

STATE OF MICHIGAN
COURT OF APPEALS

LISA JOHNSON,

Plaintiff-Appellant,

v

MIKE HENDERSON and LYNN HENDERSON,

Defendants-Appellees.

UNPUBLISHED

February 10, 1998

No. 198375

Wayne Circuit Court

LC No. 95-508743-NO

Before: Michael J. Kelly, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

This case arises out of injuries plaintiff allegedly suffered after a slip and fall on a stairway at defendants' home. On appeal, plaintiff argues that the trial court erred in excluding evidence of the BOCA (Building Officials and Code Administrators) National Building Code which was adopted as an ordinance by the City of Trenton in 1992. Plaintiff argues that the ordinance should have been admitted as evidence because defendants violated the code, which requires that stairways have continuous guards and handrails, and that violation caused plaintiff's fall and resulting injuries. We disagree. The decision whether to admit the code as evidence was within the sound discretion of the trial court and, as there was no abuse of discretion, will not be disturbed on appeal. *Phinney v Perlmutter*, 222 Mich App 513, 528; 564 NW2d 532 (1997).

Before the trial court decided to admit or exclude Ordinance 510, the City of Trenton's adoption of the code, it correctly ruled upon the relevance of the ordinance in proving negligence in this case. *Webster v WXYZ*, 59 Mich App 375, 383; 229 NW2d 460 (1975); *Whinnen v 231 Corp*, 49 Mich App 371, 374; 212 NW2d 297 (1973). The trial court's determination of whether the code applied to defendants' home is purely a legal question to be resolved by statutory interpretation and reviewed de novo on appeal. *Auto Club Ins Ass'n, v State Farm Ins Cos*, 221 Mich App 154, 169; 561 NW2d 445 (1997).

The trial court properly excluded introduction of the BOCA National Building Code as it was not relevant to proving negligence in this case. In construing a statute or ordinance, we must

first ascertain the purpose and intent of the Legislature. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). In ascertaining the purpose and intent of the Legislature, we must look to the language of the statute or ordinance and if the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Indenbaum v Michigan Bd of Medicine*, 213 Mich App 263, 270; 539 NW2d 574 (1995). We find that the language of the BOCA, as adopted by the City of Trenton, clearly and unambiguously does not apply to defendants' home.

Defendants' home was built in 1925 and defendants purchased the home in 1989. In 1992, the City of Trenton adopted an ordinance incorporating the BOCA National Building Code, 1990 Edition and 1992 Accumulative Supplement, exempting pre-existing structures from automatic compliance with its provisions in most situations. Section 103.1 provides that:

The legal use and occupancy of any structure existing on the date of adoption of this code, or for which it has been heretofore approved, shall be permitted to continue without change, except as is specifically covered in this code, . . . or as is deemed necessary by the code official for the general safety and welfare of the occupants and the public.

In Article 8, BOCA states unambiguously that the provisions of this article have as their purpose to:

control the design, construction and arrangement of building elements required to provide a reasonably safe means of egress from all buildings and *structures hereafter erected, and from all buildings hereafter altered* to a new occupant load, or manner of use, or inherent fire hazard. Existing building and uses shall be controlled by the provisions of Section 804.1. [Emphasis added.]

Section 804.1, which controls existing structures and uses, directs that owners of existing structures are responsible for the safety of people in the premises “with respect to the adequacy of means of egress therefrom.” The handrail requirement which plaintiff argues is applicable to defendants’ residence is contained in Article 8 and Article 8 unequivocally establishes that the requirements found therein only have bearing on structures erected or altered after the enactment of the ordinance. Plaintiff has not alleged or offered any evidence that any alterations were made to defendants' home or that there was a change of use which would invoke the BOCA provisions, nor does plaintiff challenge that defendants’ home was built in 1925 well before the City of Trenton enacted this ordinance.

This Court has considered the code once before with respect to the handrail requirement. *Dukes v Glen of Michigan*, 31 Mich App 500; 188 NW2d 46 (1971). The code was found to apply in that case because the defendant changed the use of its building five years after the ordinance adopting the code was enacted. *Dukes, supra*, 31 Mich App 507. The defendant had opened its second floor to the public as a display area for merchandise and that change in use invoked the handrail requirement provisions. *Dukes, supra*, 31 Mich App 507.

Plaintiff's construction of the ordinance would render all of Section 103 and provisions 800.1 and 804.1 meaningless and unnecessary. When construing a statute, we will not construe it in such a way as to render parts unnecessary. *Gross v General Motors Corp*, 448 Mich 147, 159; 528 NW2d 787 (1995). Since the BOCA National Building Code as adopted by the City of Trenton does not apply to defendants' home, it was irrelevant in determining negligence in this case and the trial judge properly excluded it. *Webster, supra*, 59 Mich App 384-385.

Plaintiff also argues on appeal that the trial court erred in precluding plaintiff from introducing evidence regarding another fall which took place at defendant's home on the same stairwell only eleven months prior to plaintiff's fall. We disagree. This evidence was properly excluded as plaintiff did not establish a proper foundation for its admittance by showing similarity of conditions, reasonable proximity in time and avoidance of confusion of issues. *Freed v Simon*, 370 Mich 473, 475; 122 NW2d 813 (1963); *Maerz v U S Steel Corp*, 116 Mich App 710, 723; 323 NW2d 524 (1982).

Plaintiff argues that it does not matter what the cause of the other fall was because the stairwell itself was a defective area. Plaintiff does not know how or why the prior accident occurred, what conditions existed on the stairwell at the time of the prior fall, or if a handrail would have aided in stopping the fall as plaintiff argued it would have in her case. Therefore, evidence of this prior fall was properly excluded as plaintiff failed to establish a foundation for its admissibility.

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ Roman S. Gribbs