

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of EDWARD BRANNON.

DEBORAH ERBER, Personal Representative of
the Estate of EDWARD BRANNON,

Plaintiff-Appellant,

v

DEPARTMENT OF COMMUNITY HEALTH,

Intervenor,

and

KZ PROPERTIES, LLC,

Defendant-Appellee.

UNPUBLISHED
November 10, 2009

No. 285470
Charlevoix Circuit Court
LC No. 07-054821-NO

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order of the circuit court granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). Because defendant did not have a statutory duty to provide decedent with a portable ladder to use as an alternative means of egress in the event of a fire, we affirm.

In the early morning hours of December 8, 2005, a fire broke out in decedent's apartment (one of several apartments located in a building owned by defendant) while he was asleep. The exact cause of the fire was unable to be determined. By the time decedent was awakened, the fire blocked his ability to safely exit through the front door of his apartment, which was the only door leading to a main hallway. Consequently, decedent jumped from a window in his second-floor apartment. Decedent suffered severe burns, broken bones, and paralysis. Following the fire, decedent suffered several bouts of pneumonia, one of which led to his death. Plaintiff initiated this action against defendant after decedent's death, asserting claims of negligence and wrongful death.

We review de novo a trial court's grant or denial of a motion for summary disposition. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the allegations claimed in the pleadings. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the case. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Under MCR 2.116(C)(10), the moving party is entitled to a grant of summary disposition if the party demonstrates that no genuine issue of material fact exists. *Coblentz v Novi*, 475 Mich 558, 569; 719 NW2d 73 (2006). Mere speculation and conjecture cannot give rise to a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 371-372; 547 NW2d 314 (1996).

Plaintiff's claims against defendant are based on a theory of negligence. To establish a prima facie case of negligence, a plaintiff must prove that a defendant owed the plaintiff a duty, the defendant breached that duty, the defendant's breach caused the plaintiff's injuries, and the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Whether a defendant owes a duty to a plaintiff is a question of law. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004).

Both statutory and common law governs a landlord's duty to its tenants. MCL 554.139; *Woodbury v Bruckner (On Remand)*, 248 Mich App 684, 695-696; 650 NW2d 343 (2001). MCL 554.139 governs a landlord's statutory duty to its tenants and states, in relevant part:

- (1) In every lease or license of residential premises, the lessor or licensor covenants:
 - (a) That the premises and all common areas are fit for the use intended by the parties.
 - (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants wilful or irresponsible conduct or lack of conduct.

Plaintiff asserts that, in failing to provide decedent with an alternative means of egress from the second-floor window of his apartment, defendant failed to comply with either of the above statutory provisions, and that the trial court erred in holding that defendant did not owe decedent a duty to provide him with an alternative means of egress. We disagree.

The trial court's ruling, specifically, was that defendant had no duty to provide portable ladders in each apartment. With respect to other means of egress (such as additional exit routes and windows that were not nailed shut), the trial court ruled that the absence of these was not a proximate cause of decedent's injuries. In reviewing the duty portion of plaintiff's argument, then, we focus primarily upon the lack of portable ladders.

According to plaintiff, the trial court incorrectly interpreted the requirements of BOCA when determining that defendant did not have a statutory duty to provide decedent with a portable ladder to use an alternative means of egress in the event of a fire.¹ We disagree.

This Court reviews questions of statutory interpretation de novo. *Halloran v Bhan*, 470 Mich 572, 576; 683 NW2d 129 (2004). The goal of statutory interpretation is to give effect to the intent of the Legislature. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). The first step in determining the intent of the Legislature is to look to the language of the statute. *People v Lively*, 470 Mich 248, 253; 680 NW2d 878 (2004). If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005).

The parties agree that the applicable local health and safety law is the 1970 Building Official and Code Administrators (BOCA), which states at section 611.1:

There shall be not less than two (2) approved independent exitways serving every floor area above and below the first or grade floor, at least one (1) of which shall be an interior enclosed stairway Exitways in dwellings shall be so arranged that they may be reached without passing through another living unit.

The plain language of the statute clearly states that the secondary means of egress required under the statute would necessarily have to service the entire floor and that it must be accessed without going through another living unit. Here, since an alternative means of egress from decedent's second-floor window (in this case, plaintiff's proposed portable ladder) would not be a means of egress that everyone on the second floor could use without passing through another living unit, defendant was not required to provide one. A portable ladder for use in the event of a fire, under the facts of the instant case, would not meet the requirements of BOCA.

In the alternative, plaintiff argues that even if defendant did not breach his statutory duty, defendant cannot escape liability because defendant had a common law duty to provide decedent with an alternative means of egress from his second-floor window. However, this issue is not properly before this Court. Plaintiff failed to raise this issue in her questions presented. An issue not raised in a party's questions presented is deemed abandoned on appeal. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 553; 730 NW2d 481 (2007), citing MCR 7.212(C)(5).

¹ It is important to note that a question exists as to whether defendant was required to comply with the requirements of BOCA. Although the issue was raised below, the trial court failed to dispose of this issue when it rendered its opinion. Instead, in rendering its opinion, the trial court held that even if defendant was required to meet the requirements of BOCA, plaintiff failed to demonstrate that defendant had a duty to provide decedent with a portable ladder as an alternative means of egress from the second-floor window of his apartment. Because we find that plaintiff failed to present sufficient evidence to survive a motion for summary disposition that defendant was required to comply with BOCA, we find that the trial court could have properly granted defendant's motion for summary disposition without addressing this issue.

Next, relying on the Restatement Torts 2d § 288, plaintiff argues that defendant cannot escape liability here because a reasonable person in its position would have provided decedent with an alternative means of egress from the second-floor window of his apartment. Restatement Torts 2d § 288 C states, “[c]ompliance with a legislative enactment or an administrative regulation does not prevent a finding of negligence where a reasonable man would take additional precautions.” Plaintiff’s reliance on Restatement Torts 2d § 288 is misplaced because “[w]hether defendant acted with reasonable care is the standard for liability, not the test for determining whether a duty exists.” *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 15; 596 NW2d 620 (1999). Because plaintiff has failed to establish that defendant had a duty to provide decedent with an alternative means of egress from his second-floor apartment window, this argument must also fail.

Because we find that the trial court did not err when it held as a matter of law that defendant did not have a duty to provide decedent with an alternative means of egress from the second floor window of his apartment, it is not necessary to address plaintiff’s other issue on appeal.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto