

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL  
(Memorandum Web Opinion)**

PARDE V. CLEAR TITLE & ABSTRACT

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AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

VERNA PARDE, APPELLANT,

v.

CLEAR TITLE & ABSTRACT, L.L.C., ET AL., APPELLEES.

Filed March 26, 2024. No. A-23-269.

Appeal from the District Court for Douglas County: J. MICHAEL COFFEY, Judge. Affirmed.

David D. Begley, of Elder Law and Estate Planning of Nebraska, David D. Begley, P.C., L.L.O., for appellant.

Craig A. Knickrehm and Brad Entwistle, of Valentine O'Toole, L.L.P., for appellees.

MOORE, BISHOP, and ARTERBURN, Judges.

BISHOP, Judge.

INTRODUCTION

Verna Parde filed a complaint against Clear Title & Abstract, LLC, and two of its employees (collectively referred to as Clear Title). Parde's complaint alleged that Clear Title was negligent with respect to its preparation of a warranty deed for a parcel of real property. The Douglas County District Court granted Clear Title's motion to dismiss with prejudice, finding that Parde's complaint failed to state a cause of action against Clear Title and that she would be unable to amend her complaint to state a cause of action. Parde appeals, claiming that there were material questions of fact for a jury to decide.

We find that Clear Title's motion to dismiss was converted to a motion for summary judgment. Because we find that there are no genuine issues of material fact preventing summary judgment in favor of Clear Title, we affirm the order of the district court.

## BACKGROUND

### SEPARATE CASE

The underlying circumstances of this case are set forth in the Nebraska Supreme Court's memorandum opinion and judgment on appeal in *Parde v. Powers*, No. S-21-651 (June 24, 2022) (*Parde I*). We briefly summarize that case here.

Parde owned real property on Bauman Avenue in Omaha, Nebraska (the property). She agreed to sell the property to Robert and Christina Powers (collectively the Powerses) via a series of agreements.

In 2012, Parde and the Powerses entered into a land contract, which was amended in January 2016 and again in February 2018; the February amendment reflected a purchase price of \$179,000 with a downpayment of \$1,900 and monthly payments of \$1,100. The February contract further provided that the property needed to be “‘sold, purchased or in the process of obtaining such loan or funds for the total amount of \$152,716 by December 31<sup>st</sup>[,] 2019,’” and the contract contained a forfeiture provision. *Id.* at 2.

In December 2018, Parde and the Powerses entered into another agreement, and as part of this agreement, Parde and the Powerses “executed what they titled a ‘PROMISSORY NOTE (UNSECURED).’” *Id.* at 3. The Powerses promised to pay Parde the principal sum of \$150,599.83 at 4 percent interest, with monthly payments of \$1,050 beginning in February 2019. The note also provided that the Powerses had to present Parde “‘with secured funds of \$20,000.00 as good faith for this loan to be executed.’” *Id.* “The promissory note made no reference to the property at . . . Bauman Avenue, but everyone agrees the note pertained to an agreement to purchase this property.” *Id.* And “a handwritten notation just above the signature lines stated: ‘This agreement supersedes the past “Contract for Deed” and any other past agreements or money owed by either party’”; the handwritten notation was initialed by Parde and the Powerses.

In November 2019, Parde filed a “Complaint for Foreclosure” against the Powerses alleging that they had defaulted on the February 2018 land contract in the amount of \$30,845.86. She declared the whole of the contract indebtedness due and payable and claimed she was entitled to foreclose for satisfaction thereof. Parde’s complaint did not mention the 2018 promissory note. Robert filed a counterclaim seeking to quiet title to the property alleging that the February 2018 land contract had been superseded by the December 2018 promissory note, and that title to the property vested in the Powerses by virtue of Parde’s execution and delivery of a warranty deed.

