

No. 1-14-0924

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LAWRENCE P. WALSH,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 12 L 013925
)	
)	
MIGUEL SERRANO and)	Honorable
CLEMENTINA SERRANO,)	Jeffrey Lawrence,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

Held: The trial court properly granted summary judgment for the defendants because the plaintiff's claim was barred by the fireman's rule.

¶ 1 The plaintiff, Lawrence P. Walsh, a firefighter, brought suit against the defendants, Miguel and Clementina Serrano, for injuries he sustained while fighting a fire at their apartment building. The trial court granted summary judgment in favor of the defendants under section 2-

1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2010)), and the plaintiff now appeals, claiming that (1) the trial court misapplied the "fireman's rule" to bar his claim for recovery; and (2) the defendants breached their duty to reasonably protect the plaintiff from injuries caused by circumstances independent of the fire by failing to maintain an alternative means of ingress and egress from the attic of their building in violation of the building code. For the reasons that follow, we affirm.

¶ 2 The following facts are substantially undisputed based upon the pleadings, depositions and affidavits in the record. At the time of the occurrence, the defendants owned a three story building in Chicago (building). The first two floors were apartments and the third floor was an attic. The defendants resided in the first floor apartment, and leased the second floor residence to two tenants. The attic was generally unoccupied, although it contained a bed. The entrance to the attic was at the back of the building and it was accessible only through a staircase running to the backyard.

¶ 3 On December 31, 2010, the defendants held a New Year's Eve party at the building. Among the guests were Clementina's cousin and her daughter, who spent the night in the attic after the party. They were not tenants or residents of the building and had their own residence in Cicero. On the morning of January 1, 2011, the Chicago Fire Department was summoned to a "still fire" at the building. The plaintiff was one of the responding firefighters. He testified that when his engine company arrived at the premises, the building was "fully involved," meaning that flames were visible from all areas of the premises, coming out of the windows of both lower floors and the attic. Upon his arrival, the plaintiff observed a mother and daughter being taken out of the attic window by other firefighters.

¶ 4 After tending to some preliminary duties, the plaintiff entered the building through the front door and assisted other firefighters by pulling the hose line up the stairs to extinguish flames on the second floor. He and several other firefighters then attempted to check the attic, because it was still in flames, and they wanted to determine whether there were other people still trapped inside. They went around to the staircase at the back of the building, but saw that it was “burnt out” and unusable, so they returned through the main entrance and up to the second floor. Knowing that there was no other opening to the attic, the plaintiff and several other firefighters proceeded to saw a hole through the ceiling of the second floor in order to gain entry with the use of a collapsible ladder. The plaintiff testified that after they cut the hole, they saw that the attic was completely engulfed in flames. He carried the fire hose up the ladder, and when he stepped into the attic, he was consumed by thick black smoke and soot. The plaintiff’s oxygen tank was depleted at this point, so he was ordered by his lieutenant to follow the hose line back to the hole and get down from the attic. According to the plaintiff’s testimony, in his effort to escape, he “jumped down the hole,” landed “sideways on a burnt out couch,” and then fell to the floor. He was subsequently assisted out of the building and transported to the hospital by ambulance, having severely injured his back as a result of the fall.

¶ 5 In his first amended complaint, the plaintiff alleged that the defendants negligently allowed individuals to sleep in the attic in violation of the municipal building code, and that they failed to provide a reasonably safe means of ingress and egress for the attic “living space” in violation of applicable fire safety codes, local regulations and ordinances. As a result of these acts, the plaintiff was caused to enter the attic living space in order to rescue individuals sleeping there, leading to his injury.

¶ 6 The defendants moved for summary judgment, contending that the plaintiff's claim was barred as a matter of law by the fireman's rule. Alternatively, the defendants argued that the plaintiff failed to show that his injuries were proximately caused by their alleged negligent conduct.

¶ 7 In response, the plaintiff argued, in relevant part, that the defendants breached their duty to use reasonable care to maintain their premises in safe condition under the Fire Investigation Act (425 ILCS 25/9(f) (2003)). In support of this claim, the plaintiff offered the affidavit of an architect attesting that, in maintaining an attic apartment without an alternative means of ingress and egress, the defendants were in violation of the Chicago building code. The plaintiff also submitted his affidavit averring that, had he not observed people being rescued from the attic when he arrived, he would not have gone there to search for others possibly trapped inside, and could have fought the fire from the street. The trial court granted summary judgment to the defendants, and the instant appeal followed.

¶ 8 The plaintiff argues that summary judgment was improper because he pled sufficient facts which, when viewed in the light most favorable to him, established that (1) the defendants owed him a duty to maintain their premises in reasonably safe condition; (2) they breached this duty by failing to create an alternative means of ingress and egress to the "illegal apartment" in the attic; and (3) this breach was the proximate cause of his injuries. In response, the defendants assert that the court properly found the plaintiff's claim barred under the "fireman's rule." We agree.

¶ 9 Summary judgment is appropriate where "the pleadings, depositions, 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 a judgment as a matter of law." 735 ILCS 5/2-1005(c)

(West 2008). On appeal, this court must determine "whether a genuine issue of fact was raised and, if none was raised, whether judgment as a matter of law was proper." *Rusch v. Leonard*, 399 Ill. App. 3d 1026, 1031, 927 N.E.2d 316 (2010). We review the entry of summary judgment under the *de novo* standard. *Id.*, citing *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204 (1992).

