

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

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|--------------|---|--------------------------|
| LORI BORROW, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | C.A. No. N10C-11-075 CLS |
| PEGGY COLE, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

Date Submitted: November 30, 2011
Date Decided: February 27, 2012

On Defendant's Motion for Summary Judgment.
GRANTED.

ORDER

Cynthia H. Pruitt, Esq., Doroshow, Pasquale, Krawitz & Bhaya, 1208 Kirkwood Highway, Wilmington, DE 19805. Attorney for Plaintiff.

Robert K. Pearce, Esq., Ferry, Joseph & Pearce, P.A., 824 Market Street, Suite 1000, P.O. Box 1351, Wilmington, DE 19899. Attorney for Defendant.

J. Scott

Introduction

Before the Court is Peggy Cole's ("Defendant"), Motion for Summary Judgment pursuant to Superior Court Civil Rule 56. For the reasons that follow, Plaintiff's claim is barred by the Premises Guest Statute, as this situation is not one that falls within the purview of the Rescue Doctrine. Accordingly, Defendant's Motion for Summary Judgment is **GRANTED**.

Facts

This case arises from an injury that occurred on Defendant's property. At the time of the incident, Plaintiff and Defendant lived next door to one another. On August 1, 2009, Plaintiff Lori Borrow ("Plaintiff") arrived home from a cookout at the Terrace Athletic Club. Shortly thereafter, Plaintiff heard Defendant's car alarm sound for approximately ten minutes. Rather than inspecting Defendant's car, Plaintiff checked on the Defendant because Defendant lived alone and Plaintiff thought something could be wrong. While walking to check on the Defendant, Plaintiff tripped on a curb next to the sidewalk on Defendant's property. Plaintiff claims that the curb was covered with grass, and that she did not know of its existence. As a result of Plaintiff's fall, she sustained left ankle fractures and a left shoulder fracture.

As it turns out, Defendant inadvertently sounded her car alarm, but did not hear it because she was wearing ear plugs. This was not the first time that Defendant accidentally sounded her alarm; it happened once before by accident and it was turned off.

Parties' Contentions

Defendant filed this Motion for Summary Judgment arguing that the Rescue Doctrine does not apply, and therefore Plaintiff's claim is barred by the Premises Guest Statute, *25 Del. C. § 1501*. Specifically, Defendant argues that there was no imminent peril to Defendant or her property as is required to apply the Rescue Doctrine. Defendant further argues that even if the Court finds that Defendant was in danger, her "mission" was merely investigatory. Finally, Defendant submits that Plaintiff did not take any physical action to rescue Defendant.

Plaintiff agrees with the Defendant that the Rescue Doctrine must apply to prevent the Plaintiff's claim from being barred by *25 Del. C. § 1501*. However, Plaintiff disagrees with Defendant's interpretation and application of the Rescue Doctrine. Plaintiff argues that Defendant's interpretation of the Rescue Doctrine misconstrues Delaware law, is inapplicable to the present facts, and undermines public policy. In supplemental briefing, Plaintiff analogizes the Rescue Doctrine to

Delaware's Authorized Emergency Vehicle Statute codified in 21 *Del. C.* § 4106. Thus, Plaintiff argues that summary judgment is not appropriate because in viewing the facts and inferences in the light most favorable to the Plaintiff, there is sufficient evidence to reasonably conclude that she was a rescuer.

Standard of Review

The Court may grant summary judgment if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.”¹ The moving party bears the initial burden of showing that no material issues of fact are present.² Once such a showing is made, the burden shifts to the non-moving party to demonstrate that there are material issues of fact in dispute.³ In considering a motion for summary judgment, the Court must view the record in a light most favorable to the non-moving party.⁴ “Summary judgment will not be granted when a more thorough inquiry into the facts is desirable to clarify the application of the law to the

¹ Super. Ct. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

⁴ *Burkhart*, 602 A.2d at 59.

circumstances.”⁵

Discussion

The Premises Guest Statute, codified in title 25, section 1501 of the Delaware Code, protects owners or occupiers of land from lawsuits that arise from either a guest without payment or a trespasser sustains injuries on the property.⁶ The Premises Guest Statute provides that:

No person who enters into private residential or farm premises owned or occupied by another person, *either as a guest without payment or as a trespasser*, shall have a cause of action against the owner or occupier of such premises for any injuries or damages sustained by such person while on the premises unless such accident was intentional on the part of the owner or occupier or was caused by the willful or wanton disregard of the rights of others.⁷

In *Burgess v. Rowland*,⁸ the Court held that a rescuer does not fall within the purview of 25 *Del. C.* § 1501. “In order to reach a result consistent with the social policy underlying the Rescue Doctrine, a rescuer is not within one of the traditional land entrance classifications.”⁹ Thus, unlike guests without payment of a trespasser, rescuers are not precluded from recovery under 25 *Del. C.* § 1501.

