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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000930-MR

YOLANDA M. MCCOMBS — APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE DANIEL J. ZALLA, JUDGE
ACTION NO. 17-CI-00611

MITTS RENTALS, LLC — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, GOODWINE, AND TAYLOR, JUDGES.

COMBS, JUDGE: This case involves a lawsuit for a slip-and-fall accident suffered by the Appellant at a house rented by her son. Yolanda M. McCombs appeals from a summary judgment of the Campbell Circuit Court dismissing her claim against her son's landlord, Mitts Rentals, LLC, for injuries sustained when she tripped over an uneven threshold and fell down two steps. She contends that

the trial court erred by finding that Mitts Rentals "was not a 'land possessor' and therefore had no duty to repair the premises." Because McCombs's injuries were the result of an obvious hazard at her son's rental house and because McCombs was aware of the dangerous condition before she fell, we are compelled to affirm.

On February 1, 2016, Russell McCombs executed a lease agreement with Mitts Rentals for the rental of a single-family home on Isabella Street in Newport. The lease agreement provided that "[t]hroughout the term of the Lease the Landlord, at its sole cost, expense and judgment, will be responsible for maintaining the roof, foundation and structure of the Property in good condition. . . ." In the lease agreement, Russell acknowledged that he had inspected the house and agreed that it was in satisfactory condition. However, in his affidavit, Russell indicated that shortly after he moved into the house, he and others tripped over the side-door threshold. Russell swore that in response to his complaints, Tom Mitts of Mitts Rentals agreed to "level out the floor in front of the doorway in order to prevent people from falling. . . ." Russell indicated that Mitts Rentals did not "fix, warn, or otherwise make the exit from the residence any safer. . . ."

On July 12, 2016, McCombs visited Russell's house. As she was departing, McCombs noticed that the threshold was not even with the first outside stone step. As she crossed the threshold, McCombs tripped and fell, sustaining physical injuries.

On July 10, 2017, McCombs filed a complaint against Mitts Rentals, alleging that the landlord had been negligent in its maintenance of the rental house. Mitts Rentals denied liability and, following discovery, filed a motion for summary judgment arguing that it was entitled to judgment as a matter of law. After a review of the record, the circuit court granted the motion of Mitts Rentals for summary judgment and dismissed the action. This appeal followed.

Summary judgment serves to terminate litigation where "the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR[1] 56.03. On appeal, we must consider whether the trial court correctly determined that there were no genuine issues of material fact and that Mitts Rentals was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky. App. 1996). We review the trial court's interpretations of law *de novo*. *Cumberland Valley Contrs., Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644 (Ky. 2007).

McCombs contends that the trial court erred in granting summary judgment because Mitts Rentals had assumed the duty to make structural repairs to the premises pursuant to the parties' lease agreement. We disagree.

[1] Kentucky Rules of Civil Procedure.

We begin by noting that Kentucky courts have consistently held that guests of a tenant are owed the same duties as the tenant.

> "[T]he duties and liabilities of a landlord to persons on the leased premises by the consent of the tenant are the same as those owed to the tenant himself. For this purpose, they stand in his shoes. . . . Where the tenant has no redress against the landlord, those on the premises in the tenant's right are likewise barred."

Lambert v. Franklin Real Estate Co., 37 S.W.3d 770, 776 (Ky. App. 2000) (quoting *Clary v. Hayes*, 300 Ky. 853, 190 S.W.2d 657, 659 (1945)).

The jurisprudence concerning a landlord's liability to a tenant (and, therefore, to an invitee of a tenant) for personal injuries caused by a hazard on the premises occupied by a tenant is clear. In *Pinkston v. Audubon Area Community Services, Inc.*, 210 S.W.3d 188 (Ky. App. 2006), we considered the liability of a landlord to a tenant for personal injuries. While the parties' lease did not specifically require the landlord to maintain the premises, it stated that the landlord would "make necessary repairs with reasonable promptness." *Id.* at 189. After moving into the apartment, the tenant noticed an oily substance on the stairwell steps and discovered that the stairwell handrail was loose. Requests to the landlord to repair the handrail were ignored. Eventually, the tenant was injured when she grabbed the handrail and it pulled from the wall. In that case, we recited the applicable law as follows:

> In the absence of a special agreement to do so, made when the contract is entered into, there is no obligation upon the landlord to repair the leased premises. *Miles v. Shauntee*, 664 S.W.2d 512, 518 (Ky.1983). Likewise, a landlord will not be liable for injuries caused by defects in the leased premises unless the condition is unknown to the tenant and not discoverable through reasonable inspection. *Milby v. Mears*, 580 S.W.2d 724, 728 (Ky.App.1979), citing *Parson v. Whitlow*, 453 S.W.2d 270 (Ky.1970); *Carver v. Howard*, 280 S.W.2d 708 (Ky.1955); *Larkin v. Baker*, 308 Ky. 364, 214 S.W.2d 379 (1948); *Consolidation Coal Co. v. Zarirs*, 222 Ky. 238, 300 S.W. 615 (1927); and *Speckman v. Schuster*, 183 Ky. 326, 209 S.W. 372 (1919).

