STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH HALL, Plaintiff-Appellee,	UNPUBLISHED March 15, 2018
v	No. 337275 Macomb Circuit Court
FOUNTAINVIEW TERRACE APARTMENTS, Defendant-Appellant.	LC No. 2015-003956-NO

Before: M. J. KELLY, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Defendant, Fountainview Terrace Apartments, appeals by leave granted[1] an order granting in part and denying in part its motion for summary deposition. For the reasons stated in this opinion, we reverse.

I. BASIC FACTS

In January 2015, plaintiff, Deborah Hall, slipped and fell on a patch of ice located in the carport area of Fountainview's parking area. Hall testified that the ice appeared to have formed as a result of water funneling from a downspout located near the end of the carport. As a result of the fall, Hall sustained physical injuries and required assistance with her personal care. Hall filed suit against Fountainview under theories of common law premises liability and statutory liability under MCL 554.139. Fountainview moved for summary disposition. The trial court dismissed the common law claim, finding that the danger posed by the ice was open and obvious.[2] The court, however, denied the motion with respect to the statutory violation, finding that the carport was not fit for one of its intended uses—walking—because it was covered with snow and ice. Fountainview moved for reconsideration, which the court denied.

[1] *Hall v Fountainview Terrace Apartments*, unpublished order of the Court of Appeals, entered April 20, 2017 (Docket No. 337275).

[2] Hall does not challenge the trial court's grant of summary disposition on her common-law premises liability claim. As such, we will not address it further.

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Fountainview argues that the trial court erred by denying its motion for summary disposition regarding Hall's statutory claim pursuant to MCL 554.139. This Court reviews a denial of a summary disposition motion de novo. *Barnard Mfg Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

B. ANALYSIS

Under MCL 554.139(1)(a), a landlord has a statutory duty to keep its premises and common areas "fit for the use intended by the parties." In *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 427; 751 NW2d 8 (2008), our Supreme Court explained that the "common areas" are "those areas of the property over which the lessor retains control that are shared by two or more, or all, of the tenants." A parking lot constitutes a common area within the meaning of MCL 554.139(1)(a), and the intended uses for a parking lot include parking vehicles and accessing them. *Id*. at 428-429. "A lessor's obligation under MCL 554.139(1)(a) with regard to the accumulation of snow and ice . . . would commonly be to ensure that the entrance to, and the exit from, the lot is clear, that vehicles can access parking spaces, and that tenants have reasonable access to their parked vehicles. Fulfilling this obligation would allow the lot to be used as the parties intended it to be used." *Id*. at 429. The same reasoning applies to carports, which are essentially a covered portion of a parking lot.[3]

In *Allison*, the plaintiff slipped and fell while walking in the defendant's parking lot, which had accumulated one to two inches of snow. *Id.* at 423. Our Supreme Court concluded that although "a lessor may have some duty under MCL 554.139(1)(a) with regard to the accumulation of snow and ice in a parking lot, it would be triggered only under much more exigent circumstances than those obtaining in this case" because "[t]he statute does not require a lessor to maintain the lot in an ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain it in a condition that renders it fit for the use as a parking lot." *Id*. at 430. "Mere inconvenience of access . . . will not defeat the characterization of a lot as being fit for its intended purposes." *Id*. at 430.

In this case, the record reflects that Fountainview regularly had its parking lots and sidewalks plowed and salted. James Brown, a member of the apartment complex maintenance staff, testified that he distributed salt wherever needed each morning, including the sidewalks and carports. Rhonda Andreski, the manager of the apartment complex, testified that salt was distributed on "all of the roads behind the carports, the main roads, and also behind the carports." The snow and salt log kept by Fountainview's maintenance staff indicated that the area behind the carport was salted. Tenants were able to access, drive, and park their vehicles. Further, the weather reports indicated that there was .01 inches of snow on the ground. There was a single

[3] *Merriam-Webster's Collegiate Dictionary* (11th ed) defines "carport" as "an open-sided automobile shelter by the side of a building."

patch of ice located beneath a downspout at the far end of the carport. There is no evidence that Hall was unable to use the carport for its intended purpose, i.e., parking her vehicle and reasonably accessing it. In fact, at the time of the accident, Hall was not attempting to access her vehicle; she was cutting through the carport on her way to a nearby dumpster. In sum, the fact that there was a slight accumulation of snow and ice does not rise to the level of exigent circumstances that will trigger a lessor's duty under MCL 554.139(1)(a). Accordingly, the trial court erred by denying summary disposition on this claim because there is no genuine issue of material fact with regard to whether Fountainview failed to properly maintain the carport so that it would be fit for its intended purpose.

Reversed and remanded for entry of summary disposition in Fountainview's favor. We do not retain jurisdiction. Fountainview may tax costs as the prevailing party. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Patrick M. Meter