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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY

TO: Donald A. Powell, Esquire
POWELL BIRCHMEIER POWELL
1891 State Highway 50
P.O. Box 582
Tuckahoe, NJ 08250

CASE: Corinne Sugalski v City of Cape May
DOCKET NO. CPM L 615-12

NATURE OF APPLICATION: DEFENDANT THE CITY OF CAPE MAY'S MOTION FOR SUMMARY JUDGMENT

MEMORANDUM OF DECISION ON MOTION

NATURE AND BACKGROUND OF MOTION

The complaint in this matter was filed on July 24, 2012. The discovery end date was April 16, 2014. The discovery end date has been extended two times. Arbitration was scheduled for May 15, 2014.

The instant personal injury matter arises from a fall sustained by Plaintiff on the sidewalk of the City of Cape May on July 25, 2010.

Defendant the City of Cape May moves for summary judgment dismissing any and all claims against it with prejudice. The court has carefully and thoroughly reviewed the moving papers and attached exhibits submitted by the parties with this motion.

LEGAL ANALYSIS

I. SUMMARY JUDGMENT

R. 4:46-2(c), governing motions for summary judgment, provides, in pertinent part, that:

> the judgment or order sought shall be rendered forthwith 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 challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

A genuine issue of material fact must be of a substantial, as opposed to being of an insubstantial nature. Brill v. Guardian Life Ins. Co. 142 N.J. 520, 529 (1995). "Substantial" means "[h]aving substance; not imaginary, unreal, or apparent only; true, solid, real," or, "having real existence, not imaginary[;] firmly based, a substantial argument." Ibid. (citations omitted). Disputed facts which are immaterial, fanciful, frivolous, gauzy, or merely suspicious are insubstantial, and hence do not raise a genuine issue of material fact. Ibid. (citations omitted).

In determining whether a genuine issue of material fact exists, the motion judge must "engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'"

Id. at 533. This weighing process "requires the court to be guided by the same evidentiary standard of proof—by a preponderance of the evidence or clear and convincing evidence—that would apply at the trial on the merits when deciding whether there exists a 'genuine' issue of material fact." Id. at 533-34. In short, the motion judge must determine "whether the competent evidentiary materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540.

II. TORT CLAIMS ACT

The New Jersey Tort Claims Act, N.J.S.A. § 59:4:2, states, in pertinent part, that:

> A public entity is liable for injury caused by a condition of its property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> > (a) a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
> >
> > (b) a public entity had actual or constructive notice of the dangerous condition under section 59:4-3 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
>
> Nothing in this section shall be construed to impose liability upon a public entity for a dangerous condition of its public property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable.

MOVANT'S POSITION

Defendant the City of Cape May maintains that it is entitled to summary judgment based on the immunities provided under the New Jersey Tort Claims Act ("TCA"), N.J.S.A. § 59:1-1, *et seq.*

Defendant directs that the TCA governs liability against public entities. Defendants states that a public entity is defined as the "State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State." N.J.S.A. § 59:1-3. Therefore, defendant asserts that it is a public entity and plaintiff's claims against it must be analyzed under the TCA.

Defendant directs that the TCA circumscribes governmental liability to specifically defined situations. See Prico v. State, 116 N.J. 55, 59 (1989)("We begin by affirming the now familiar principle that the public policy of this State is that public entities shall be liable for their negligence only as set forth in the Tort Claims Act."); Kolitch v. Lindedahl, 100 N.J. 485, 492 (1985)("The statute is therefore unmistakably clear in providing that liability on the part of [a public entity] cannot be imposed unless consistent with the entire Act itself.").

Defendant provides that the liability of a public entity for a dangerous condition is governed by N.J.S.A. 59:4-2. Under that section, to demonstrate liability a plaintiff must show: (1) that the property was in a dangerous condition at the time of the injury; (2) that the injury was proximately caused

by the dangerous condition; (3) that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred; and (4) either a negligent or wrongful act of an employee of the public entity within the scope of his employment created the condition or the entity had sufficient actual or constructive notice of the condition to take protective or remedial measures and the action or inaction with regard to the dangerous condition was palpably unreasonable. N.J.S.A. § 59:4-2, see also Fluehr v. City of Cape May, 159 N.J. 532, 539 (1999).

