

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000002-MR

THERESA LYONS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 08-CI-00083

M & K APARTMENTS, INC.

APPELLEE

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: ACREE, DIXON AND KELLER, JUDGES.

DIXON, JUDGE: Theresa Lyons appeals an order of the Kenton Circuit Court granting summary judgment in favor of M & K Apartments, Inc., in a premises liability action. Because summary judgment was improper, we vacate the court's order and remand for further proceedings.

On April 6, 2007, Lyons visited an apartment leased by Rodney Bramlage at the Sherwood Knoll Apartments, a six-building apartment complex

owned by Appellee. To enter or exit the building's common area, guests must navigate three to four concrete stairs, a concrete landing, and a step up through a doorway into an entryway vestibule. The entryway is enclosed by an outward-swinging transparent glass door, hinged on the right, and a handrail is located along the left side of the landing and stairway. When the door is open (perpendicular to the building), the door extends beyond the edge of the concrete landing. When Lyons arrived at the apartment building, someone held open the entryway door for her, and she entered the building without incident.

Unfortunately, when Lyons exited the building, she opened the door and "missed" the first step, allegedly because the door extended out past the landing. Lyons fell forward, striking her knee on the concrete, with her upper-body landing in the shrubbery beside the stairs. Lyons sought emergency medical treatment for her injuries and subsequently underwent surgery to repair a broken kneecap.

On January 9, 2008, Lyons filed a complaint in Kenton Circuit Court alleging Appellee negligently maintained the entryway of the apartment building. Following discovery, Appellee moved for summary judgment. The court held oral arguments, and granted summary judgment for Appellee, finding that Appellee owed no duty to Lyons because the entryway to the common area presented an "open and obvious" hazard. This appeal followed.

In considering a motion for summary judgment, a trial court must view the record in a light most favorable to the non-moving party, resolving all doubts in her favor. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d

476, 480 (Ky. 1991). The trial court may grant summary judgment only if it concludes no disputed issues of material fact exist for trial. *Id.* On appeal of a summary judgment, we must determine whether the trial court correctly found that the moving party was entitled to a judgment as a matter of law. *Id.* Because summary judgment involves questions of law, we need not defer to the trial court's conclusions; accordingly, we review the record *de novo*. *Blevins v. Moran*, 12 S.W.3d 698, 700-01 (Ky. App. 2000).

Lyons asserts that summary judgment was improper because Appellee owed her a duty of care pursuant to a landlord-tenant relationship and questions of fact existed as to Appellee's alleged breach of that duty. We agree.

“A landlord owes a duty to exercise reasonable diligence to keep common areas retained under the landlord's control in a safe condition for the tenants.” *Davis v. Coleman Management Co.*, 765 S.W.2d 37, 38 (Ky. App. 1989). A landlord owes the same duty of care to the guest of a tenant. *Clary v. Hayes*, 300 Ky. 853, 190 S.W.2d 657, 659 (Ky. 1945). Pursuant to this general rule, Appellee was obligated to keep the entryway in a safe condition for the benefit of its tenants and their guests. The trial court concluded that Appellee was relieved of its duty because the condition of the entryway was “open and obvious” as a matter of law. We believe this was an erroneous conclusion in light of the landlord-tenant relationship, because, even if a tenant knew or should have known of an unsafe condition on the premises, the landlord is not automatically absolved of liability. *Davis*, 765 S.W.2d at 39; cf., *Ky. River Med. Ctr. v. McIntosh*, 319 S.W.3d 385,

393-94 (Ky. 2010). Instead, the actions of both landlord and tenant “should be evaluated according to what is reasonable under all the circumstances.” *Id.*

Lyons contends the entryway was unsafe because the door swung outward, extending over the first step and obscuring the step-off from the doorway threshold to the landing. Lyons introduced the deposition testimony of Thomas Huey, Jr., a principal of M & K, acknowledging that, in one of the other buildings, a maintenance person had painted the entryway yellow at the request of an elderly resident with poor vision. Further, in an addendum to Huey’s deposition, he acknowledged that someone had fallen on the stairs before, and a handrail was installed after that incident. Lyons also presented a preliminary expert opinion indicating the design and construction of the entryway constituted an unsafe condition which caused her injury.

Viewing the record in the light most favorable to Lyons, we conclude she presented genuine issues of material fact regarding the cause of her fall and whether the entryway presented an unsafe condition on Appellee’s premises. *See Eggen v. Hickman*, 274 Ky. 550, 119 S.W.2d 633 (Ky. App. 1938). Because disputed issues of fact exist, summary judgment was improper.

For the reasons stated herein, we vacate the Kenton Circuit Court’s order of summary judgment and remand this case for further proceedings.

ACREE, JUDGE, CONCURS.

KELLER, JUDGE, CONCURS IN RESULT ONLY.

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