¶ 10 In order to establish a claim for premises liability, a plaintiff must allege and prove that the defendant owed him a duty, that this duty was breached, and that the breach proximately caused the plaintiff's injury. *Rusch*, 399 Ill. App. 3d at 1031, citing *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 140, 554 N. E. 2d 223 (1990). The fireman's rule, however, is a well-established limitation on a landowner's duty to a firefighter who, in an emergency, enters onto the landowner's property in the discharge of his duties. *Rusch*, 399 Ill. App. 3d at 1031. The rule holds that, while a landowner must exercise reasonable care to maintain his property so as to prevent injury to a fireman arising from a cause *independent* of the fire, he is not liable for his negligence in causing the fire. (Emphasis added.) *Washington v. Atlantic Richfield Co.*, 66 Ill. 2d 103, 361 N.E.2d 282 (1976); *Coglianesi v. Mark Twain Ltd. Partnership*, 171 Ill. App. 3d 1, 4, 524 N.E.2d 1031 (1988). Our cases since have refined the doctrine to protect firefighters only against the risk of injury arising from a cause independent or unrelated to the fire itself. See, e.g., *Vroegh v. J & M Forklift*, 165 Ill. 2d 523, 527, 651 N.E.2d 121 (1995); *Smithers v. Center Point Properties Corp.*, 318 Ill. App. 3d 430, 436, 741 N.E.2d 1152 (2000); *Coglianesi*, 171 Ill. App. 3d 1. Derived from the theory of assumption of the risk, the fireman's rule limits homeowner liability based upon the fact that, as a part of their job, firefighters knowingly and voluntarily expose themselves to certain hazards, and that they are specially trained to anticipate and guard against risks ordinarily associated with fighting a fire. *Bally v. Pora*, 303 Ill. App. 3d

239, 706 N.E.2d 1038 (1999). Accordingly, although a firefighter may be able to recover for unexpected or hidden dangers that are independent of the fire and attributable to the homeowner's negligence, he is barred from recovery for injuries caused by obvious dangers which, based on his training and experience, he would reasonably be expected to anticipate and protect against. *Bally*, 303 Ill. App. 3d at 243. Further, this is so even if those injuries did not directly result from the fire itself. *Smithers*, 318 Ill. App. 3d at 436; *Coglianesse*, 171 Ill. App. 3d 1.

¶ 11 Here, the plaintiff was injured as a direct result of his duties in fighting the fire. He testified that he and his fellow firefighters proceeded to the attic because there were still flames there and they needed to ensure that there were no other individuals requiring rescue. Finding that the rear stairwell had been destroyed by fire, they reentered the building and sawed a hole in the ceiling of the second floor in order to gain access to the attic. Once in the attic, the plaintiff was overcome by smoke and had run out of oxygen, leading him to jump back down through the hole, sustaining injury when he landed on the floor below. As part of his job, a firefighter can expect to have to fashion an entry into a space that has been blocked or partially destroyed by fire, both to rescue people that are trapped and to best enable him to fight the fire. He also should anticipate that he may be required to make a quick exit for his own protection due to smoke inhalation or other life-threatening occurrences. In this case, the plaintiff and his fellow firefighters came equipped with the collapsible ladder and the tools necessary to create the hole, and, according to the plaintiff's testimony, received training in carpentry and building structure in order to perform their jobs. We conclude that the plaintiff's actions were directly related to his job in fighting the fire and that his injury was therefore squarely within the purview of the fireman's rule.

¶ 12 The plaintiff argues that the fireman's rule was misapplied in this case because his injuries were the result of a cause independent of the fire and attributable to the defendants' negligence. Specifically, he contends that, because the attic was also being used as a living space, the defendants were required by the municipal building code to provide an alternative means of ingress and egress for this space in addition to the rear stairwell. Had he had the use of a "safe, stable" second stairwell, the plaintiff contends he would not have had to cut a hole into the ceiling to access the attic and would not have sustained injury. In support of this argument, the plaintiff cites to *Harris v. Chicago Housing Authority*, 235 Ill. App. 3d 276, 601 N.E.2d 1011 (1992).

¶ 13 In *Harris*, the fireman was injured following an explosion in a residential high-rise building where he was fighting a fire. Harris alleged that, when he and other firefighters attempted to attach fire hoses to standing water pipes in the building, a lack of water pressure in the pipes, in violation of fire safety regulations, made it impossible to get any water, and that this eventually lead to the explosion. Finding that "[n]o fireman would be expected to fight a fire without water," this court concluded that the lack of water was not an expected or inherent risk in a firefighter's job, and that it was therefore an independent cause of Harris's injury. *Harris*, 235 Ill. App. 3d at 279-80.

¶ 14 Assuming, for the purpose of summary judgment, that the defendants were in violation of a city municipal code, this does not affect the applicability of the fireman's rule on the facts of this case. The violation of an ordinance, without more, does not create liability on the part of the land owner for injuries to a firefighter that are associated with the fire. See *Coglianesse*, 171 Ill. App. 3d at 5-6. In contrast to *Harris*, the injuries to the plaintiff here arose directly from the performance of his duties in fighting a fire. As stated above, a firefighter assumes the risk that he

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may need to force access into an area to which one or all entrances have been blocked or destroyed, and that he may be required to make a quick exit. The danger to the plaintiff here was obvious, and his action was knowingly undertaken.

¶ 15 For the foregoing reasons, the trial court properly granted summary judgment for the defendants based on the fireman's rule.

¶ 16 Affirmed.