

STATE OF MICHIGAN
COURT OF APPEALS

AMANDA FLETCHER,

Plaintiff-Appellant,

v

KNOLLWOOD VILLAGE ASSOCIATES,

Defendant-Appellee.

UNPUBLISHED

June 19, 2012

No. 304368

Genesee Circuit Court

LC No. 2010-094514-NO

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

In this premises liability action involving an allegedly defective sidewalk, plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff fractured her ankle when she unsuccessfully attempted to pivot while her right foot was in a depression in a sidewalk at defendant's apartment complex where plaintiff lived. Plaintiff brought this action against defendant, her landlord, and alleged that it was liable for violation of its statutory duties to maintain the premises and all common areas in a condition fit for their intended use and to keep the premises in reasonable repair. MCL 554.139(1)(a) and (b). The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

MCL 554.139 provides:

(1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties.

(b) To keep the premises in reasonable repair

The lessor's duty to repair as set forth in MCL 554.139(1)(b) does not extend to common areas. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 432-433; 751 NW2d 8 (2008). Here, the allegedly defective condition involves a sidewalk. A sidewalk is a common area. *Benton v Dart Props*, 270 Mich App 437, 443-444; 715 NW2d 335 (2006). Therefore, the statutory duty in MCL 554.139(1)(b) is inapplicable.

MCL 554.139(1)(a) applies to common areas, but it “does not require a lessor to maintain [the area] in an ideal condition or in the most accessible condition possible[.]” See *Allison*, 481 Mich at 430. When reviewing a trial court's summary-disposition decision concerning a claim based on this statutory duty, this Court “must ascertain whether there could be reasonable differences of opinion regarding whether the [sidewalk] was fit for its intended use of providing tenants with reasonable access under the circumstances presented at the time of plaintiff's fall.” *Hadden v McDermitt Apartments, LLC*, 287 Mich App 124, 130; 782 NW2d 800 (2010). “[T]he intended use of a sidewalk is walking on it” *Benton*, 270 Mich App at 444. The submitted photographs of the sidewalk show a dirt-covered depression, approximately half the width of the sidewalk, at the base of a step. Plaintiff's testimony indicates that the alleged hazard was avoidable if one used the other side of the sidewalk and step. Although the sidewalk was not in perfect condition, reasonable minds could not disagree that it was fit for the use intended by the parties. Accordingly, there was no genuine issue of material fact regarding defendant's liability under MCL 554.139(1)(a).¹

Affirmed.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

¹ In light of our decision, it is unnecessary to consider whether defendant is entitled to summary disposition on the alternative ground that it lacked notice of the condition, an issue that was not reached or decided by the trial court.