Following a bench trial, the district court specifically found that the Powerses agreed to pay Parde \$20,000 and that Parde agreed to deed them the property free and clear of all encumbrances so the Powerses could use the deed to secure a mortgage on the property and then use the proceeds to pay off the promissory note. The court further found that “‘it was [Parde’s] intent and understanding that when she left the executed Warranty Deed with Clear Title [on December 19, 2018], that she had “sold” the property. It was only later after speaking with her daughter, that she had second thoughts about the terms of the agreement.’” *Id.* at 9 (brackets in original). “The court thus found that when Parde executed the warranty deed and left it with the title company, she ‘fully considered the Property to be sold and the transaction complete.’” *Id.* at 9-10, “At that point Parde could ‘no longer foreclose on the Property’ and her only recourse would be to sue on the unsecured promissory note,” something she had not done in that action. *Id.* at 10.

“Based on the conclusion that Parde had delivered the warranty deed on December 19, 2018, the court concluded that Robert obtained legal title and was entitled to have title quieted in his name.” *Id.*

On appeal, the Nebraska Supreme Court affirmed the decision of the district court quieting title in Robert Powers’ name. It stated, “On this record, there is no evidence that Parde left the executed deed in the control of the title company for any purpose other than delivery to the Powerses.” *Id.* at 14. “We therefore agree with the district court that Robert proved by a preponderance of the evidence that delivery of the deed was completed on December 19, 2018, when Parde executed the deed and left it in the control of the title company for the Powerses’ unconditional use.” *Id.*

#### CURRENT CASE

On December 8, 2022, Parde filed a complaint against Clear Title alleging that Clear Title was negligent in preparing the warranty deed and transfer statement to sell and transfer the property to the Powerses. Parde alleged that Clear Title owed her the following duties when preparing legal documents and/or issuing title insurance policies underwritten by Clear Title:

- a. Defendants are allowed to prepare deeds of transfer only for the purchase of real estate or the refinancing of real estate;
- b. Defendants are required to act in accordance with the standards, rules and regulations of the Nebraska Department of Insurance and the Nebraska Supreme Court Rules; and
- c. Defendant Clear Title is to prepare and issue title policies based on a written report of title resulting from a complete search and examination of the public records, surveys, and inspections relevant to the insurance afforded by such policies.

Parde then alleged that Clear Title materially breached those duties by:

- a. Preparing the Warranty Deed to the Property in the absence of a written purchase agreement between [Parde] and [the Powerses];
- b. Failing to adhere to recognized underwriting practices;
- c. Failing to complete a title search, examination or request a written purchase agreement from [Parde] and Robert Powers;
- d. Failing to make a reasonable inquiry into the status of transaction or purchase price of the Property;
- e. Failing to adhere to the standards, rules and regulations of the Nebraska Department of Insurance that govern title insurance companies; [and]
- f. Engaging in the unauthorized practice of law contrary to the Nebraska Supreme Court Rules, Chapter 3, Article 10.

Parde alleged that “[a]s a direct and proximate result of [Clear Title’s] actions,” she suffered actual and consequential damages, including her loss of the legal and equitable title in the property and the value of the property. Parde sought the value of the property in the amount of \$205,176.40, and “[m]onetary damages, in an amount to be proven at trial, that places [Parde] in the position she would have been had there been no negligence by [Clear Title].”

On January 17, 2023, Clear Title filed a motion to dismiss Parde’s complaint pursuant to Neb. Ct. R. Pldg. § 6-1112(b)(6) for failure to state a claim upon which relief can be granted. In its affidavit in support of its motion to dismiss, Clear Title cited to and attached a copy of the Nebraska Supreme Court’s memorandum opinion in *Parde I*. Clear Title had two additional filings on January 17. The first was an “Index of Evidence in Support of Defendants’ Motion to Dismiss” (listing the affidavit in support of its motion to dismiss, including the attached copy of *Parde I*). The second was an “Annotated Statement of Undisputed Facts in Support of Defendants’ Motion to Dismiss” wherein Clear Title said that “pursuant to Neb. Ct. R. § 6-1526(A)(2), and in support of Defendants’ *Motion for Summary Judgment*” (emphasis supplied), it submitted the following undisputed material facts.

