STATE OF MICHIGAN

COURT OF APPEALS

DERICK AARON,

Plaintiff-Appellant,

v

ARTHUR LESOW COMMUNITY CENTER, CITY OF MONROE, COUNTY OF MONROE and UNITED WAY,[1]

Defendants-Appellees.

UNPUBLISHED
December 22, 1998

No. 206059
Monroe Circuit Court
LC No. 96-005003 NO

Before: Doctoroff, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from orders granting summary disposition in favor of defendants, the Arthur Lesow Community Center ("ALCC") and the City of Monroe, pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff first argues that the trial court erred in granting the ALCC's motion for summary disposition pursuant to MCR 2.116(C)(10). We disagree. We review de novo a trial court's decision on a motion for summary disposition. *Michigan Mutual Insurance Co v Dowell,* 204 Mich App 81, 86; 514 NW2d 185 (1994). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Michigan Mutual, supra,* 204 Mich App 85. When considering a motion for summary disposition pursuant to MCR 2.116(C)(10), this Court must consider the pleadings, affidavits, depositions, and other documentary evidence available to it and grant summary disposition if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 85-86.

The decision of the trial court indicates that the trial court did not determine whether plaintiff was a licensee or an invitee at the time of his injury. Rather, the trial court determined that, even if plaintiff was an invitee, the ALCC still could not be held liable for his injury. An invitor is not an insurer of the safety of invitees, and his duty is only to exercise reasonable care for their protection. *Williams v Cunningham Drug Stores, Inc,* 429 Mich 495, 500; 418 NW2d 381 (1988). The invitor must warn

the invitee of dangers of which he knows, and must inspect the premises to discover possible defects. *Kroll v Katz*, 374 Mich 364, 373; 132 NW2d 27 (1965). The invitor's duty does not extend to conditions from which an unreasonable risk cannot be anticipated or discovered with reasonable care, or to dangers so obvious that an invitee can be expected to discover them himself. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 94; 485 NW2d 676 (1992); *Kroll, supra,* 374 Mich 373. Furthermore, "[t]he mere existence of a defect or danger is not enough to establish liability unless it is shown to be of such a character or of such duration that the jury may reasonably conclude that due care would have discovered it." *Kroll, supra*, 374 Mich 373.

Our review of the affidavits of Darin Hoskins and Beverly Heck established that there was no visible defect in the floor where plaintiff suffered the injury. Both Hoskins and Heck attested that they inspected the floor after plaintiff's injury and found no defect. Additionally, there were no prior complaints that the floor was defective or hazardous. In response to the ALCC's motion, plaintiff submitted the affidavit of his expert, Karl Greimel, who examined the property on November 1, 1996, almost nine months after plaintiff's injury. While Greimel opined that the floor had deteriorated and lost its spring in various pockets, he did not opine as to the level of deterioration on the day of injury, the duration of the deterioration, and the floor's character on the date of injury. In fact, Greimel's affidavit supports the ALCC's position that the defect was of such a nature that it did not have notice, constructive or otherwise, as he found soft areas on the court only through a "careful inspection" nearly nine months after the injury. Therefore, even if plaintiff was an invitee on the premises, plaintiff failed to create a genuine issue of material fact regarding the duration or character of the hidden defect such that the ALCC knew or should have known of its condition through due care. *Kroll, supra*. Accordingly, the trial court properly granted summary disposition in favor of the ALCC pursuant to MCR 2.116(C)(10).

Plaintiff next argues that the trial court erred in granting the City of Monroe's motion for summary disposition pursuant to MCR 2.116(C)(10) on the ground that the City of Monroe did not have possession and control of the premises at the time of plaintiff's injury. We disagree.

Premises liability is conditioned on the presence of both possession and control of the premises. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660; 575 NW2d 745 (1998); *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980). "Ownership is not dispositive. Possession and control are certainly incidents of title ownership, but these possessory rights can be 'loaned' to another, thereby conferring the duty to make the premises safe while simultaneously absolving oneself of responsibility." *Merritt, supra*, 407 Mich 552-553. A possessor of land is defined as:

> (a) a person who is in occupation of the land with intent to control it, or
>
> (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
>
> (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under clauses (a) and (b). [*Merritt, supra*, 407 Mich 552 (quoting 2 Restatement Torts, 2d, § 328 E, p 170).]

Pursuant to the lease, the ALCC agreed to make all repairs and "to keep the premises safe and in good order and condition at all times during the term of this lease." The terms of the lease provided that the City of Monroe had the right to make capital improvements and the right to inspect the premises. However, the lease clearly gave the ALCC possession of the premises. Plaintiff failed to present any evidence to raise a genuine issue of fact with respect to whether the City of Monroe had possession and control of the premises at the time of plaintiff's injury. Accordingly, the trial court did not err in granting summary disposition in favor of the City of Monroe pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

[1] Summary disposition was granted in favor of all defendants. Plaintiff has only appealed the dismissal of the Arthur Lesow Community Center and the City of Monroe.