STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL DEBOER, Next Friend of NICOLE DEBOER, and THERESA DEBOER,

Plaintiffs-Appellants,

v

WHISPERING WOODS LIMITED DIVIDEND HOUSING ASSOCIATION, and AMURCON CORPORATION,

Defendants-Appellees.

UNPUBLISHED
January 24, 1997

No. 179987
Oakland Circuit Court
LC No. 94-477-47

MELENY ROSE, Next Friend of ELIZABETH LAFAVE, and MATTHEW LAFAVE,

Plaintiffs-Appellants,

v

WHISPERING WOODS LIMITED DIVIDEND HOUSING ASSOCIATION, and AMURCON CORPORATION,

Defendants-Appellees.

No. 187122
Oakland Circuit Court
LC No. 95-490058

Before: Saad, P.J., and Corrigan and R. A. Benson,* JJ.

PER CURIAM.

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

Plaintiff Nichole DeBoer, age 5, and plaintiff Elizabeth LaFave, age 2, were injured when they fell out of screened windows located in the second floor of an apartment complex, in two separate accidents. Nichole's parents were tenants; Elizabeth was a social guest of her aunt, who was a tenant. Both cases were premised upon multiple theories, but the foundational and dispositive issue in both cases is the same: does a landlord have a duty to provide window screens that will withhold the weight of a child? Because the law does not impose such a duty on a landlord, we affirm the circuit courts' grant of summary disposition for defendants in both cases.

Plaintiffs argue that defendants: (1) had a duty under the common law to warn tenants and their guests of known conditions in the leased premises; (2) had a duty under the common law to repair known dangerous conditions in the leased premises; and (3) had a duty under common and statutory law to maintain the premises in a safe condition and to correct known dangerous defects. These arguments do not warrant reversal because no defective or dangerous condition has been shown to exist.

In general, a landlord is not liable for injuries that occur within the boundaries of leased premises. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499 n 10; 418 NW2d 381 (1988). However, MCL 554.139; MSA 26.1109 provides that a landlord covenants to keep leased premises fit for the use intended by the parties and to keep the premises in reasonable repair during the term of the lease.[1] Thus, defendants here owe a duty to the tenants to keep the rented premises fit for their intended use and to keep the premises in reasonable repair. Despite these duties, however, we conclude that, as a matter of law, no error warranting reversal occurred here because defendants did not have a duty to provide window screens that serve as child barriers.[2] A screen that is placed in a window is defined as a mesh frame that 'admit[s] air but exclude[s] insects." *Random House Webster's College Dictionary*, (1992). Thus, the purpose of a window screen is to provide ventilation, while excluding insects; it is not meant to serve as a safety barrier. See *Lamkin v Towner*, 138 Ill2d 510, 529; 563 NE2d 449, 547-548 (1990) ("Window screens are designed to allow air and light into an area while preventing insects from entering. . . . They may, on occasion, serve to prevent an individual from falling from a window, but this purpose is incidental to their intended use.") Thus, if a window screen's purpose is to allow ventilation and to keep out insects, then the failure of a window screen to serve as a barrier for children would not be a defective, or constitute a dangerous, condition. Moreover, a window screen that does not prevent the passage of children would not render the premises unfit for the use intended by the parties.

As the Illinois Supreme Court concluded in *Lamkin*, 138 Ill2d at 519-520; 563 NW2d at 453:

> We [hold] that, as a matter of law, there is no duty on the part of a landlord to maintain in any window of an apartment he leases to tenants a screen sufficiently strong to support the weight of a tenant's minor child leaning against the screen.

* * *

> Our decision on this issue is also consistent with the majority of authority in other jurisdictions. Courts considering injuries sustained by a minor who has fallen through a window screen have generally attached no liability to the landlord, finding no duty on the landlord's part to maintain screens capable of withstanding the weight of a minor leaning against it.