I. DANGEROUS CONDITION

Defendant argues that the sidewalk in front of 33 Second Avenue in the City of Cape May, the site of the accident, was not a dangerous condition under the TCA.

Defendant indicates that a dangerous condition must pose a substantial risk of harm, which cannot be minor, trivial, or insignificant. Polyard v. Terry, 160 N.J. Super. 497, 508-09 (App. Div. 1978), aff'd o.b. 79 N.J. 547 (1979). Defendant provides that minor irregularities in paved roads and pathways do not constitute a dangerous condition. Wilson v. Jacobs, 334 N.J. Super. 640, 648 (2000)(finding a gap between a sidewalk without any difference in elevation to be insufficient to constitute a dangerous condition).

Defendant notes that plaintiff walked over the site of the accident on her way to the beach without incident. Defendant provides that it was only upon her second trip, on her way back to her car, when she tripped and fell.

Defendant directs that the photographs show the irregularity in the sidewalk to be minimal and which no reasonable fact finder could find that a dangerous condition exists.

As such, defendant requests that the court grant its motion for summary judgment.

II. NOTICE

Defendant argues that it did not have actual or constructive notice of the alleged dangerous condition of the sidewalk.

Defendant states that a claimant must demonstrate that a condition existed for such a period of time and was of such an obvious nature that the public entity should have discovered the condition and its dangerous character. Norris v. Borough of Leonia, 160 N.J. 427, 447 (1999). Defendant provides that a history of similar incidents or complaints may establish actual notice of a dangerous condition. Carroll v. New Jersey Transit, 366 N.J. Super. 380, 389 (2004).

Defendant asserts that it has advised in its answers to interrogatories that it had no actual or constructive notice of the condition. Defendant provides that plaintiff has failed to establish any actual or constructive notice of the condition.

As such, defendant requests that the court grant its motion for summary judgment.

III. PALPABLY UNREASONABLE CONDUCT

Defendant maintains that any alleged action or inaction on its part regarding the purported dangerous condition of the sidewalk was not palpably unreasonable.

Defendant states that "palpably unreasonable" implies behavior that is patently unacceptable under any circumstances and must be so obvious that no prudent person would approve of the public entity's course of action or inaction. Holloway v. State, 125 N.J. 386, 403-04 (1991). Even if a dangerous condition existed, defendant argues that its actions or inactions were not palpably unreasonable because there was no notice of said condition. And defendant provides that a public entity is not liable for injury caused by failing to make an inspection or by reason of an inadequate or negligent inspection. N.J.S.A. § 59:2-6.

As such, defendant requests that the court grant its motion for summary judgment.

IV. PAIN AND SUFFERING BAR

Defendant argues that plaintiff is precluded from recovering damages for pain and suffering because her injuries do not meet the threshold requirement of N.J.S.A. § 59:9-2(d).

In order to recover damages for pain and suffering from a public entity, defendant directs that a claimant must demonstrate that he has suffered a permanent injury or disfigurement. N.J.S.A. § 59:9-2(d), see also Peterson

Edison Twp. Bd. of Educ., 137 N.J. Super. 566 (App. Div. 1975). Defendant states that failure to meet this threshold requirement bars recovery for pain and suffering, which includes damages resulting from anguish, fear, anger, apprehension, and humiliation. Ayers v. Jackson Twp., 106 N.J. 557 (1987).

To satisfy this threshold requirement, defendant directs that a claimant must suffer a permanent loss of a substantial bodily function. Brooks v. Odom, 150 N.J. 395, 402 (1997). Defendant states that the permanency of the injury must be demonstrated by objective medical evidence. Id. at 402-03. Defendant provides that temporary injuries and subjective feelings of discomfort are not recoverable under the TCA. Id. at 403 (citations omitted).

Defendant provides that our courts have identified numerous injuries that satisfy this threshold: blindness; debilitating tremors; paralysis; and loss of taste and smell. Knowles v. Mantua Twp. Soccer Ass'n, 176 N.J. 324, 332 (2003). However, defendant directs not every permanent injury satisfies as a loss of a substantial bodily function.

