

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000035-MR

SANDRA MCKENZIE AND
JERRY MCKENZIE

APPELLANTS

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE FRED A. STINE, V., JUDGE
ACTION NO. 10-CI-01534

CHARLES TURNER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, COMBS, AND VANMETER, JUDGES.

CLAYTON, JUDGE: Sandra and Jerry McKenzie appeal from the December 2, 2011, order of the Campbell Circuit Court which granted summary judgment to Charles Turner in the McKenzies' personal injury action. Because we hold that the trial court did not err, we affirm.

Sandra McKenzie was a tenant in a rental home owned by Turner.

The residence was accessed by a side entry which consisted of five steps from the ground to the door, bordered on one side by the building itself. When McKenzie moved into the residence in October of 2008, there was a functioning handrail on the side of the steps that was detached from the home. After residing in the residence for several weeks, McKenzie noticed that the railing had broken.

McKenzie notified Turner of the damaged rail and Turner repaired it. Within approximately two weeks, the railing broke a second time. McKenzie testified that she informed Turner that the rail had been broken and he promised to fix it. Turner denied that he had agreed to fix the rail a second time. Nevertheless, the rail remained broken.

On October 5, 2009, almost a year after the rail had broken and remained unrepaired, McKenzie fell down the stairs and injured herself. As a result, McKenzie filed suit against Turner seeking compensatory and punitive damages. In her complaint, McKenzie alleged that Turner had failed to maintain the rental property in a safe manner and had negligently failed to maintain the handrail, resulting in McKenzie's fall. Following discovery, Turner moved for summary judgment. Turner's motion was granted in the trial court's December 2, 2011, order. Therein, the trial court found that Turner was under no duty to continue repairing the handrail; that the lack of handrail was an open and obvious condition; and that compensation for any breached contractual obligation was limited to the cost of the repair. This appeal followed.

We review a trial court's grant of summary judgment to determine 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. Kentucky Rules of Civil Procedure ("CR") 56.03. "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment "is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Id.* "Only when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor should the motion for summary judgment be granted." *Id.* at 482.

McKenzie argues that the trial court erred when it failed to apply the assumption of duty doctrine and cites to *Mahan-Jellico Coal Co. v. Dulling*, 282 Ky. 698, 139 S.W.2d 749 (Ky. App. 1940), in support of her argument. The Court in *Dulling* held that a landlord was liable after he attempted to repair faulty steps, assured his tenant that they were then safe, and the tenant then suffered injuries after relying on the landlord's false assurances. *Id.* McKenzie maintains that the holding in *Dulling* demonstrates that a landlord, once he attempts to make a repair, is under a duty to continue making the same repair. We do not agree.

The law is well established that a tenant takes the premises as he or she finds them and there is no obligation upon the landlord to repair the premises. *Miller v. Cundiff*, 245 S.W.3d 786, 788 (Ky. App. 2007). Under the Uniform

Residential Landlord Tenant Act (“URLTA”),¹ a landlord has a duty to make repairs and maintain the premises in a “fit and habitable condition.” Kentucky Revised Statutes (“KRS”) 383.595(1)(b). However, *Miller* is clear that URLTA does not alter the common-law rule regarding landlord liability. *Miller*, 245 S.W.3d at 789. Similar to the facts before us, the tenant plaintiff in *Miller* injured herself after tripping on loose carpet that was an *obvious condition*. *Id.* Had McKenzie injured herself as a result of relying upon assurances from Turner that the handrail was safe, then she may have a cause of action under the principles of *Dulling*. However, McKenzie’s testimony is clear that she was aware the handrail was not functioning and also that her fall was not as a result of utilizing the broken handrail. The handrail’s status was not concealed from her as it was from the plaintiff in *Dulling*, making her situation akin to that in *Miller*, and therefore unrecoverable. Moreover, the Court in *Miller* made clear that damages for personal injuries are not recoverable under URLTA. *Id.* at 789-90. Accordingly, there is no way in which McKenzie could have prevailed at trial and Turner was entitled to judgment as a matter of law, making summary judgment proper. *See Steelvest*, 807 S.W.2d 476; CR 56.03.

For the foregoing reasons, the December 2, 2011, order of the Campbell Circuit Court is affirmed.

ALL CONCUR.

¹ The City of Newport, Kentucky has adopted the URLTA. Newport Ordinance § 112.01.

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