

68344-4

68344-6

No. 683446

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

DARLENE F. ACOSTA

Plaintiff/Appellant,

v.

DOUGLAS A. HEDGES

Defendant/Respondent.

APPELLANT'S REPLY BRIEF

KING COUNTY SUPERIOR COURT
CAUSE NO. 112181626
HONORABLE JUDGE MARY YU

2012 JUL 30 PM 2:10
 COURT OF APPEALS DIV 1
 STATE OF WASHINGTON

*Appellate Counsel for Plaintiff/Appellant
Darlene F. Acosta:*

DAVID A. WILLIAMS, WSBA #12010
Attorney for Plaintiff
9 Lake Bellevue Drive, Suite 104
Bellevue, WA 98005

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....i

ARGUMENT.....1

 Acosta’s Knowledge.....1

 Proximate Cause.....2

CONCLUSION.....3

TABLE OF AUTHORITIES

TABLE OF CASES

Jones v. Allstate, 146 Wn. 2d 291, 45 P. 3d 1068 (2002).....3

Shah v. Allstate Ins. Co., 130 Wn. App 74, 121 P.3d 1204,
1207 (2005).....3

Attwood v. Albertson's Food Centers, Inc., 92 Wash. App. 326,
966 P.2d 351. (Div. 2 1998).....3

Conrad v. Alderwood Manor, 119 Wn. App. 275, 78
P. 3d 177 (2003).....3

ARGUMENT

Respondent contends that summary judgment was proper because (1) Acosta was aware of the condition of the property that caused her fall, and (2) presented no evidence that whatever “change” in the condition she was unaware of was a proximate cause of the incident.

Acosta’s knowledge

There is no dispute that the area of Acosta’s fall changed in the days leading up to Acosta’s fall; by Hedges’ own testimony, “with [Acosta’s] family coming and going for the holidays and stuff, it just kind of beat the trail down, got kind of muddy and slippery”. CP 66,67. Indeed, Hedges admitted that this very change is why he put gravel in the area (after Acosta’s fall). Id.

Was Acosta “aware” of this change? Interestingly, both sides use the same quote from Acosta’s deposition on this point:

Q. All right. And the condition, did it change in any manner between when you started going to the house in February 2009 until December 2009?

A. Not really.

CP 44.

Whatever argument Respondent may make at trial relative to the significance of this testimony, as the non-moving party, Acosta is entitled to the inference most favorable to her. Jones v. Allstate, 146 Wn.2d 291, 45 P. 3d 1068 (2002). And the clear inference of this testimony is that even at her deposition she was unaware that the path had become “muddy and slippery” due to the rainy conditions in the days leading up to her fall.

Proximate cause

Proximate cause is generally a fact issue not amenable to summary judgment. Shah v. Allstate Ins. Co., 130 Wn.App 74, 121 P.3rd 1204, 1207(2005); Attwood v. Albertson's Food Centers, Inc., 92 Wash. App. 326, 966 P.2d 351. (Div. 2 1998)

Furthermore, proximate cause may be proven with circumstantial evidence. Conrad v. Alderwood Manor, 119 Wn. App. 275, 78 P. 3d 177 (2003).

The circumstances here are:

Hedges was a self-described “hermit” (CP 68);

Hedges acknowledged that before meeting Acosta, “nobody came” to his house to see him (Id);

Acosta always found the pathway “scary” and was very careful around it (CP 49);

Acosta’s family visited, staying at Hedges’ home for about two weeks around Thanksgiving;

Hedges acknowledged that “with her family coming and going for the holidays and stuff, it just kind of beat the trail down, got kind of muddy and slippery;

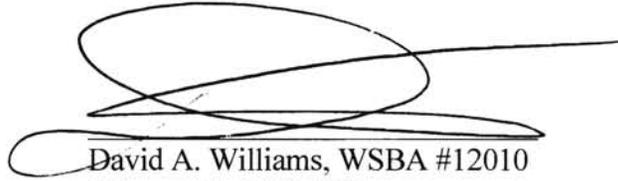
On Christmas Eve, though walking “cautiously” as she always did, Acosta slipped on the slope and fell.

A reasonable jury could find that the change in the path was a proximate cause of Acosta’s fall.

CONCLUSION

Acosta deserves a trial. Summary judgment should be reversed.

DATED this 27th day of July, 2012.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

David A. Williams, WSBA #12010
Attorney for Plaintiff
9 Lake Bellevue Drive, Suite 104
Bellevue, WA 98005
(425) 646-7767

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that I caused a true and correct copy of the foregoing document, "Appellant's Reply Brief" to be delivered in the manner indicated below to the following counsel of record:

Filed in: Court of Appeals, Division 1 State of Washington 600 University Street Seattle, WA 98101-1176	Sent VIA: <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email to: div1motions@courts.wa.gov
Served on: Attorneys for Respondent: Pauline V. Smetka WSBA # 11183 psmetka@helsell.com Lauren D. Parris, WSBA # 44064 lparris@helsell.com Helsell Fetterman 1001 Fourth Avenue, Suite 4200 Seattle, WA 98154 Fax: 206.340.0903	Sent VIA: <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Via Fax

DATED this 27th day of July, 2012.



Lora Perry
Paralegal to David A. Williams