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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000376-MR

LATASHA MARTIN — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 10-CI-00650

JEFF MOORE — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, KELLER, AND THOMPSON, JUDGES.

KELLER, JUDGE: Appellant Latasha Martin appeals from the Fayette Circuit Court's entry of summary judgment in favor of Appellee Jeff Moore. Appellant filed a premises liability action after falling down a staircase in a residence owned by Appellee and breaking her ankle. After careful review, we conclude that the trial court's grant of summary judgment was appropriate. Thus, we affirm.

The incident leading to this appeal occurred on April 23, 2009, in the townhouse located at 187 Hedgewood Court in Lexington, Kentucky. At the time of the incident, Appellee was leasing the premises to Felix and Sherice Martin. Appellant is the cousin of Felix Martin. In a deposition, Appellant testified that she had visited the subject residence on multiple occasions prior to her fall and that she had never had any previous problems with the staircase at issue. She also noted that no one had ever complained to her about the staircase being unsafe prior to that time.

On the day of the subject incident, Appellant arrived at the townhouse at around 12:00 p.m. to visit Sherice. Appellant entered the residence through the front door and walked up the staircase to an upstairs bedroom. Eventually, Appellant and Sherice decided that they would walk to a nearby store. Appellant left the bedroom by herself and started walking down the same staircase.

In a deposition, Appellant testified that she was about halfway down the staircase when she stepped down on one of the steps with her left foot and heard a "pop." According to Appellant, it felt "[l]ike the step gave way or [her] foot kind of sunk down in" the step, which caused her to lose her balance and fall. As a result of the fall, Appellant broke her left ankle and had to undergo surgery. Appellant noted that no toys or other objects were on the staircase and that there was nothing visibly wrong or defective about the step in question. She also did not allege that any frays, tears, or holes in the carpet on the staircase had contributed to her fall. Appellant further admitted that the lighting on the stairway was sufficient.

Appellant indicated that it later occurred to her that "[i]t look[ed] like the steps [were] uneven" and weren't the same size, but she acknowledged that Sherice had told her this and that it was not something she had personally observed or measured. According to Appellant, Sherice also told her that the steps had given way under people's weight before. However, Appellant additionally noted that she had never noticed or appreciated that the steps might be uneven before her fall and that no one had ever complained to her that the steps were uneven. Appellant did not return to the townhouse after the fall. She ultimately believed that "the step gave way" because it was not "stable enough to hold [her] weight."

Appellee was also deposed and acknowledged that he owned the subject premises at the time of Appellant's fall. He indicated that he had done some minor repairs to the townhouse but had never worked on the subject staircase beyond using a staple gun to reattach the carpet to some of the steps on one occasion[1] and cleaning the carpet. Appellee could not recall when the carpet reattachment was done, but he knew that it occurred before the current tenant in the residence moved in. Appellee further noted that he had never hired anyone to do any work on the staircase.

When asked if the steps on the staircase were uniform in size, Appellee indicated that he had never measured them and did not know if they differed in length or width. He also testified that he did not have the townhouse inspected before purchasing it and that he was not aware of anyone else who had

[1] When asked if this was "a one or two-staple job" or if he had "fix[ed] the carpet on several steps," Appellee responded, "I don't really recall it being multiple steps."

fallen on the staircase or had otherwise complained about it. Appellee further stated that he had never noticed any "give" on any of the steps.

On February 5, 2010, Appellant filed suit against Appellee seeking damages for her injuries. Appellant claimed that the subject staircase was defective or improperly constructed and that this had caused her fall. She maintained that Appellee should have corrected this alleged defect or at least warned against it.

Following discovery, Appellee filed a motion for summary judgment on the grounds that he only owed Appellant a duty to disclose known latent defects in the staircase and that this duty had not been violated. In response to Appellee's motion, Appellant submitted deposition testimony from Allan Craven, a purported construction witness. Craven testified that the staircase was "poorly constructed" and a "lawsuit waiting to happen" because the dimensions of the steps were not uniform in nature. According to Craven, this violated building code guidelines and merited repairs that would have disclosed any deficiency leading to Appellant's fall.[2] On February 10, 2011, the trial court granted Appellee's motion. This appeal followed.

On appeal, Appellant contends that summary judgment was entered erroneously because a genuine issue of fact exists as to whether Appellee had prior knowledge of the staircase's defective condition. Appellant asserts that even though Appellee denied knowledge of any defects, his actions in repairing and

[2] Craven never examined the staircase and relied on photographs for his opinions.

cleaning the staircase showed that he had reason to know of a problem with its condition. The standards for reviewing a trial court's entry of summary judgment are well established and were concisely summarized by this Court in *Lewis v. B & R Corp.*, 56 S.W.3d 432 (Ky. App. 2001):

> The standard of review on appeal when a trial court grants a motion for summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." The trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. The moving party bears the initial burden of showing that no genuine issue of material fact exists, and then the burden shifts to the party opposing summary judgment to present "at least some affirmative evidence showing that there is a genuine issue of material fact for trial."