Therefore, we conclude that there was no defective or dangerous condition, the premises were not unfit for their intended use, and they were not rendered in a state of unreasonable repair. See also *Best v Services for Cooperative & Condominium Communities,* 256 Ill App3d 462; 629 NE2d 123 (1994) (summary disposition proper because defendant owed no duty to child who fell out of screened window in HUD apartment, to provide window screens for any reason other than to protect against insects; result unchanged by fact that several other children had fallen from screened windows in same complex.)

Plaintiff Rose (next friend of Elizabeth Lefave) raises an argument that is unique to her case. In opposition to defendants' motion for summary disposition below, Rose presented an affidavit of Virginia Bozek—the tenant from whose window Elizabeth fell. Bozek's affidavit states in relevant part:

> 5. That prior to my niece, Elizabeth, falling from the window, I had concerns regarding the window screens and frames. Specifically, at the time I moved into the apartment complex, I asked to be allowed to place a window guard in the window to prevent this type of incident from occurring. I made this request of Whispering Woods Apartment management. At this time, I was told that I could not place a window guard in the window screen or do anything else to prevent the window or screen from opening or popping out. Further, at no time was I given a warning regarding prior problems with the screen or the fact that other children had fallen out of the window. Further, I was told that I could make no alterations or improvements to the windows, window ledges, window screens or awnings of the apartment complex, both as part of my lease agreement and when I requested to so do of [sic] apartment management.

Plaintiff Rose thus argues, in essence, that this activity created a duty on the part of defendants to take some action to prevent children from falling through the screen windows. While this argument had an emotional appeal, we find no legal support for it. As stated above, it is undisputed that the window screens here were maintained in reasonable repair, and that the screens were fit for their intended use. There is no statutory or local requirement identified by Rose that would require that screens be reinforced in a manner to prevent children from falling through windows. And, as stated above, there is no duty to provide window screens that will withhold the weight of a child.

Rose' argument is, essentially, that a tenant's mere *request* for certain action is sufficient to impose a duty on the landlord to fulfill the request. At least on the facts of this case, we disagree. We see this case as similar to *McMillen v Gottwalt,* 1989 Minn App LEXIS 387 (1989)[3], where the tenant, the United States Postal Service, sent a letter to its landlord asking "if there is any way a canopy could be installed over the loading platform." The landlord responded by stating that it considered the

request a "low priority." A postal employee was later injured when she fell on the slippery loading platform, and she sued (among others) the landlords, alleging that their negligent failure to remedy the slippery condition by constructing the requested canopy caused her injury. The Court there affirmed the trial court's grant of summary disposition for defendants, reasoning:

> [Plaintiffs] maintain the lease between the [landlords] and the USPS requires [the landlords] to erect a canopy, and [that] this question raises a material fact precluding summary judgment. We disagree. As *Breimhorst* indicates, the question of whether a duty exists is one of law for the trial court, not a question for a trier of fact. The lease clearly provides for repair of the premises, but does not require [the landlords] to make additions to the property. In our view, the Postmaster's letter does not change the legal duty. [LEXIS, pp 2-3]

Similarly, here, we do not believe that the Bozek's request imposed a legal duty on defendants to install window screens capable of withstanding the weight of a child.

There was no error in the circuit courts' grants of summary disposition for defendants here.

Affirmed.

/s/ Henry William Saad
/s/ Maura D. Corrigan
/s/ Robert Benson

[1] MCL 554.139; MSA 26.1109 provides:

> (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.
>
> (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
>
> (3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or

license shall not defeat his right to have the benefit of the covenants established herein.

[2] Importantly, there was no showing here that either: (1) the window screens were not maintained in reasonable repair, or (2) that the screens were not fit for their intended use. Thus, here we do not address situations where the screens that were torn, improperly installed, or absent, such that other duties of the landlord would be implicated.

[3] *McMillen* is unpublished. Minnesota statute §480A.08 subd 3(b) provides that an unpublished opinion must not be cited as precedent. Thus, we cite this decision only for the benefit of the analysis.