1. [Parde] asked Clear Title . . . to prepare a Warranty Deed conveying [the] property . . . to [the Powerses] sometime prior to December 19, 2018. [*Parde I*], page 6.
2. Clear Title was also asked to prepare a title search on the Property. *Id.*
3. [Parde] and Powers entered into a series of agreements pursuant to which [Parde] agreed to sell the Property to Powers. [Complaint Exhibit C.]
4. In December 2018 [Parde] and the Powers entered into a Promissory Note (Unsecured) for the amount of \$150,599.83 to be paid by Powers in monthly installments of \$1,050 per month beginning on February 15, 2019. Powers also paid [Parde] \$20,000 per the Promissory Note. *Id.*
5. On December 19, 2019 [Parde] went to Clear Title and signed a Warranty Deed conveying the Property to Powers. *Id.*
6. It was [Parde’s] intent and understanding that when she left the executed Warranty Deed with Clear Title that she had sold the property to Powers. *Id.*
7. In other words, “when [Parde] executed the warranty deed and left it with the title company, she ‘fully considered the property to be sold and the transaction complete.’” [*Parde I*], pages 9-10.
8. [Parde] left the warranty deed in control of the title company for the sole purpose of delivery of the warranty deed to Powers. In doing so, [Parde] effectively delivered the warranty deed to Powers. The evidence at the trial before [the district court] “was undisputed that the Warranty Deed was delivered to [Powers].” [Complaint Exhibit C.]
9. The promissory note was unsecured. It did not operate as a lien on the Property. [*Id.*]
10. Powers defaulted on the promissory note. [*Id.*]
11. [Parde] did not sue on the Promissory Note. *Id.*

On January 27, 2023, Parde filed an “Affidavit in Opposition to Defendants’ Motion to Dismiss or Summary Judgment.” In her affidavit, Parde stated, in relevant part:

- ....
9. In 2018, I owned [the property]. For a number of years, I was selling it on a land contract to [Powers].
  10. If [Clear Title] would not have presented me with a warranty deed to sign on December 19, 2018[,] with respect to the transaction with Powers, I would have consulted a Nebraska attorney as to how I could properly complete the transaction and protect my

own self-interest. My only intent with respect to the . . . real estate transaction was to get paid in full for the real estate at the time I delivered the deed to Powers (or shortly thereafter) or, in the alternative, have a perfected first lien on the real estate until Powers paid me in full.

11. At the time I signed the warranty deed with respect to the [property] on December 19, 2018, I trusted and relied on [Clear Title] to not allow Powers to obtain title to the [property] without paying me in full for the [property] or, at least, perfect my first lien interest in the said real estate.

12. Powers obtained fee simple absolute title with respect to the [property] per the orders of the Douglas County District Court and Nebraska Supreme Court.

13. At no time did I ever intend, desire or want to be involved in extensive and expensive litigation just to get paid by Powers for the [property] that I formerly owned.

14. I never intended to make a gift of the [property] to Powers.

15. There was no purchase agreement between myself and Powers with respect to the [property].

16. Neither myself or Robert Powers ever ordered any title insurance from Clear Title with respect to the [property].

17. There was no real estate closing between myself and Powers with respect to the [property].

18. Defendant Clear Title never prepared and delivered to me a closing statement (showing debits and credits) with respect to the . . . real estate transaction between Powers and myself.

19. At no time did I ever intend, desire or want to be left in possession of an unsecured promissory note, with no acceleration clause, made by the uncreditworthy Powers with respect to the [property].

20. From 2019 to this day, Powers hasn't paid me any money whatsoever with respect to the [property].

21. My attorney filed a lawsuit against Robert Powers in the District Court of Washington County at CI 21-081 with respect to the unsecured promissory note.

Parde had two additional filings on January 27, 2023. The first was an "Index of Evidence in Opposition to Defendants' Motion to Dismiss" (listing her affidavit in opposition to Clear Title's motion to dismiss or motion for summary judgment). The second was an "Annotated Statement of Disputed Facts" wherein Parde stated that "pursuant to Neb. Ct. R. § 6-1526(B)(2), and in opposition to Defendants' Motion for Summary Judgment," she submitted the following disputed material facts.

