

STATE OF MICHIGAN
COURT OF APPEALS

SARAH MIZE and CHARLES MIZE, JR.,

Plaintiffs-Appellants,

v

VILLAGE ENTERPRISES, L.L.C., d/b/a
BAVARIAN VILLAGE ON THE LAKE AND
INDEPENDENCE MANAGEMENT
CORPORATION,

Defendant-Appellee.

UNPUBLISHED

June 23, 2005

No. 253473

Oakland Circuit Court

LC No. 2002-044530-NO

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

Gage, P.J. (*dissenting*).

I respectfully dissent from the majority's conclusion that there are no genuine issues of material fact in this case. This Court is liberal in finding a genuine issue of material fact. *Trentadue v Buckler Automatic Lawn Sprinkler Co.*, __ Mich App __; __ NW2d __ (Docket No. 252155, issued March 24, 2005) slip op, p 6. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the nonmoving party, leaves open an issue on which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The handrail repair presents a genuine issue of material fact. At her deposition, plaintiff Sarah Mize was asked if any person had been in her apartment to make repairs before her fall. She testified that someone had repaired the upstairs sink and window, but she did not recall anyone repairing anything else. Also, counsel presented plaintiff Sarah Mize with a picture of the stairwell and asked if it accurately depicted the stairwell where she fell. She testified that the handrail in the picture was different because there were wooden blocks present. The wood blocks were placed in between the handrail and the wall to repair any defect. In addition, plaintiff Charles Mize testified that he believed the repairs to the handrail had been made after his wife's fall.

On the other hand, Thomas Ingram, who was the apartment manager and maintenance worker, testified that he made the repairs to the handrail before plaintiff Sarah Mize fell. He testified that he could not remember the date he made the repairs, but he believed it was in March 2001. Furthermore, Ingram testified that he was not allowed into plaintiff's apartment after the fall. Plaintiff Charles Mize testified that he had taken pictures of the repaired handrail approximately a month after the fall. Ingram asserted that because he was not allowed into

plaintiff's apartment after the fall and there were pictures showing that the repair had been completed, the repair had to have been made before the fall. Plaintiffs did not offer any testimony regarding this issue. I am satisfied that a genuine issue of material fact exists concerning when the handrail was repaired.

Furthermore, summary disposition is rarely appropriate in cases involving questions of credibility. *In re Handelsman Est*, __ Mich App __; __ NW2d __ (Docket No. 252205, issued May 19, 2005) slip op, p 3. In this case, Ingram did not present any evidence to prove the exact date on which he believed the repairs were made. He only offered his testimony that he believed he made the repairs before the fall. In addition, plaintiffs did not offer any evidence to prove the exact date on which they believed the repairs were made. They merely believed the repairs were made after the fall. Therefore, I will not weigh the parties' credibility in order to determine whose testimony regarding the handrail repair is more trustworthy.

In addition, I find that a genuine issue of material fact exists concerning whether defendant had notice of a defect in the carpet on the stairs in the basement stairwell. For these reasons, I believe the trial court erred in granting defendant's motion for summary disposition and would reverse and remand for further proceedings consistent with this opinion.

/s/ Hilda R. Gage