

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER BURRIS, a Minor, by her Next Friend
JANIS BURRIS,

UNPUBLISHED
March 5, 1999

Plaintiff-Appellant,

v

DAN YOUNG,

No. 205209
Wayne Circuit Court
LC No. 96-610192 NO

Defendant-Appellee.

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Plaintiff Jennifer Burris, a minor, by her Next Friend Janis Burris, appeals of right from the circuit court order granting the motion for summary disposition filed by defendant Dan Young. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 1, 1991 David and Vanessa Long (n/k/a Vanessa Sanders) leased a home from defendant. The lease was for a term of fifteen months or longer. It provided that defendant would furnish all materials necessary for repairs to the property. On May 6, 1992 Jennifer Burris was playing on the property when she attempted to exit a small shed by crawling through a window. The wooden frame of the window broke, causing her to fall and sustain injuries.

Plaintiff filed suit against defendant only, alleging negligence and attractive nuisance. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that because he did not retain possession or control of the property he had no liability to social guests of the tenants. The circuit court granted summary disposition of both claims.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Baker v Arbor Drugs, Inc.*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

Plaintiff argues that when a landlord retains some control over the premises he owes duties to the social guests of tenants analogous to those duties owed to invitees. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540-541; 506 NW2d 890 (1993). Under the lease, defendant was

obligated to furnish materials for repairs. Plaintiff argues that, at a minimum, a question of fact existed as to whether defendant retained some control over the premises. Plaintiff further argues that defendant remained liable for plaintiff's injuries because he failed to apprise the Longs of the condition of the shed. *McCurtis v Detroit Hilton*, 68 Mich App 253, 256; 242 NW2d 541 (1976).

We affirm the decision of the trial court. Possession and control are prerequisites for attachment of premises liability. *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980). Defendant retained neither possession nor control of the premises. He did not live on the property, and while he furnished materials for repairs, he did not make repair decisions. Plaintiff did not create an issue of fact as to whether defendant maintained some control over the premises. While a landlord who has relinquished complete possession and control can be held liable for injuries incurred by another if he failed to apprise tenants of a hidden, dangerous condition of which he knew or should have known at the time of transfer, such liability is based on nuisance rather than on negligence. *McCurtis, supra*. Plaintiff's nuisance claim was dismissed; thus, recovery is precluded.

The trial court did not address or rule on plaintiff's argument that the lease did not apply to the Longs because the accident occurred several days after the lease expired. This Court's review is limited to issues actually decided by the trial court. *Michigan Mutual Ins Co v American Community Mut Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987). Furthermore, the lease indicated that it was for a term of fifteen months or longer. Plaintiff presented no evidence or authority to support its position that the lease did not control under these circumstances.

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff