STATE OF MICHIGAN

COURT OF APPEALS

SANDRA RICKLEY GARNEAU,

Plaintiff-Appellant,

v

SAMUEL R. NOON and LAURA L. NOON,

Defendants-Appellees.

UNPUBLISHED
January 27, 2011

No. 294846
Mackinac Circuit Court
LC No. 08-006592-NO

Before: SAWYER, P.J., and WHITBECK and WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews the trial court's grant of summary disposition de novo. *Greene v AP Prod, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). In ruling on such a motion, the Court must "consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Rose v Nat'l Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Summary disposition is appropriately granted under MCR 2.116(C)(10) "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Rose*, 466 Mich at 461.

Plaintiff was staying with her son and his family in a leased home owned by defendants. She was injured when she exited the home and her feet slipped as she stood on the back stairway threshold. Plaintiff fell from the height of three steps to the ground, and fractured her right ankle. Plaintiff's complaint alleges that the stairs were in a state of disrepair and that defendants had actual or constructive knowledge of the need for repair to the stairs.

Defendants' motion for summary disposition asserted that plaintiff's claim was barred by the common-law open and obvious doctrine and that there was no violation of the statutory duties set forth in MCL 554.139. The trial court granted defendant's motion, concluding both that the stairway conditions were open and obvious and that there was no violation of MCL 554.139.

The Michigan Supreme Court has stated that legislatively imposed statutory duties on landlords may abrogate common-law rules regarding a landlord's duty to repair. See *Mobile Oil Corp v Thorn*, 401 Mich 306, 310; 258 NW2d 30 (1977). "[A] defendant cannot use the "open and obvious" danger doctrine to avoid liability when the defendant has a statutory duty to maintain the premises in accordance with MCL 554.139(1)(a) or (b)." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 426 n 2; 751 NW2d 8 (2008).

In relevant part, 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 during the term of the lease or license. . . .
>
> (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.

There is some dispute as to whether, pursuant to § (2), the parties' lease arrangement transferred the duty for repairs to plaintiff's son, George Rickley. Defendant Samuel Noon and George Rickley's wife, Lois Rickley, both stated that George Rickley was responsible for maintenance of the home. During a three- to four-year tenancy, George Rickley performed extensive carpentry and repair work to the home, including installation of a roof on the garage, flooring in the kitchen and dining room, kitchen cabinet doors, a sock pipe for a septic drain, and a wood stove in the garage. He did not do any work on the back stairway either before or after plaintiff's fall. All of this evidence supports the conclusion that the parties' lease arrangement transferred responsibility for repairs to the tenant.

However, even without a transfer of responsibility for repairs, defendants' duty under the statute was to repair all defects about which he knew or should have known. *Raatikka v Jones*, 81 Mich App 428, 430; 265 NW2d 360 (1978); see also *Evans v VanKleek*, 110 Mich App 798, 803; 314 NW2d 846 (1981). A landlord is not required "to inspect the premises on a regular basis to determine if any defects exist," but rather, must "repair any defects brought to his attention by the tenant or by his casual inspection of the premises." *Raatikka*, 81 Mich App at 431.

Plaintiff did not present any evidence that she or her son informed defendants of the condition of the back stairs, or of the need for repair to the stairs. Although plaintiff asserts that defendants could have or should have seen the condition of the back stairs by casual observation, plaintiff offers no evidence to support this contention. Instead, the evidence presented by plaintiff shows that neither she nor her son, both of whom resided in the house, noticed any problem with, or were concerned about, the condition of the back stairs. Plaintiff stated that she did not notice the condition of the stairway threshold until after she fell. At no time, either before or after plaintiff's fall, did she or her son ask defendants to do any work on the back stairway area. Plaintiff points to no evidence that creates a question of fact as to whether

defendants knew or should have known of the condition of the back stairway threshold. Accordingly, the trial court did not err in granting summary disposition in favor of defendants.

Affirmed.

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Kurtis T. Wilder