

RENDERED: OCTOBER 24, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001372-MR

AUNDRIA BURKHART-DAVIS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY N. BUNNELL, JUDGE  
ACTION NO. 13-CI-02185

FEDERAL NATIONAL MORTGAGE ASSOCIATION  
AND LINCOLN REAL ESTATE, INC.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; MAZE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Aundria Burkhardt-Davis appeals from the dismissal of her case for failure to state a claim.

Burkhardt-Davis was injured after falling on a public sidewalk in Fayette County in front of a building owned by Federal National Mortgage Association (FNMA), which had contracted with Lincoln Real Estate, Inc.

(Lincoln) to maintain and sell the property. Pursuant to the Lexington-Fayette Urban County Government's Code of Ordinances, Section 17-147, landowners have a duty to repair public sidewalks abutting their property:

It shall be the duty of each owner of real estate abutting on any sidewalk to repair, at his own expense, all holes, uneven surfaces and other defects in the sidewalk upon which his property abuts; reconstruction shall comply with the standard drawings and technical manuals. If such owner be a nonresident of the urban county, or if he cannot be found, it shall be the duty of his agent in charge of the property to make the repairs as herein required[.]

On the basis of this statute, Burkhart-Davis filed suit against FNMA and Lincoln, alleging negligence, failure to warn and negligence *per se*. FNMA and Lincoln filed a motion to dismiss under CR 12.02(f) for failure to state a claim upon which relief can be granted. Following oral argument, the circuit court granted the motion and dismissed the case.

The issue on appeal is whether FNMA and Lincoln owed Burkhart- Davis a duty of ordinary care for injuries she suffered after falling on a defective public sidewalk in front of their building. We review *de novo* a trial court's order dismissing a case after determining, as a matter of law, the plaintiff would not be entitled to relief under the facts alleged. *Certain Underwriters at Lloyd's, London v. Abundance Coal, Inc.*, 352 S.W.3d 594, 596 (Ky.App. 2011).

It is well-established law in Kentucky that an ordinance requiring adjoining landowners to keep a public sidewalk clear from debris and in good repair only creates a duty from the landowner to the city to bear the cost of maintenance and

repair and does not establish any duty to sidewalk travelers or liability for their injuries. *Schilling v. Schoenle*, 782 S.W.2d 630, 632-634 (Ky. 1990), *Vissman v. Koby*, 309 S.W.2d 345, 347-348 (Ky. 1958); *Webster v. Chesapeake & O. Ry. Co.*, 105 S.W. 945, 946 (Ky. 1907); *Fields v. Lexington-Fayette Urban County Government*, 91 S.W.3d 110, 112 (Ky.App. 2001). An abutting property owner can only be liable to injuries resulting from a defect or dangerous condition in the public sidewalk where the owner creates the defect or dangerous condition through an affirmative act or negligence. *Equitable Life Assur. Soc. v. McClellan*, 286 Ky. 17, 149 S.W.2d 730, 731-732 (1941).

Because Burkhart-Davis did not allege FNMA or Lincoln caused the defect to the public sidewalk where she fell, the circuit court properly granted the motion to dismiss because FNMA and Lincoln did not owe Burkhart-Davis any duty to maintain the public sidewalk in front of their building.

Accordingly, we affirm the Fayette Circuit Court's Order dismissing Burkhart-Davis's case.

ALL CONCUR.

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