Defendant states that an injury requiring arthroscopic knee surgery with no evidence of a permanent instability or limitation on range of motion is not sufficient. Ponte v. Overeem, 171 N.J. 46 (2002). Defendant states that a compression fracture in the vertebrae, which did not result in more than minor limitations on activities, is not sufficient. Newsham v. Cumberland Reg'l High School, 351 N.J. Super. 186 (App. Div. 2002).

Defendant maintains that plaintiff's injury does not satisfy the threshold requirement. Admittedly, plaintiff sustained a fracture of the distal radius of the left wrist. Defendant notes that the fracture did not require surgery. And while plaintiff has advised of continuing discomfort, defendant directs that she admits that she has essentially resumed all prior activities she engaged in before the accident. Defendant provides that she has resumed her occupation as a court reporter and continues to work approximately 50 to 60 hours a week.

As such, even if the court denies defendant's motion for summary judgment dismissing any and all claims against it with prejudice, defendant argues that plaintiff should be barred from recovering any damages for pain and suffering under the TCA.

DEFENDANTS STEPHEN G. WILLIAMS AND

DONNA E. ELICKERS' OPPOSITION

Defendants Stephen G. Williams and Donna E. Elicker oppose the City of Cape May's motion for summary judgment.

The individual defendants provide that the plaintiff alleges she tripped over an uneven slab of concrete that was disturbed by tree roots. They direct that the tree was plated by the City of Cape May Shade Tree Commission. They assert that the sidewalk was owned by the City of Cape May.

The individual defendants state that the City of Cape May adopted a proactive program to address problems with trees and sidewalks. They note

that the city denies repairing the sidewalk. They assert that there is a presumption that the city made the repair because the city is the owner of the sidewalk and that such repair is proof of control by the city. Manieri v. Volkswagenwerk, 151 N.J. Super. 422 (App. Div. 1977), certif. denied, 75 N.J. 594 (1978); Norris v. Borough of Leonia, 160 N.J. 427, 443 (1999), see also N.J.R.E. 407.

The individual defendants provide that commercial property owners have a duty to maintain abutting sidewalks. Stewart v. 104 Wallace Street, Inc., 87 N.J. 146 (1981). However, they assert that said duty does not relieve a public entity from the responsibility to maintain the same sidewalks. Norris v. Borough of Leonia, supra, 160 N.J. at 443.

The individual defendants provide that Mr. Shatz of the Shade Tree Commission stated that the photographs of the sidewalk showed an obvious tripping hazard. They direct that the city had notice of such condition and in fact replaced the slab at issue following the accident. As the condition was so dangerous that the city repaired it at its own cost, they direct that the city should be charged with notice of said condition.

The individual defendants assert that any municipal ordinances requiring property owners to maintain abutting sidewalks are not dispositive of the legal standard applicable to either the city of abutting property owners. Yahnko v. Fane, 70 N.J. 528 (1976). The individual defendants direct that the city created a forestry plan, which included a duty to be proactive

regarding how such trees would affect the sidewalk. Therefore, they provide that the city should have had notice of the condition.

Lastly, defendants note that plaintiff has alleged that her ability to work is now permanently affected. Therefore, they direct that there is an issue as to the permanency and loss of a substantial bodily function rendering summary judgment inappropriate.

PLAINTIFF'S OPPOSITION

Plaintiff indicates that she joins in the opposition filed by defendants Stephen G. Williams and Donna E. Elicker. Additionally, plaintiff provides that she has suffered a permanent injury causing loss of a substantial bodily function.

Plaintiff attaches a medical report allegedly demonstrating focal central herniation of the C3-4, C5-6, and C6-7 vertebrae pursuant to an MRI study dated November 5, 2012. Additionally, plaintiff provides that an EMF study dated January 10, 2012 of the cervical area evidences abnormalities due to left C8-T1 radiculopathy. Plaintiff directs that Dr. Chiara Mariana, opined that the abnormal C8-T1 radiculopathy is consistent with the C5-6 radiculopathy later confirmed by MRI. See Report of Chiara Mariana, Attached as Plaintiff's Exhibit "B". And plaintiff indicates that Dr. Gary Goldstein stated that she will continue to have permanent symptoms in her neck and hand as a result of the accident. See Report of Gary Goldstein, Attached as Plaintiff's Exhibit "C".

Plaintiff directs that a herniated disk constitutes a permanent injury as a matter of law. See, e.g., Pardo v. Dominguez, 392 N.J. Super. 489 (App. Div. 2006). Additionally, plaintiff provides that she will offer testimony that the pain she experiences continue to affect her ability to perform her job as a court reporter.

As such, plaintiff requests that the court deny the City of Cape May's motion for summary judgment.

REPLY

Defendant the City of Cape May asserts that Section 440-17 of the City of Cape May Municipal Code sets forth that it is the responsibility of the property owner, whether the property is commercial or residential, to maintain and repair abutting sidewalks. See Municipal Code § 440-17, Attached as Defendant the City of Cape May's Reply Exhibit "A". Furthermore, our courts have established such a duty for commercial property owners. Stewart v. 104 Wallace Street, Inc., 87 N.J. 146 (1981). Defendant directs that the abutting property is commercial in nature.

Defendant indicates that a non-owner occupied rental house is commercial for purposes of abutting sidewalk liability. Grijalba v. Floro, 431 N.J. Super. 57 (App. Div. 2013), Defendant notes that codefendant Williams testified at deposition that he lives in Pennsylvania and purchased the home in Cape May in 1993. See Deposition of Stephen G. Williams, 9, Attached as Defendant the City of Cape May's Reply Exhibit "B". Defendant indicates

that he further testified that he had rented the property since 2009. Id. at 17-18.

Defendant provides that Mr. Williams obtains a mercantile license from the city each year to rent the property. Id. at 17. And defendant directs that the property was only used for one to two weeks out of the year in 2010. Id. at 19. And the property was listed as rental property for the entirety of 2011 and 2012. Therefore, defendant directs that the property at issue is commercial.

With respect to notice, defendant states that the tree at issue had been planted approximately six to ten years before the accident. While the individual codefendants argue that nearby repairs were made to a driveway, defendant directs that the abutting property owner at issue here is commercial rather than residential.

Furthermore, defendant provides that the Norris case cited by codefendants indicates that notice of an alleged dangerous condition on one side of the street does not give notice of a condition on the other side. Therein, although the neighbor across the street had complained about the sidewalk in front of his house, the court held that defendant had no notice of the condition of the sidewalk across the street in front of the claimant's house. Even assuming defendant was aware of problems with other sidewalks, defendant asserts that it had no notice of any dangerous condition of the sidewalk at issue here.

Therefore, defendant provides that it was responsibility of the abutting property owner to repair the sidewalk and that, without notice of any dangerous condition, defendant is entitled to summary judgment.

DISCUSSION

The court finds that defendant the City of Cape May is not entitled to the relief requested pursuant to R. 4:46-2(c), Brill v. Guardian Life Ins. Co. 142 N.J. 520 (1995), and N.J.S.A. § 59:4-2.

Actions against public entities are governed by the TCA. Defendant, the City of Cape May, is a public entity. The TCA governs plaintiff's claims against the City of Cape May.

Initially, the court finds that the N.J.S.A. § 59:2-6 does not provide defendant with immunity in this matter. N.J.S.A. § 59:2-6 states that:

> A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property; provided, however, that nothing in this section shall exonerate a public entity from liability for negligence during the course of, but outside the scope of, any inspection conducted by it, nor shall this section exonerate a public entity from liability for failure to protect against a dangerous condition as provided in chapter 4.

By its own terms, N.J.S.A. § 59:2-6 does not effect a public entity's liability for failure to protect against a dangerous condition on public property under chapter 4 of the TCA.

N.J.S.A. 59:4-2 provides that:

> A public entity is liable for injury caused by conditions of its property if the plaintiff has found that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, if the

> dangerous condition created a reasonably foreseeable risk of the kind of injury which occurred and that either:
>
> (a) a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
>
> (b) a public entity had actual or constructive notice of the dangerous condition under Section 59:4-3 in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
>
> Nothing in this section shall be construed to impose liability upon a public entity for a dangerous condition of its property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable.

