

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UNPUBLISHED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

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

MURPHY, C.J. (*dissenting*).

Because I would reverse the trial court’s order granting summary disposition in favor of defendant on the basis of my conclusion that there exists a genuine issue of material fact with respect to whether the sidewalk located on the grounds of the apartment complex was “fit for the use intended by the parties,” MCL 554.139(1)(a), I respectfully dissent.

MCL 554.139(1)(a) provides that in every lease of residential premises, the lessor covenants that “the premises and all common areas are fit for the use intended by the parties.”<sup>1</sup> Sidewalks within an apartment complex constitute common areas. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 428; 751 NW2d 8 (2008), citing *Benton v Dart Properties, Inc*, 270 Mich App 437, 442-443; 715 NW2d 335 (2006). There is no dispute here that the location of plaintiff’s fall was a sidewalk on the premises owned by defendant, that she was using the sidewalk for the purpose intended, and that plaintiff was a resident and tenant of defendant’s apartment complex. Therefore, defendant owed a duty to plaintiff to keep the sidewalk fit for its intended use. *Allison*, 481 Mich at 431. I also note that the open and obvious danger doctrine is not available to a defendant when the defendant has a statutory duty and breaches that duty under MCL 554.139. *Benton*, 270 Mich App at 441. In *Benton*, this Court observed:

[A] landlord has a duty to take reasonable measures to ensure that the sidewalks are fit for their intended use. Because the intended use of a sidewalk is walking on it, a sidewalk covered with ice is not fit for this purpose. Thus, . . .

---

<sup>1</sup> MCL 554.139(3) provides that “[t]he provisions of this section shall be liberally construed[.]”

defendant owed plaintiff a duty of reasonable care regardless of the openness or obviousness of the icy sidewalk conditions. [*Id.* at 444.]

If this case involved an ordinary apartment complex and slightly different circumstances, I perhaps would agree with the majority's ruling that, as a matter of law, the sidewalk was not unfit for its intended use. However, defendant's apartment complex, Meadow Creek Village (MCV), is a housing facility specifically designed and operated for senior citizens.<sup>2</sup> Plaintiff, in her efforts to distinguish *Allison*, argues in part:

Further, in the case at bar, the sidewalk is part of the common area of a senior citizen apartment building. The residents are elderly persons who need extra care in walking because of frail bones and some residents being less stable than a younger person. What might be a minor or insignificant break in concrete to a twenty year old is major or significant to a ninety year old person who the sidewalk is designed to be used by such as in the case at bar.<sup>[3]</sup>

I find merit in plaintiff's argument. Under MCL 554.139(1)(a), defendant had a legal obligation to keep the sidewalk "fit for the use *intended by the parties.*" (Emphasis added.) The express language of the statute has a subjective component to it, where the language refers to the parties' intent as to use.<sup>4</sup> The parties' intent here, clearly and necessarily, was that the sidewalks would be used to walk on for purposes such as ingress and egress relative to the apartments. But encompassed within that intent and the parties' knowledge was the fact that the sidewalks would be used to a great extent by the elderly, given that residents of MCV are senior citizens. Stated otherwise, the intended purpose of the sidewalks at MCV was for senior citizens to walk on them during their residency at the complex. It cannot reasonably be disputed that, in general, senior citizens and the elderly are more susceptible to falls and injuries from falls, especially where there is some defect present in a walking surface, considering natural frailties and the loss of agility and balance that unfortunately come with age.

Furthermore, on review of the photographs presented below, the area where the sidewalk's broken concrete is located is adjacent to a handicapped parking spot and is directly in the path of where one would plant his or her feet after exiting the passenger side of a vehicle parked in the handicap spot. Indeed, there is evidence in the record that plaintiff had been

---

<sup>2</sup> Plaintiff claims that MCV is also an assisted living facility, but defendant, who acknowledges that MCV is a facility for senior citizens, denies that it is an assisted living facility or a nursing home.

<sup>3</sup> In her brief, plaintiff indicates that she is 88 years old.

<sup>4</sup> I recognize that, in the context of the open and obvious danger doctrine, an objective standard is used and that the fact-finder must consider the condition of the premises, "not the condition of the plaintiff." *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329; 683 NW2d 573 (2004). Here, however, I am not addressing the open and obvious danger doctrine, but rather a landlord's duty under specific statutory language that places some emphasis on the actual parties in a landlord-tenant relationship.

grocery shopping with an acquaintance, that plaintiff was sitting in the passenger seat of a vehicle when the two returned back to MCV after shopping, that the acquaintance parked the car in the handicapped parking spot, that when plaintiff opened the passenger door to exit the car the door overhung the sidewalk, that plaintiff stepped out of the car and removed some grocery items, and that when she stepped up onto the sidewalk to shut the door her left foot became entangled in the sidewalk's broken concrete, causing her to fall.

Taking the location of the broken concrete into consideration along with the fact that the apartment complex is for senior citizens, I conclude that reasonable minds could differ with regard to whether the sidewalk was fit for the use intended by the parties, MCR 2.116(C)(10). *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003)("A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."). Accordingly, I respectfully dissent.

I would reverse the trial court's order and remand for further proceedings.

/s/ William B. Murphy