Id. at 436 (internal footnotes omitted). Because summary judgments involve no fact finding, we review the trial court's decision *de novo*. *3D Enters. Contr. Corp. v. Louisville & Jefferson County Metro. Sewer Dist.*, 174 S.W.3d 440, 445 (Ky. 2005); *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

The law governing landlord-tenant liability in a case such as this is well established and agreed upon by the parties. "[A] landlord has a duty to disclose a known defective condition which is unknown to the tenant and not discoverable through reasonable inspection." *Milby v. Mears*, 580 S.W.2d 724, 728 (Ky. App. 1979); *see also Lambert v. Franklin Real Estate Co.*, 37 S.W.3d 770, 775 (Ky. App. 2000). However, "[i]t has been a longstanding rule in Kentucky that a tenant

takes the premises as he finds them. The landlord need not exercise even ordinary care to furnish reasonably safe premises, and he is not generally liable for injuries caused by defects therein." *Milby*, 580 S.W.2d at 728. Moreover, "the landlord is under no implied obligation to repair the demised premises in the absence of a contract to that effect, nor is he responsible to a tenant for injuries to persons or property caused by defects therein, where there has been no reservation on the part of the landlord of any portion of the rented premises.[3] In such cases the law applies to the contract or lease the doctrine of caveat emptor." *Home Realty Co. v. Carius*, 189 Ky. 228, 224 S.W. 751, 751 (1920); *see also Lambert*, 37 S.W.3d at 775-76. Thus, "[w]here the tenant is put in complete and unrestricted possession and control of the premises, as here, the landlord is liable only for the failure to disclose known latent defects at the time the tenant leases the premises." *Lambert*, 37 S.W.3d at 776; *see also Carver v. Howard*, 280 S.W.2d 708, 711 (Ky. 1955).[4]

Appellee testified in his deposition that he was unaware of any defects in the subject staircase and that none of his tenants had ever complained about its condition prior to Appellant's fall. In response, Appellant acknowledges that she had never experienced any "give" in the steps prior to her fall and had never complained of or been warned of such an issue. She contends, though, that Appellee's deposition testimony regarding the work that he had performed on the

[3] Appellant has not alleged in her brief that either circumstance exists here.

[4] Although Appellant was not a tenant, these same standards apply to her since she was on the leased premises by the consent of a tenant. *Lambert*, 37 S.W.3d at 776. "Where the tenant has no redress against the landlord, those on the premises in the tenant's right are likewise barred." *Clary v. Hayes*, 300 Ky. 853, 190 S.W.2d 657, 659 (1945) (citation omitted).

staircase called into question his claim that he did not know about its defective nature and created a question of fact for the jury. However, the record reflects that the only work personally undertaken by Appellee was to reattach carpet to a number of the steps with a staple gun. He also cleaned the carpet at some point. Appellant does not allege that the carpet on the staircase caused her fall, and no evidence was presented showing that the carpet was somehow defective at the time of the subject incident.

Appellant also argues that photographs of the staircase show that the steps are not uniform because their widths, depths, and height "vary wildly." Appellant contends that had someone repaired this deficiency, he/she would have likely discovered and repaired any deficiency in the staircase that led to her injuries. However, this argument is unconvincing.

Appellant does not argue that an alleged lack of uniformity in the size of the steps caused her fall – indeed, she had used those steps on numerous prior occasions without incident. Moreover, even if the varying size of the steps could be considered "defective," such a defect would be open and obvious to anyone who used the staircase and would, therefore, not be considered latent in nature. Appellant does not cite to any authority that would have required Appellee to repair such a defect and does not link the defect to her assertion that her injuries were caused when a step gave way beneath her. Knowledge of a patent defect does not necessarily give rise to constructive notice to search for latent defects.

"The latent defect must be known; it is not required by any precedent to be intuited." *Schneder v. Erdman*, 752 S.W.2d 789, 791 (Ky. App. 1988).

Although Appellant fails to support her assertion that a step gave way beneath her with anything beyond her own testimony, the parties do not dispute that if the step was actually defective, such a defect would be latent since it could not be readily seen or observed. The record plainly shows that Appellee was unaware of such a defect and Appellant has failed to present adequate proof showing otherwise. Therefore, summary judgment was appropriate.[5]

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bradly Slutskin
Versailles, Kentucky

Kelly Spencer
Lexington, Kentucky

BRIEF FOR APPELLEE:

Douglas L. Hoots
Lexington, Kentucky

[5] We note that Appellant testified that Sherice advised her after the incident that the step had given way before. However, Sherice failed to offer any testimony in this case via deposition or affidavit, so Appellant's recitation of what Sherice told her constitutes inadmissible hearsay and cannot be used to defeat summary judgment. *See Estate of Turner ex rel. Turner v. Globe Indem. Co.*, 223 S.W.3d 840, 843 (Ky. App. 2007); *Nelson v. Martin*, 552 S.W.2d 668, 670 (Ky. App. 1977). We further note that no evidence was produced showing that Sherice ever brought this concern to Appellee's attention.