Where, as here, it is not alleged that the public entity created the dangerous condition, a claimant must prove by a preponderance of the evidence that: (1) at the time of the injury the public entity's property was in a dangerous condition, (2) the dangerous condition created a foreseeable risk of the kind of injury that occurred, (3) the condition proximately caused the injury (4) the entity had actual or constructive notice of the condition, and (5) the action the entity took to protect against the dangerous condition or the failure to take action was palpably unreasonable. Garrison v. Twp. of Middletown, 154 N.J. 282, 286 (1998).

Defendant argues that the condition does not qualify as dangerous, that it had no actual or constructive notice of any dangerous condition, and that its actions or inactions were not palpably unreasonable.

I. DANGEROUS CONDITION

The court finds that, making every reasonable inference in plaintiff's favor, there is a genuine issue of material fact as to whether the elevated sidewalk constituted a dangerous condition under the TCA.

N.J.S.A. § 59:4-1 defines a dangerous condition as "property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." In Daniel v. State, Dep't of Transp., 239 N.J. Super. 563, 588 (App. Div.), cert. denied, 122 N.J. 325 (1990), the court stated:

> The infinite variety of situations that may arise makes it impossible to fix definite rules in advance of all conceivable conduct. In other words, it would be impossible for a public entity to prognosticate every imaginable way in which property can or will be used. In a similar vein, it would be folly to impose a burden on a public entity to protect individuals from every conceivable risk attendant to the use of its property.

The photographs of the sidewalk in question show that a section of sidewalk has an elevation differential that increases as it moves away from the street to approximately several inches. In the context of roads, courts have found a similar differential to not constitute a dangerous condition under the TCA. See Polyard, supra., 160 N.J. Super. 497 (holding a differential of three quarters of an inch on a highway to be minor, trivial, and insignificant, and not a dangerous condition as a matter of law). However, the differential at issue here occurred on a sidewalk where pedestrian traffic was expected rather than a roadway. The court finds that the photographs of the

differential present in the sidewalk are sufficient to demonstrate a factual dispute as to whether a dangerous condition exists under the TCA.

II. NOTICE

The court finds that, making every reasonable inference in favor of plaintiff, there is a genuine issue of material fact as to whether defendant the City of Cape May had actual or constructive notice of the alleged dangerous condition.

With respect to actual notice, N.J.S.A.§ 59:4-3(a) states:

> A public entity shall be deemed to have actual notice of a dangerous condition within the meaning of subsection b. of section 59:4-2 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.

With respect to constructive notice, N.J.S.A.§ 59:4-3(b) states:

> A public entity shall be deemed to have constructive notice of a dangerous condition within the meaning of subsection b. of section 59:4-2 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character.

Plaintiff and codefendants present two arguments to support that defendant the City of Cape May should be charged with constructive notice of the alleged dangerous condition. First, they argue that the defect in the sidewalk is such an obvious tripping hazard that the city should be charged with constructive notice of it. The court has concluded that there is enough evidence to support a prima facie showing of a dangerous condition. The tree

at issue was planted approximately six to ten years prior to the accident. The disruption of the sidewalk by the tree's growth presumably occurred over a period of years. Making every reasonable inference in favor of plaintiff, this is sufficient to create a factual issue as to constructive notice.

Second, plaintiff and codefendants argue that the city had previously corrected other sidewalk defects in the neighborhood and there is a presumption that, as the owner of the sidewalk, the city subsequently repaired the sidewalk in question. While this does not demonstrate constructive notice in and of itself, coupled with the gradual nature of disruption of the sidewalk from the tree's growth it supports a factual dispute as to whether the city should be charged with notice of the dangerous condition.

Therefore, plaintiff has demonstrated a factual dispute precluding summary judgment as to the requisite notice element for liability under N.J.S.A. 59:4-2.

III. PALPABLY UNREASONABLE

The court finds that plaintiff has demonstrated the existence of a genuine issue of material fact as to whether defendant the City of Cape May's actions or inactions were palpably unreasonable.