1. Defendants prepared a warranty deed for [Parde] to sign with respect to [the property] notwithstanding the fact that the Defendants were not in possession of a purchase agreement or an order for title insurance with respect to [the property]. [Complaint], paragraphs 9 and 11.

2. [Parde] filed a lawsuit in the District Court of Washington County (CI 21-081) to collect on the unsecured promissory note made by Powers. [Parde Affidavit], page 2, paragraph 21.

3. Parde only intended to sell [the property] to Powers if she was paid in full shortly after delivery of the deed or, in the alternative, she only intended to sell [the property] provided she had a perfected first lien on the property until such time as Powers paid her in full. [Parde Affidavit], paragraph 10.

A hearing on Clear Title's "motion to dismiss" was held on January 31, 2023. Received into evidence was (1) Clear Title's affidavit in support of its motion to dismiss, which included a copy of *Parde I*, and (2) Parde's "Affidavit in Opposition to Defendants' Motion to Dismiss or Summary Judgment." Upon request, and without objection, the district court also took judicial notice of the complaint, both parties' indexes of evidence, and the annotated statements of undisputed/disputed facts; none of these documents were marked, offered, or received into evidence. Although counsel for both parties answered affirmatively when the district court asked if they wished to argue, arguments by counsel do not appear in our record.

In its order dated February 17, 2023, the district court found that Parde's complaint failed to state a cause of action against Clear Title and that she would be unable to amend her complaint to state a cause of action. The court therefore sustained Clear Title's "motion to dismiss" and dismissed the complaint with prejudice. On February 22, Parde filed a motion to alter or amend the judgment, but her motion was denied on March 31.

Parde appeals.

#### ASSIGNMENTS OF ERROR

Parde assigns that the district court erred when it dismissed the complaint because (1) there were material questions of fact regarding negligence for a jury to decide and (2) proximate cause is a jury question.

#### STANDARD OF REVIEW

If, on a motion to dismiss for failure to state a claim, matters outside the pleading are presented to and not excluded by the court, the motion shall ordinarily be treated as one for summary judgment and the parties must be given reasonable opportunity to present all material made pertinent to such a motion. *Trausch v. Hagemeyer*, 313 Neb. 538, 985 N.W.2d 402 (2023).

An appellate court reviews a district court's grant of summary judgment de novo. *Puncochar v. Rudolf*, 315 Neb. 650, 999 N.W.2d 127 (2024). An appellate court affirms a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law. *Id.* In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence. *Id.*

The question whether a legal duty exists for actionable negligence is a question of law dependent on the facts in a particular situation. *McReynolds v. RIU Resorts & Hotels*, 293 Neb. 345, 880 N.W.2d 43 (2016). When reviewing a question of law, an appellate court resolves the question independently of the conclusion reached by the trial court. *Id.*

## ANALYSIS

The district court's order sustained Clear Title's "motion to dismiss" and dismissed the complaint with prejudice after finding that Parde's complaint failed to state a cause of action against Clear Title and that she would be unable to amend her complaint to state a cause of action. However, neither party disputes that the motion should have been treated as one for summary judgment because matters outside the pleading were received by the court. We therefore treat the district court's order as granting summary judgment in favor of Clear Title. We note that the district court's order did not make specific findings as to any of the elements of the negligence claim in this case.

### GENERAL LEGAL PRINCIPLES

The party moving for summary judgment has the burden to show that no genuine dispute of material fact exists and must produce sufficient evidence to demonstrate that the moving party is entitled to judgment as a matter of law if the evidence was uncontroverted at trial. *Estate of Block v. Estate of Becker*, 313 Neb. 818, 986 N.W.2d 726 (2023). If the movant does so, the burden shifts to the party opposing the motion to produce evidence showing the existence of a genuine dispute of material fact that prevents judgment as a matter of law. *Id.* To be granted summary judgment for a nonsuit, a defendant must show that one of the required elements of a plaintiff's case cannot be established. *Id.* Failure of proof concerning an essential element of the nonmoving party's case renders all other facts immaterial. *Id.*

