

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001793-MR

LORIE WARD AND
CHRISTOPHER WARD

APPELLANTS

v. APPEAL FROM PENDLETON CIRCUIT COURT
HONORABLE JAY DELANEY, JUDGE
ACTION NO. 11-CI-00080

STACEY WELLS AND
JO WELLS

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: LAMBERT, MAZE, AND MOORE, JUDGES.

MAZE, JUDGE: Lorie and Christopher Ward (the Wards) appeal from a summary judgment by the Pendleton Circuit Court which dismissed their claims arising from injuries sustained while on property leased from Stacey and Jo Wells (the Wellses). The Wards argue that there were genuine issues of material fact concerning

whether the condition was open and obvious. However, we agree with the trial court that, as a matter of law, the Wellses owed no duty as landlords to protect against or repair hazardous conditions which were known to the Wards. Hence, we affirm.

On February 21, 2008, the Wards rented a mobile home from the Wellses in the Wells Vintage Acres Mobile Home Park in Falmouth, Kentucky. They initially occupied a mobile home located at 141 Tiffany Lane. However, in June of 2008, the Wards moved into a different mobile home located at 149 Tiffany Lane.

At the time the Wards moved into the residence at 149 Tiffany Lane, there was a ramp which covered a gap between the front porch and the entry of the residence. At some point shortly after moving into this mobile home, the Wellses or their agents removed the ramp, revealing a gap of several inches between the front porch and the front door of the residence. The Wards admitted that they were aware of this gap. They also state that the gap grew larger over time. The Wards state they made numerous requests to the Wells to have it repaired, but no action was taken.

On June 4, 2010, Lori Ward was injured while entering the residence when her foot slipped into the gap. Thereafter, the Wards brought this action alleging that the Wellses were negligent in failing to maintain and repair the defective condition.

After conducting some discovery, the Wellses filed a motion for summary judgment. The Wellses argued that they had no duty to make repairs and could not be liable for injuries caused by known defects in the leased premises. After considering the motion, the Wards' response and the discovery and depositions of record, the trial court granted the motion and dismissed the complaint. The Wards now appeal.

The standard of review governing an appeal of a summary judgment is well-settled. We must determine whether the trial court erred in concluding that there was no genuine issue as to any material fact and that the moving party was entitled to a judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rules of Civil Procedure 56.03. *See also Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Since summary judgment involves no fact-finding, this Court's review is *de novo*, in the sense that we owe no deference to the conclusions of the trial court. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

The controlling question in this case concerns whether the Wellses, as landlords, owed a duty to their tenants, the Wards. The existence of a duty is a question of law which must be resolved by the court. *Pathways, Inc. v. Hammons*,

113 S.W.3d 85, 89 (Ky. 2003). In *Pinkston v. Audubon Area Community Services, Inc.*, 210 S.W.3d 188 (Ky. App. 2006), this Court held that, in the absence of a special agreement to do so, a landlord has no obligation to repair a leased premises. *Id.* at 190. Likewise, “a landlord will not be liable for injuries caused by defects in the leased premises unless the condition is unknown to the tenant and not discoverable through reasonable inspection.” *Id.* See also *Miller v. Cundiff*, 245 S.W.3d 786 (Ky. App. 2007). The trial court found that the condition was open and obvious, and consequently, concluded that the Wellses had no duty to make repairs to the porch and were not liable for any injuries caused by the defective condition.

The Wards contend that this rule has been modified by the Kentucky Supreme Court’s decision in *Kentucky River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010). In *McIntosh*, the Court held that the open-and-obvious doctrine is no longer an absolute bar to recovery from a landowner. *Id.* at 392. Rather, in most cases, the fact that a condition was open and obvious merely goes to apportionment of liability under comparative fault. *Id.* at 392-93. Along similar lines, the Wards argue that the open condition of the gap was a factual issue for the jury to decide.

However, the Supreme Court’s holding in *McIntosh* was based upon the duties of a possessor of land to an invitee, and not those owed between a landlord and tenant. Generally speaking, a possessor of land owes a duty to an invitee to discover unreasonably dangerous conditions on the land and either

eliminate or warn of them. *Shelton v. Kentucky Easter Seals Society, Inc.*, 413 S.W.3d 901, 909 (Ky. 2013). We find no indication that the Supreme Court in *McIntosh* intended to alter the duties owed by a landlord to her tenant.

Where the landlord has surrendered exclusive possession and control of the leased premises to her tenants, they are deemed to be the possessor of the property. See *Jaimes v. Thompson*, 318 S.W.3d 118, 119 (Ky. App. 2010), citing *Carver v. Howard*, 280 S.W.2d 708, 711 (Ky. 1955). Except for latent or unknown defects, a tenant takes the premises as he finds them, and the landlord is not liable for injuries sustained from a known defective condition. *Miles v. Shauntee*, 664 S.W.2d 512, 517-18 (Ky. 1983); and *Milby v. Mears*, 580 S.W.2d 724, 728 (Ky. App. 1979). There was no evidence in this case showing that the Wellses retained control over the porch or entry to the mobile home or that the condition was unknown to the Wards at the time they took possession. Therefore, the trial court properly granted summary judgment for the Wellses.

Accordingly, the summary judgment granted by the Pendleton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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