

STATE OF MICHIGAN
COURT OF APPEALS

MICHELE A. WILLIAMS and MICHAEL A.
WILLIAMS, II, Minors, through their Next Friend
MARY JO WILLIAMS, and MICHAEL A.
WILLIAMS,

UNPUBLISHED
May 31, 2002

Plaintiffs-Appellants,

v

ANTHONY WOLF and KIMBERLY WOLF,

No. 229734
Otsego Circuit Court
LC No. 99-008355-NO

Defendants/Counter-Plaintiffs-
Appellees,

and

TAMMY SUMERIX and DARYL BRABENDER,

Defendants/Counter-Defendants.

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting the Wolf defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Michele Williams was bitten by a dog owned by defendants Sumerix and Brabender, who rented their home from the Wolfs. Plaintiffs brought this action for strict liability, negligence, and premises liability. The trial court granted summary disposition to the Wolfs under MCR 2.116(C)(10), and entered a default judgment as to defendants Sumerix and Brabender.

A landlord who neither owns, keeps, nor controls a dog is not subject to strict liability. *Szkodzinski v Griffin*, 171 Mich App 711; 431 NW2d 51 (1988). While *Szkodzinski* stated that a landlord possibly could be held liable on a common law theory if he knew of the dog's vicious nature, in *Feister v Bosack*, 198 Mich App 19, 23; 497 NW2d 522 (1993), the Court declined to extend the rule. A landlord can be held liable only if he knew of the dangerous nature of the dog at the time he entered into the lease. If a third party is injured before the landlord lawfully could

have evicted the tenant, the landlord cannot be liable, even if he knew about the dog's vicious nature. *Id.*

In support of their motion for summary disposition, defendants presented affidavits stating that they were not aware that their tenants had a dog on the premises prior to the attack, and their agent had never witnessed the dog behaving in a vicious or threatening manner. In response to a motion under MCR 2.116(C)(10), plaintiffs were required to proffer substantively admissible evidence showing that there is a genuine issue of fact for trial. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Plaintiffs' assertion that the agent should not be believed was insufficient to raise a fact issue.

There was no basis for a premises liability claim against the Wolfs. Premises liability is conditioned upon the presence of both possession and control over the land. *Merritt v Nickelson*, 407 Mich 544, 544; 278 NW2d 178 (1980). Liability for an injury due to defective premises ordinarily depends upon power to prevent the injury, which rests primarily with the person who has control and possession. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 662; 575 NW2d 745 (1998). A tenant generally has exclusive legal possession and control of the premises for the term of the leasehold. *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 443; 581 NW2d 794 (1998). If a landlord could exercise control over the premises by evicting the tenant, the result would only have been to expose other individuals to the same dog. *Feister*, *supra* at 25. Even if defendants had the duty to evict their tenants, there was insufficient time to execute an eviction where the attack took place within weeks of the tenants assuming occupancy. *Id.*

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff