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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002220-MR

DEBORAH TAYLOR AND JOHN D. TAYLOR — APPELLANTS

v.

APPEAL FROM GRANT CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 03-CI-00033

DR. MARK SANDER — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JOHNSON, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: Deborah Taylor and John D. Taylor (collectively referred to as appellants) bring this appeal from a September 19, 2003, summary judgment of the Grant Circuit Court. We affirm.

The facts are as follows. Appellee owned a 22.5 acre farm in Grant County, Kentucky, upon which two mobile homes were situated. Appellee rented one of the mobile homes to Danny Marksberry (Marksberry). Apparently, the rent consideration was

in the form of services rendered by Marksberry to appellee rather than cash payment.

On October 13, 2002, Marksberry invited Deborah Taylor (Deborah) to his home to play cards. That evening Deborah drank at least three beers. Deborah stayed at the mobile home that night and took a Xanax before going to bed. She awoke around 4:30 a.m. from an alleged noise outside the trailer. She then opened the rear door of the mobile home by unlocking its deadbolt. She alleges to have fallen out of the back door of the mobile home (about a three-foot fall) and suffered injuries to her foot and right knee. She further alleges her kneecap was crushed and her leg was broken in eleven places. Incredibly, Deborah did not seek medical attention at that time; instead, she went to her home and only sought medical attention some six hours after the alleged fall.

On January 27, 2003, appellants filed a complaint in the Grant Circuit Court against appellee. Appellants claim Deborah's fall was caused by appellee's failure to provide suitable steps exiting the back door of the mobile home. Appellee answered and, thereafter, made a motion for summary judgment. The motion was granted on September 19, 2003, and appellants' claims were dismissed. This appeal follows.

Appellants contend the circuit court committed error by entering summary judgment. Summary judgment is proper where

there exist no material issue of fact and movant is entitled to judgment as a matter of law. Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

As to a landlord's liability for demised premises, the general rule under the common law is:

> [A] landlord who, without covenanting to repair, and without knowledge of latent defects, puts a tenant into full possession and control of the demised premises, not intended for public purposes, and which are free from defects of construction constituting a nuisance, will not, in the absence of statute, be liable for personal injuries sustained on the demised premises, by reason of the defective condition thereof, by the tenant and others entering on the premises under the tenant's title.

Starns v. Lancaster, Ky. App., 553 S.W.2d 696, 697 (1977)(quoting 52 C.J.S. Landlord and Tenant § 417(3) at 33 (1968)). Appellants allege that appellee is nevertheless liable because numerous exceptions to the above general rule are applicable in this case.

Initially, appellants argue that appellee had actual knowledge of the mobile home's lack of stairs from the rear door, and therefore, had knowledge of a latent defect in the mobile home. The back door did have concrete blocks in a stair-like formation; however, there was a two-foot drop from the doorway jam to the first block. Appellants contend this constitutes a latent defect. We disagree. The very definition

of a latent defect is a defect that a reasonably careful inspection would not reveal or is a hidden defect. BLACK'S LAW DICTIONARY 1026 (Revised 4th ed. 1968). Even if the concrete-block stairs could be considered a "defect," the stairs are not as a matter of law a latent defect. We, thus, reject appellants' contention that there existed a latent defect upon the premises.

Next, appellants contend the general rule of landlord non-liability is inapplicable because appellee violated Kentucky Revised Statutes (KRS) 383.595(1)(a), which states the landlord shall "[c]omply with the requirements of applicable building and housing codes materially affecting health and safety . . . ." Appellants allege the applicable building and housing code violated by appellee is the CABO One and Two Family Dwelling Code. Appellants, however, failed to offer us a specific cite for CABO and failed to indicate to this Court whether CABO was adopted by city ordinance or state regulation. Appellants did offer the affidavit of Terry Conrad, Grant County Building Inspector, wherein he opined that CABO would be applicable to the mobile home. Appellants state the affidavit created an issue of fact upon the applicable building code in this case. However, the determination of applicable law or code is a question of law for the court. As such, we reject the contention appellee violated KRS 383.595(1)(a) by violating CABO.

Appellants further argue appellee would be liable for the demised premise under the Restatement (Second) of Property, Landlord & Tenant § 17.6 (1977). Thereunder, a landlord of property is liable:

> [F]or physical harm caused to the tenant and others upon the leased property with the consent of the tenant or his subtenant by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of . . . a duty created by statute or administrative regulation.

Id. We do not believe appellee would be liable under the Restatement (Second) of Property, Landlord & Tenant § 17.6 (1977), as there has been no violation of a duty created by statute or administrative regulation.

Next, appellants contend appellee is liable under the Restatement (Second) of Torts § 361 (1965), which states as follows:

> A possessor of land who leases a part thereof and retains in his own control any other part which is necessary to the safe use of the leased part, is subject to liability to his lessee and others lawfully upon the land with the consent of the lessee . . . for physical harm caused by a dangerous condition upon that part of the land retained in the lessor's control, if the lessor by the exercise of reasonable care (a) could have discovered the condition and the risk involved, and (b) could have made the condition safe.

We reject this contention. First, we point out the facts do not demonstrate that appellee retained control over the mobile home. Appellee's undisputed testimony indicates that Marksberry was solely responsible for the maintenance, upkeep, and daily care of the mobile home. Furthermore, appellee's undisputed testimony also indicates he was not on the subject property during the entire tenancy of Marksberry. We do not believe the concrete staircase constitutes a "dangerous condition" within the contemplation of Restatement (Second) of Torts § 361 (1965). In the case at hand, Deborah chose to exit the back door at night in complete darkness. Thus, we are of the opinion appellee would not be liable under the Restatement (Second) of Torts § 361 (1965).

Appellant also contends the lack of proper stairs on the back of the mobile home constituted a nuisance. Nuisances are "that class of wrongs arising from the unreasonable, unwarrantable, or unlawful use by a person of his own property and producing such material annoyance, inconvenience, discomfort, or hurt that the law will presume a consequent damage." City v. Sears, 313 Ky. 784, 233 S.W.2d 530, 532 (1950)(quoting 39 Am. Jur., Nuisances § 2). It has been observed that "the creation of trifling annoyance in inconvenience does not constitute an actionable nuisance . . . ." Kentucky & West Virginia Power Co. v. Anderson, 288

Ky. 501, 156 S.W.2d 857, 859 (1941). In this case, we believe the concrete-block staircase cannot be included in the class of wrongs arising from the unreasonable, unwarranted, or unlawful use of property; rather, we believe it more akin to the creation of an inconvenience upon property, which does not constitute an actionable nuisance. We, thus, reject appellants' contention that the concrete-block staircase constituted a nuisance.

We view appellants' remaining contentions as either moot or without merit. Under the facts of this case, if anyone had responsibility for maintaining Deborah's safety at the trailer, it was Marksberry, not appellee.

In sum, we are of the opinion the circuit court properly entered summary judgment dismissing appellants' claims against appellee.

For the foregoing reasons, the summary judgment of the Grant Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR APPELLANT:	BRIEF AND ORAL ARGUMENT FOR APPELLEE:
Meredith L. Lawrence Warsaw, Kentucky	Nick Benson Benson and Schultz, P.S.C. Walton, Kentucky