To prevail in any negligence action, a plaintiff must show a legal duty owed by the defendant to the plaintiff, a breach of such duty, causation, and resulting damages. *Id.* A proximate cause is a cause that produces a result in a natural and continuous sequence and without which the result would not have occurred. *Id.* There are three basic requirements that must be met to establish causation: (1) that "but for" the defendant's negligence, the injury would not have occurred; (2) that the injury is the natural and probable result of the negligence; and (3) that there is no efficient intervening cause. *World Radio Labs. v. Coopers & Lybrand*, 251 Neb. 261, 557 N.W.2d 1 (1996). Determination of causation is ordinarily a matter for the trier of fact. *Id.*

### SUMMARY JUDGMENT WAS PROPERLY GRANTED

The threshold inquiry in any negligence action is whether the defendant owed the plaintiff a duty. *McReynolds v. RIU Resorts & Hotels*, *supra*. A duty is an obligation, to which the law gives recognition and effect, to conform to a particular standard of conduct toward another. *Id.* If there is no duty owed, there can be no negligence. *Id.* The question whether a legal duty exists for actionable negligence is a question of law dependent on the facts in a particular situation. *Id.* We therefore initially consider whether the pleadings and evidence establish a legal duty owed by Clear Title to Parde related to its drafting of the deed it was instructed to prepare.

Parde's complaint alleged that Clear Title owed her the following duties: to prepare deeds of transfer only for the purchase or refinancing of real estate, to act in accordance with "standards, rules and regulations of the Nebraska Department of Insurance and the Nebraska Supreme Court Rules," and to "prepare and issue title policies based on a written report of title resulting from a complete search and examination of the public records, surveys, and inspections relevant to the insurance afforded by such policies." She claimed Clear Title materially breached these duties by:

preparing a deed in the absence of a written purchase agreement; failing to “adhere to recognized underwriting practices”; failing to “complete a title search, examination or request a written purchase agreement from [Parde] and Robert Powers”; failing to “make a reasonable inquiry into the status of transaction or purchase price of the [p]roperty”; failing to “adhere to the standards, rules and regulations of the Nebraska Department of Insurance that govern title insurance companies”; and engaging in “the unauthorized practice of law contrary to the Nebraska Supreme Court Rules, Chapter 3, Article 10.” Parde claimed that “as a result of the preparation of the Warranty Deed, [she] lost title to her Property to Robert Powers.” She claimed that as a “direct and proximate result of [Clear Title’s] actions,” she suffered damages.

The premise of Parde’s negligence claim is that Clear Title had a duty to prevent her from executing the deed by not preparing one; that based on unspecified rules and regulations, Clear Title had a duty to obtain a purchase agreement or to make other inquiries related to the agreement between Parde and the Powerses before preparing the deed for her signature. However, other than generally referring to “standards, rules and regulations of the Nebraska Department of Insurance and the Nebraska Supreme Court Rules,” she cites no specific legal authority in her complaint or on appeal to support such a duty. She contends only that “Clear Title conceded its own negligence with its admission that it could not prepare a deed without an order for title insurance or a purchase agreement.” Brief for appellant at 13. However, Clear Title’s alleged “concession” comes from a response to a subpoena duces tecum in *Parde I* by Clear Title’s president, wherein he incorrectly interpreted a Nebraska Supreme Court rule regarding the unauthorized practice of law. Parde also claims that she “factually stated in her affidavit that there was no purchase agreement and that she would have stopped the real estate transaction and consulted an attorney if Clear Title would have told her it could not legally prepare a deed to convey the real estate.” *Id.* However, she again cites to no authority to support that Clear Title could not legally prepare a deed to convey real estate without a purchase agreement, nor does she produce any authority that required Clear Title to affirmatively prevent her from executing a deed that they were instructed to prepare for a real estate transfer that Parde intended to execute.

