RENDERED: JULY 7, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000157-MR

SAMILLIA WASHINGTON — APPELLANT

v. — APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NOS. 11-CI-04018 & 11-CI-04043

WB HOLDINGS, LLC — APPELLEE

AND — NO. 2014-CA-000189-MR

TIA WILLIAMS — APPELLANT

v. — APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NOS. 11-CI-04018 & 11-CI-04043

WB HOLDINGS, LLC — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, JONES AND NICKELL, JUDGES.

NICKELL, JUDGE: These consolidated appeals arise from the Fayette Circuit Court's grant of summary judgment in favor of WB Holdings, LLC, on claims related to injuries sustained by Samillia Washington and Tia Williams following a residential deck collapse. Having reviewed the record, the briefs and the law, we affirm.

Following church on a Sunday afternoon, Washington, Williams and Jimetta Frye were visiting at Frye's rental home. The detached single-family home was owned by WB Holdings which had leased the home to Frye approximately twenty-one months prior to that fateful Sunday. As the trio was sitting on a wooden deck attached to the second floor at the rear of the home, Frye's young daughter opened the door leading to the deck and started outside to join the gathering. Before she could alight from the house, the deck separated from the main structure. The loose end of the deck dropped to the ground several feet below while the opposite end remained attached in its original location. Washington and Williams sustained injuries in the fall.

Washington and Williams separately brought suit[1] against WB Holdings and others[2] alleging negligence, negligence *per se* and failure to warn. In general, the plaintiffs' claims sounded in premises liability and contended WB Holdings was under a duty to inspect, investigate and discover the structural condition of the deck; to disclose its defective nature; and to undertake competent and non-negligent repairs and maintenance of the deck. They claimed WB Holdings had notice of the defective condition of the deck; was required under the terms of the lease to undertake all major repairs of the home; negligently attempted to repair water infiltration issues at the home which undermined the structural integrity of the deck; and failed to warn of a known dangerous and hazardous condition. Based on these allegations, Washington and Williams sought compensatory damages.

Following a lengthy period of discovery and motion practice, WB Holdings moved for summary judgment arguing it was unaware of the condition of the deck prior to its collapse and had no duty to discover or investigate for potential latent defects; no repairs had been requested or undertaken on the deck; and it had no duty to maintain the deck as a matter of law nor to repair the deck under the terms of the lease agreement. The trial court agreed and entered

[1] In the interest of judicial economy, the cases were consolidated after filing.

[2] The Bank of New York Mellon Trust Company, N.A., and Carlissa Moore were initially named as defendants. Both were predecessors in title to WB Holdings. The claims against each were ultimately dismissed and neither is a party to this appeal. Frye was never a party in this action.

summary judgment in favor of WB Holdings upon finding no duty existed to investigate or discover the condition of the deck; no duty existed to repair or maintain the premises; and, because no repairs had been undertaken, no claim for negligent repair could lie. These consolidated appeals followed.

Summary judgment serves to terminate litigation where "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." CR[3] 56.03. Summary judgment should be granted only if it appears impossible the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Summary judgment "is proper where the movant shows that the adverse party could not prevail under any circumstances." *Id.* at 480 (citing *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985)).

On appeal, we must consider whether the trial court correctly determined there were no genuine issues of material fact and WB Holdings was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779 (Ky. App. 1996). Because summary judgment involves only questions of law and not the resolution of disputed material facts, an appellate court does not defer to the trial court's decision. *Goldsmith v. Allied Building Components, Inc.*, 833 S.W.2d 378 (Ky. 1992). Likewise, we review the trial court's interpretations of law *de*

[3] Kentucky Rules of Civil Procedure.

novo. *Cumberland Valley Contrs., Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007).

A claim of negligence requires a showing of four elements: duty, breach, causation, and injury. *Shelton v. Kentucky Easter Seals Society, Inc.*, 413 S.W.3d 901, 906 (Ky. 2013). The focus of this case is whether WB Holdings owed a duty to Washington and Williams and, if so, the extent of that duty. This is a question of law. *Id.* at 908. Upon review, we find no reason to depart from the trial court's decision to grant summary judgment on the basis that no actionable duty existed in this case.

First, we must determine whether and to what extent WB Holdings owed a duty to its tenant, Frye. Kentucky courts have long held "[w]hen a tenant maintains complete control and possession over the premises and the landlord has no contractual or statutory obligation to repair, the landlord is only liable for 'the failure to disclose known latent defects at the time the tenant leases the premises.'" *Jaimes v. Thompson*, 318 S.W.3d 118, 119 (Ky. App. 2010) (quoting *Carver v. Howard*, 280 S.W.2d 708, 711 (Ky. App. 1955)). At the time WB Holdings leased the premises to Frye, there was no indication of any problems with the deck. Frye had complete control and possession of the premises for nearly two years before the collapse. The agreement between WB Holdings and Frye indicated she took the property "as-is," "where-is" and "with all faults" and would be responsible for any minor repairs and maintenance. WB Holdings retained responsibility for making major repairs to the premises upon being notified in writing of the need for

such work. However, no notice of any kind—written or oral—was given to WB Holdings that the deck was in need of any repair and WB Holdings did not undertake any work on the deck. Thus, the only duty WB Holdings owed Frye was the duty to disclose any known latent defects existing when the property was leased to her. *Id*.

As for the duty owed Washington and Williams, Kentucky courts have consistently held guests and invitees of a tenant are owed the same duties as the tenant. "'[T]he duties and liabilities of a landlord to persons on the leased premises by the consent of the tenant are the same as those owed to the tenant himself. For this purpose they stand in his shoes. . . . Where the tenant has no redress against the landlord, those on the premises in the tenant's right are likewise barred.'" *Lambert v. Franklin Real Estate Co.*, 37 S.W.3d 770, 776 (Ky. App. 2000) (quoting *Clary v. Hayes*, 300 Ky. 853, 190 S.W.2d 657, 659 (1945)). Consequently, since WB Holdings owed no duty of care to Frye beyond a duty to disclose known latent defects at the time the home was leased to her, it owed no duty to Frye's invitee or guest.

Finally, Washington and Williams argue two recent cases from the Supreme Court of Kentucky abrogate the rule discussed above.[4] Those cases, according to Washington and Williams, are *Shelton, supra*, and *Dick's Sporting*

[4] Additionally, Washington and Williams rely upon two sections of the *Restatement* (Second) *of Torts* in support of their contention. However, neither section is mentioned in any case cited to us, nor have they been adopted by any Kentucky court. Thus, their reliance on these sections is misplaced.

Goods, Inc. v. Webb, 413 S.W.3d 891 (Ky. 2013). This contention is incorrect. Collectively, those cases do not discuss, much less abrogate, this rule. Rather, those cases stand for the general proposition that land *possessors* owe a duty to invitees to discover unreasonably dangerous conditions on the land and either eliminate or warn of them. *Shelton*, 413 S.W.3d at 907; *McIntosh*, 319 S.W.3d at 388. Here, WB Holdings did not have possession of the land where Washington and Williams's injuries occurred. Those cases, therefore, have no relevance.

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

DIXON, JUDGE, CONCURS.

JONES, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

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