MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 03-49
Docket No. Cum-02-582

NANCY NOYES et al.

v.

R.E. COLEMAN EXCAVATION, INC.

Submitted on Briefs January 23, 2003
Decided April 3, 2003

Panel: CLIFFORD and RUDMAN, DANA, ALEXANDER, CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Nancy and Benjamin Noyes appeal from the summary judgment entered in the Superior Court (Cumberland County, *Cole J.*) denying their negligence claim because Coleman did not owe Nancy Noyes a duty of care.[1] Contrary to their contention, the Superior Court did not err in granting a summary judgment because Coleman owed no duty to Nancy.

No duty arose pursuant to either contract provisions 3.2 or 8.3. Contract provision 3.2 required Coleman to, "[i]n the event of an ice storm, . . . sand/salt all

[1] Benjamin's claim for loss of consortium is dependant on Nancy's claim and a finding that Coleman owed Nancy a duty of care.

pedestrian and vehicle traffic areas." No duty arose under this contract provision because the facts did not generate a genuine issue of material fact concerning the existence of an ice storm. The parties agreed that the day before Nancy's accident, no ice or snow fell in the area, nearby the temperature reached fifty degrees, and that afternoon, it rained and the rain continued until midnight. They also agreed that the day of the accident, no precipitation fell. Because no "ice storm" occurred, Coleman's contractual obligation to salt/sand the parking lot was not triggered.

Moreover, no duty arose pursuant to provision 8.3's requirement that Coleman "keep pedestrian and vehicular traffic areas reasonably clear during business hours." The contract does not define "business hours," and the Superior Court found that "business hours" did not include 7:00 A.M. The Noyeses have not challenged this factual finding, and we see no reason to disturb it. *See Tibbetts v. Tibbetts*, 2000 ME 210, ¶ 6, 762 A.2d 937, 939 (trial court's factual findings are reviewed for clear error).

Because the Noyeses have failed to establish a prima facie case of negligence, a summary judgment was proper. *See Stewart ex rel. Stewart v. Aldrich*, 2002 ME 16, ¶ 8, 788 A.2d 603, 606.

The entry is:

Judgment affirmed.

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