

STATE OF MICHIGAN
COURT OF APPEALS

MARIE BUTLER Individually and as
Next Friend of KELLIE BUTLER-GRANT,
a Minor,

Plaintiff- Appellant,

v

THOMAS VOGIE and LORRAINE VOGIE,

Defendants- Appellees,

and

ARTHUR ATTILA, SHERRIE ATTILA,
and RON WADLEY,

Non-Parties.

Before: Saad, P.J., and McDonald and M.A. Chrzanowski,* JJ

PER CURIAM.

Plaintiff appeals from the circuit court's grant of summary disposition in favor of defendants: we affirm.

Plaintiff, as tenant, sued defendants for injuries sustained from a house fire in April of 1991. Defendants were the record titleholders to the property; however, they had neither possession nor control over the premises because they sold it to a third person, Arthur Attila, on land contract.¹ Attila took complete control over the premises, had the keys to it, and could lease it to others. Tenants immediately occupied the house after defendants entered into their contract with Attila. Plaintiff was Attila's second tenant at the house, and defendants learned of plaintiff's tenancy only after the fire.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff alleged that defendants were negligent because the house was not equipped with operable smoke alarms. Plaintiff asserted that defendants owned the property and leased it to Attila or that Attila was defendants' agent in leasing the property. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), asserting that they could not be held liable for negligent maintenance of the premises because they had completely surrendered possession and control to Attila prior to the fire. The trial court agreed with defendants, as he reasoned that they owed no duty to the occupants of the premises because they had completely relinquished possession and control over the property.

Plaintiff argues that defendants are liable for the condition of the rented premises because there is a question of fact whether the smoke detectors in the house were inoperable when defendants transferred possession to the Attilas. We find the trial court's grant of summary disposition proper because there was no genuine issue of material fact that defendants had surrendered possession and control of the premises. Premises liability is conditioned upon possession and control over the land rather than title ownership. Possession and control may be granted to another, "thereby conferring the duty to make the premises safe while simultaneously absolving [the titleholder] of responsibility." *Merritt v Nickelson*, 407 Mich 544, 552-553; 287 NW2d 178 (1980). It is the possessor and controller of the land, who is not necessarily the title owner, who owes the duties regarding the condition of the land. *Id.*, at 553-554; *Little v Howard Johnson*, 183 Mich App 675, 678-679; 455 NW2d 390 (1990). There is no question of fact that defendants passed all possession and control of the premises over to the Attilas; defendants cannot be held liable for any defective condition of those premises.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Mary A. Chrzanowski

¹ The evidence before the circuit court showed that defendants and Attila had entered into an oral agreement to transfer the property in August of 1990. This oral agreement consisted of a lease with a six-month option to purchase.