⁵ *Phillip-Postle v. BJ Prods., Inc.*, 2006 WL 1720073, at *1 (Del. Super. Apr. 26, 2006).

⁶ 25 *Del. C.* § 1501.

⁷ *Id.* (emphasis added).

⁸ 1991 WL 113336 (Del. Super. June 13, 1991).

⁹ *Id.* at *2.

To recover, Plaintiff must be considered a rescuer under the Rescue Doctrine. The Rescue Doctrine is a common law doctrine¹⁰ that permits recovery for a rescuer who reasonably undertakes a *necessary rescue*.¹¹ As the Court noted, “[i]t is in society’s best interest to encourage rescue, to encourage cooperation between people in need, and those able to assist.”¹²

For the Rescue Doctrine to apply, the rescuer must be “making an effort or taking some action to protect the personal safety of one who was or appeared to be in imminent peril.”¹³ Under the Rescue Doctrine, peril is defined as risk of “suffering serious injury or death.”¹⁴ “[T]o achieve status of rescuer, [the] purpose must be more than investigatory; there must be asserted some specific mission of assistance by which the plight of the imperiled would reasonably be thought to be ameliorated.”¹⁵

Plaintiff analogizes the rescue doctrine to Delaware’s Authorized Emergency Vehicle Statute which is a statutory exception for professional emergency responders set forth in 21 *Del. C.* § 4106. However, this statute is inapplicable because Plaintiff was not a professional emergency responder

¹⁰ *Burgess*, 1991 WL 113336, at *1.

¹¹ *Schwartzman v. Delaware Coach Co.*, 264 A.2d 519 (Del. Super. Mar. 16, 1970).

¹² *Burgess*, 1991 WL 113336, at *1.

¹³ *Stewart v. Miller*, 1990 WL 123456, at * 2 (Del. Super. Aug. 20, 1990).

¹⁴ *Yurecka v. Zappala*, 472 F.3d 59, 63 (3d Cir. 2006) (citing *Bell v. Irace*, 619 A.2d 365, 369 (Pa. Super. Ct. 1993)).

¹⁵ *Id.* citing *Barnes v. Geiger*, 446 N.E.2d 78 (Mass. App 1983).

engaged in a rescue. Thus, this Court will only consider statutes and cases relevant to the Rescue Doctrine.

Unfortunately, the Rescue Doctrine is discussed sparingly in Delaware. In *Schwartzman v. Delaware Coach Co.*, the plaintiff's car crashed into a bus.¹⁶ Both the plaintiff and the bus driver exited their vehicles and discussed the damage to the plaintiff's car, while standing between the bus and the car.¹⁷ The plaintiff warned the bus driver that another car was headed straight for his car.¹⁸ The bus driver safely retreated from the impending danger, but the plaintiff did not get out of danger fast enough, injuring his leg.¹⁹ The Court concluded that the plaintiff could not recover under the Rescue Doctrine because no one provided physical assistance to the bus driver to get her out of the way; rather, the plaintiff had given only a verbal warning and did not carry out a rescue by staying in a place of peril.²⁰

Similarly, in *Stewart v. Miller*, this Court held that the Rescue Doctrine did not apply to the plaintiff because she did not actually assist or intend to assist anyone.²¹ In *Stewart*, the plaintiff witnessed an accident and

¹⁶ *Schwartzman*, 264 A.2d at 519.

¹⁷ *Id.* at 520.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Stewart v. Miller*, 1990 WL 123456 (Del. Super. Aug. 20, 1990).

was a passenger in her husband's business van when she stopped with her husband to see if she could provide aid to those involved in the accident.²² After the accident, the car involved in the accident left the scene and plaintiff's husband proceeded to go after the car.²³ Before plaintiff's husband gave chase, plaintiff closed the van door.²⁴ After she closed the door, plaintiff stepped into the road, where she was hit by an approaching car.²⁵ The Court rejected plaintiff's contention that she was aiding the victim of a hit and run driver and that the negligence of the unknown driver proximately caused her injuries.²⁶

The Superior Court of Pennsylvania held in *Bell v. Irace*²⁷ that the Rescue Doctrine did not apply to an emergency medical technician who was severely injured by the defendant at the accident scene. "In order to constitute a 'rescue,' a person must attempt to prevent another person from suffering serious injury or death."²⁸ The Court cited to several examples where the Rescue Doctrine applies, such as: (1) a woman believed a man was overcome by carbon monoxide because he was slumped over motionless in his car in the middle of the street; (2) a boy entered a 28 feet

²² *Id.* at *1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ 619 A.2d 365 (Pa. Super. Ct. Jan. 21, 1993).

²⁸ *Id.* at 369.

deep trench to save another boy who had fallen face-first into the trench; (3) a person dove in after a child who had fallen into a stream; (4) a person pushed a traveler to safety who was standing between railroad tracks when surprised by an oncoming train; (5) a man climbed into a well at the request of his neighbor who believed her husband in the well was injured or ill; (6) a police officer attempted to stop an unattended semi-truck from rolling down a street in a residential neighborhood; (7) a man blocked the bucket of a backhoe with his hands and body to keep it from falling on a man that was crushed by the backhoe; and (8) man ran to assist occupants of a vehicle that was wrapped around a roadside pole, sheared in half, emitting smoke.²⁹

In *Hughes v. Murnane Bldg. Contractors, Inc.*, the Supreme Court, Appellate Division of New York held that the Supreme Court did not commit legal error in denying defendants' motions for summary judgment based on the Rescue Doctrine.³⁰ In *Hughes*, the plaintiff worked as an evening shift security guard.³¹ While on duty, plaintiff received a call on his cell phone from an employee, who needed immediate help because he had fallen from a ladder into a trench that was 1,200 feet long and 40 feet deep.³² Plaintiff attempted to assist the employee, but became stuck in the mud,

²⁹ *Id.*

³⁰ 932 N.Y.S.2d 782 (N.Y. App. Div. Nov. 18, 2011).

³¹ *Id.*

³² *Id.*

which caused plaintiff's injury.³³ The plaintiff escaped, abandoned his rescue attempt, and called 911.³⁴ The defendants argued that the Rescue Doctrine did not apply because the plaintiff could not have reasonably believed that the employee was in imminent peril when the plaintiff entered the trench.³⁵ The defendants also argued that the plaintiff's rescue attempt was unreasonable.³⁶ The court held that the employee was unconscious for a period of time, and exhibited hypothermic symptoms during his rescue, and thus, the plaintiff's belief of imminent peril motivated his rescue attempt.³⁷

Also, in *Tassone v. Johannemann*,³⁸ the Supreme Court Appellate Division of New York held that the rescue doctrine was inapplicable where there was nothing in the record to suggest that plaintiff could have believed that defendant was at risk of serious injury or in imminent peril.³⁹ The Court held that plaintiffs were not culpable parties who placed themselves in a life-threatening situation which invited rescue where plaintiff crawled under plaintiff's disabled van to retrieve a spare tire.⁴⁰

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ 232 A.D.2d 627 (N.Y. App. Div. Oct. 28, 1996).

³⁹ *Id.* at 628.

⁴⁰ *Id.*

The Rescue Doctrine is inapplicable in this case. While in *Burgess*, the Court emphasized that “[d]anger invites rescue,”⁴¹ here, looking at the facts in a light most favorable to the Plaintiff, there was no danger present, nor was there anyone to rescue. The above cases consistently show that a Plaintiff is protected by the Rescue Doctrine when was an actual person to rescue and not merely a perceived threat. Unlike the cases that apply the Rescue Doctrine, here there was not an actual person in danger but merely a perceived threat. In addition, nothing in the record suggests that defendant was at risk of serious injury or in imminent peril. There was not an accident, nor anything else indicating that Defendant was in danger, other than a sounding car alarm. Therefore, Plaintiff cannot be categorized as a rescuer within the purview of the Rescue Doctrine and this suit is barred by 25 *Del. C.* § 1501.

⁴¹ *Burgess*, 1991 WL 113336, at *2.

Conclusion

Based on the foregoing, Defendant's Motion for Summary Judgment
is **GRANTED**.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.