Id. at 190. The tenant attempted to avoid application of this general rule by arguing that the landlord had specifically agreed in the lease to "make necessary repairs with reasonable promptness." In that case, we cited the common law as follows:

> [I]n *Spinks v. Asp*, 192 Ky. 550, 234 S.W. 14 (1921), the former Court of Appeals held that a landlord is not liable for injuries caused by breach of a covenant to make repairs to a leased premises. Rather, the remedy for breach of an agreement to repair is the cost of repair. *Id.* at 16.

We applied the same reasoning in *Miller v. Cundiff*, 245 S.W.3d 786 (Ky. App. 2007), where a gap in carpeting on the tenant's apartment floor caused her to fall and suffer physical injuries. The tenant admitted that she was aware of the carpet's condition both when she initially walked through the apartment and at the time of her fall. However, she alleged that the landlord had promised

repeatedly to make the necessary repairs, but the repairs were never performed. We re-affirmed the law as recited in *Pinkston, supra*, and concluded that the tenant could not recover damages for her injuries as a matter of law.

Similarly, in *True v. Fath Bluegrass Manor Apartment*, 358 S.W.3d 23 (Ky. App. 2011), tenants were injured when a loose deck railing gave way. The tenants testified that they were aware that the railing was loose when they moved in, but it had not been repaired by the landlord. Citing applicable law, we held that the tenants took the premises in an "as is" condition and that the landlord was not liable for injuries caused by the defect known to the tenants or discoverable by them through a reasonable inspection. We observed that even where a landlord assumes a contractual duty to make repairs to leased premises, the landlord has no liability to tenants or their guests beyond damages for breach of contract; *i.e.*, the cost of repair.

Finally, in *Joiner v. Tran & P Properties, LLC*, 526 S.W.3d 94 (Ky. App. 2017), we considered whether tenants could recover for alleged physical injuries caused by the presence of mold in their apartment. The tenants were aware of the existence and danger of the mold in their home, and the landlord was responsible for maintaining the property in a safe and habitable condition. The tenants alleged that the landlord failed to remediate the mold despite requests to do so and that they suffered respiratory illness as a result. Citing *Pinkston v. Audubon*

Area Community Services, Inc., 210 S.W.3d 188 (Ky. App. 2006), and *Spinks v. Asp*, 192 Ky. 550, 234 S.W. 14 (1921), we agreed that the landlord was entitled to judgment as a matter of law. We observed that "Kentucky law provides that the remedy for breach of an agreement to repair is the cost of the repair" and rejected the tenants' claims for damages for personal injuries.

McCombs's citation to the reasoning of the Kentucky Supreme Court in *Shelton v. Kentucky Easter Seals Soc., Inc.*, 413 S.W.3d 901 (Ky. 2013), and *Kentucky River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010), is not relevant to her case. In these cases, our Supreme Court modified the open-and-obvious doctrine so that it is no longer an absolute bar to recovery from a land possessor. In *McIntosh, supra,* the court explained as follows:

> The lower courts should not merely label a danger as "obvious" and then deny recovery. Rather, they must ask whether the land possessor could reasonably foresee that an invitee would be injured by the danger. If the land possessor can foresee the injury, but nevertheless fails to take reasonable precautions to prevent the injury, he can be held liable. Thus, this Court rejects the minority position, which absolves, *ipso facto*, land possessors from liability when a court labels the danger open and obvious.

Id. at 392.

McCombs contends that the holdings of these cases mean that landlords – as "land possessors" – are now subject to a comparative fault analysis in negligence actions. She explains that because a landlord yields only temporary

possession of the leased premises to a tenant, the landlord remains the ultimate "land possessor." Furthermore, she argues that there "is no logical basis to differentiate between the legal treatment of a guest/business invitee and a tenant regarding the premises liability analysis" because like a "a guest/invitee" who "comes upon the property to convey some benefit to the business owner/invitor," a landlord's tenant comes upon the property to "convey[] a benefit upon the landowner/landlord, by way of monthly rental/lease payments. . . ." There are critical differences between the relationship of business owners and their invitees who come upon the property for limited commercial purposes and the relationship between landlords and their tenants, who typically maintain control of the premises that they lease. Consequently, McCombs's analysis does not govern this situation.

In light of the nature of the tenancy, tenants who occupy a rented home can be expected to be aware of any of its defects (or *should be* through a reasonable inspection of the premises) on a day-to-day basis. Landlords who lease the entirety of residential premises to a tenant are entitled to rely on the fact that the tenant will exercise reasonable care for himself and his guests. Consequently, landlords are held to be liable to their tenants for injuries caused by defects in the leased premises **only** where the defect is unknown to the tenant and undiscoverable by him through a reasonable inspection.

Business owners enjoy a fundamentally different relationship to their invitees. Business owners do not typically surrender the entirety of their premises to invitees. Instead, they continue to maintain a level of control over the premises throughout interactions with their invitees and can be expected to exercise care for their safety. Consequently, business owners owe to their invitees a duty to discover unreasonably dangerous conditions and either to eliminate or to warn of them. Business owners occupy their premises; landlords who lease entire premises do not. This distinction accounts for the different analysis undertaken in premises liability actions against them. The circuit court did not err by granting summary judgment to Mitts Rentals.

We AFFIRM the judgment of the Campbell Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Thomas J. Dall, Jr. Cincinnati, Ohio	Frank V. Benton, V Newport, Kentucky