"Palpable unreasonableness" is "conduct that is patently unacceptable under any given circumstances." Kolitch v. Lindedahl, 100 N.J. 485, 493 (1985)., see also Johnson v. Essex Cnty., 223 N.J. Super. 239, 257 (L. Div.

1987). The court is sensitive to the standard applicable to motions for summary judgment pursuant to R. 4:46-2(c) and Brill v. Guardian Life Ins. Co. 142 N.J. 520 (1995). Given the nature of the dangerous condition at issue, specifically the large amount of time over which it presumably developed, and making every reasonable inference in plaintiff's favor, there is a genuine issue of material fact as to whether defendant's failure to correct said condition was palpably unreasonable.

Therefore, plaintiff has demonstrated a genuine issue of material fact as to the palpably unreasonable prong for liability under N.J.S.A. 59:4-2.

IV. PAIN AND SUFFERING THRESHOLD

However, plaintiff has failed to present sufficient proofs to create a genuine issue of material fact as the threshold requirement under the TCA. N.J.S.A. § 59:-2(d) states, in pertinent part, that:

> No damages shall be awarded against a public entity or public employee for pain and suffering resulting from any injury; provided, however, that this limitation on the recovery of damages for pain and suffering shall not apply in cases of permanent loss of a bodily function, permanent disfigurement or dismemberment where the medical treatment expenses are in excess of $ 3,600.00. For purposes of this section medical treatment expenses are defined as the reasonable value of services rendered for necessary surgical, medical and dental treatment of the claimant for such injury, sickness or disease, including prosthetic devices and ambulance, hospital or professional nursing service.

In Knowles v. Mantua Twp. Soccer Assoc., 176 N.J. 324, 332 (2003), the New Jersey Supreme Court stated injuries rendering a bodily organ or

limb substantially useless, but for the ability of modern medicine to supply replacement parts to mimic the natural function meet the threshold under the TCA. But an injury causing lingering pain, which impairs the ability to perform certain tasks, will not suffice. Ibid. (citations omitted). At most, plaintiff has presented sufficient proofs to establish that her ability to perform certain activities has been impaired.

Plaintiff's fall resulted in a fractured wrist, which required physical therapy but not surgery. Plaintiff notes that her experts have opined that the accident caused herniation of her vertebrae, which she asserts qualifies as a permanent injury. While she provides that she continues to suffer pain as a result of the accident and that it has hampered her ability to work as a court reporter, she has not demonstrated the permanent loss of a substantial bodily function.

CONCLUSION

Defendant the City of Cape May's motion for summary judgment is opposed. Defendant the City of Cape May has demonstrated that it is entitled to the relief requested pursuant to N.J.S.A. § 59:4-2(d) only. Defendant the City of Cape May's motion for summary judgment dismissing any and all claims against it with prejudice is denied. Defendant's motion for summary judgment to preclude plaintiff from recovering damages for pain and suffering is granted.

An appropriate form of order has been executed. Conformed copies of that order will accompany this memorandum of decision.

August 6, 2014

J. Christopher Gibson, J.S.C.

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SUPERIOR COURT OF NEW JERSEY
CAPE MAY COUNTY-LAW DIVISION

FILED
AUG 06 2014
CIVIL DIVISION
SUPERIOR COURT-CAPE MAY COUNTY

Corrine Sugalski,

Plaintiff,

v.

City of Cape May et al

Defendants

Civil Action

DOCKET NO.: CPM L 615-12

ORDER

THIS MATTER having been brought before the Court upon motion by Donald A. Powell, Esquire attorney for Defendant, City of Cape May and Cape May Shade Tree Commission for summary judgment; and the Court having heard argument and having considered the motion papers submitted and for good cause having been shown;

IT IS ON THIS 6th day of August, 2014 ORDERED that:

1. Defendant the City of Cape May's motion for summary judgment dismissing any and all claims against it with prejudice is denied.
2. Defendant's motion for summary judgment to preclude plaintiff from recovering damages for pain and suffering is granted.
3. A copy of this Order shall be served on all counsel within seven (7) days.

J. Christopher Gibson, J.S.C.

MEMORANDUM OF DECISION IS ATTACHED.