Because we conclude the record fails to establish any legal duty owed by Clear Title to Parde requiring it to refuse to prepare the deed it had been instructed to prepare, it is not necessary to reach the issue of causation. If there is no duty owed, there can be no negligence. *McReynolds v. RIU Resorts & Hotels, supra.* However, because both parties agree in their briefs to this court that the district court focused solely on the issue of the proximate cause of Parde’s damages when dismissing the underlying action, we briefly address it.

According to *Parde I*, Parde and the Powerses entered into a series of agreements for Parde to sell the property to the Powerses. “It was undisputed that Clear Title was asked to perform a title search of the property . . . and to draft a warranty deed,” and the “title company prepared a warranty deed conveying the property from Parde to the Powerses in ‘consideration of Two Dollars (\$2.00) and other good and valuable consideration’ received.” *Id.* at 6. Parde subsequently signed the deed in front of a notary and then left the fully executed deed with the title company.

The Nebraska Supreme Court stated:

After our de novo review of the record, we agree with the district court that Robert met his burden of establishing legal delivery of the deed by a preponderance of the evidence. There is ample evidence that *when Parde executed the warranty deed on*



*December 19, 2018, and then left the executed deed in the control of the title company without retaining any dominion or control over it or placing any conditions on delivery, her intent was that the deed would take effect presently and operate as a conveyance of title to the property.* And as Parde basically conceded during oral argument before this court, there is simply no evidence in the record to support a finding that delivery of the deed was conditioned upon the happening of any particular event. . . . And while we agree the evidence plainly shows that Parde had a change of heart later that evening after discussing the transaction with her daughter, it was too late to affect the completed conveyance.

On this record, there is no evidence that Parde left the executed deed in the control of the title company for any purpose other than delivery to the Powerses.

*Id.* at 13-14 (emphasis supplied). The court found “no support in the record for any of Parde’s claims that she conditioned delivery of the deed on the happening of any future event.” *Id.* at 14-15. It said:

[T]he evidence contradicts Parde’s contention that her intent was to deliver the deed only after she was paid in full on the promissory note. The undisputed evidence was that the Powerses had been unable to obtain traditional financing to purchase the home, so the parties entered into an agreement under which *Parde took an unsecured promissory note for the purchase price, and agreed to give the Powerses a warranty deed free and clear of encumbrances* which they would use to secure a bank loan and pay off the promissory note in full. Such an arrangement would not work if, as Parde now contends, she did not intend to deliver the warranty deed until after the promissory note was paid in full.

*Id.* at 15 (emphasis supplied). The court “reject[ed] Parde’s contention that her delivery of the deed was conditional.” *Id.* at 17. It also held that “acceptance of a deed operates to satisfy [the statutory requirement] that any contract creating an interest in land be signed by the party to be charged therewith.” *Id.* at 19.

Parde’s actions relating to the warranty deed conveying the property to the Powerses have already been determined in *Parde I*. Parde agreed to take an unsecured promissory note for the purchase price and agreed to give the Powerses a warranty deed free and clear of encumbrances so that the Powerses could obtain a bank loan to pay off the promissory note in full; something the Powerses could not have done if the deed was encumbered. Clear Title performed a title search of the property and drafted a warranty deed conveying the property from Parde to the Powerses as requested. Regardless of any other actions Parde claims Clear Title should have taken, as noted by Clear Title, “Any damages were the direct and proximate result of [Parde’s] execution of the warranty deed and her effective delivery of the warranty deed.” Brief for appellee at 8. Accordingly, Parde has not shown that Clear Title’s drafting of the warranty deed was the proximate cause of her losing legal and equitable title to the property, or the value thereof. Clear Title may have drafted the warranty deed, but the transfer of the property did not occur until Parde executed and delivered that warranty deed. Therefore, even when focusing only on causation, summary judgment in favor of Clear Title was proper because of the failure of proof concerning this essential element of Parde’s negligence claim.

## CONCLUSION

For the reasons stated above, we find that Clear Title's motion to dismiss was converted to a motion for summary judgment. And because we find no genuine issues of material fact preventing summary judgment in favor of Clear Title, we affirm the order of the district court.

AFFIRMED.