STATE OF MICHIGAN

COURT OF APPEALS

JANE FORD,

Plaintiff-Appellant,

v

NATIONAL CHURCH RESIDENCES, INC., d/b/a MEADOW CREEK VILLAGE,

Defendant-Appellee.

UNPUBLISHED
January 12, 2010

No. 288416
Oakland Circuit Court
LC No. 2007-085235-NO

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Plaintiff argues that the trial court erred by finding that defendant owed no statutory duties under MCL 125.536 and MCL 554.139, and by ruling that defendant was entitled to judgment as a matter of law because the defect in the sidewalk was open and obvious. We disagree.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233-234; 553 NW2d 371 (1996).

Plaintiff was injured when she fell after tripping on the sidewalk in front of her apartment building. Plaintiff claims that defendant, as the owner of the property, owed her a statutory duty under MCL 125.536(1) because the sidewalk is a "common area." The statute provides in relevant part that "[w]hen the owner of a dwelling . . . permits unsafe, unsanitary, or unhealthful conditions to exist unabated *in any portion of the dwelling*, whether a portion designated for the exclusive use and occupation of residents *or a part of the common areas* . . . any occupant . . . shall have an action against the owner . . . ." MCL 125.536(1) (emphasis added). By its own plain language, the statute clearly applies only to areas "in any portion of the dwelling." Thus, even though MCL 125.536(1) specifically mentions "common areas," we must

conclude that the statute did not impose a duty on defendant in this case because the sidewalk was not contained "in any portion of the dwelling."

Plaintiff also claims that defendant owed her a statutory duty under either MCL 554.139(1)(a) or (1)(b), which provide that a residential lessor covenants "[t]hat the premises and all common areas are fit for the use intended by the parties" and "[t]o keep the premises in reasonable repair . . . ." Our Supreme Court has held that the second covenant, 554.139(1)(b), does not apply to common areas, including sidewalks. *Allison v AEW Capital Mgt*, 481 Mich 419, 435; 751 NW2d 8 (2008). Furthermore, the first covenant, MCL 554.139(1)(a), was not applicable in this case either. It is true that the intended use of a sidewalk is for walking. *Benton v Dart Properties*, 270 Mich App 437, 444; 715 NW2d 335 (2006). But the crack in the sidewalk did not render the sidewalk unfit for its intended use. The photographs of the sidewalk crack show that it affected only a small portion of one section of the sidewalk, and part of the crack was actually smaller than the normal sidewalk joint that is visible in the same photograph. The sidewalk, although not in perfect condition, was not unfit for walking. As a consequence, MCL 554.139(1)(a) was inapplicable and did not provide plaintiff a basis for relief.

Because none of the cited statutory duties was applicable in this case, defendant was entitled to raise the open and obvious danger doctrine as a defense. See *O'Donnell v Garasic*, 259 Mich App 569, 581; 676 NW2d 213 (2003). A danger is open and obvious if a person could "discover the danger and risk presented upon casual inspection[.]" *Novotney v Burger King Corp*, 198 Mich App 470, 475; 499 NW2d 379 (1993). Plaintiff fully admitted that she would have seen the crack in the sidewalk had she been looking. The photographs of the crack also show that it was clearly visible. Accordingly, we conclude that there was no genuine issue of material fact concerning the open and obvious nature of the sidewalk crack and that defendant was entitled to judgment as a matter of law.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra