that necessity required her to cross the North Side Gate driveway. A landowner's duty of care is not negated when it is foreseeable that, because of necessity or other circumstances, a person may choose to encounter the condition.³ The Court dismissed this argument for the following reasons. First, Nicoletti did not argue this exception to the open and obvious rule in the summary judgment proceedings below, thus the argument is forfeited on appeal. Further, even assuming the argument is not forfeited, Nicoletti was not required to use the North Side Gate entrance as the apartment complex had multiple entrances. Having lived at Dolphin Marina Apartments for thirteen years, Nicoletti knew of the other two entrances. Nevertheless, she chose to use the North Side Gate entrance rather than use another entrance.

Accordingly, the trial court correctly granted Dolphin's motion for summary judgment.

² *Sanchez v. Swinerton & Walberg Co.* (1996) 47 Cal.App.4th 1461, 1470.

³ *Kaney v. Custance* (2022) 74 Cal.App.5th 201, 215.