[Cite as *Stevens v. Aaron Rental Properties, Inc.*, 2010-Ohio-4447.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRENDA S. STEVENS

Plaintiff-Appellant

-vs-

AARON RENTAL PROPERTIES, INC., ET AL.

Defendant-Appellees

JUDGES:
Hon. Julie A. Edwards, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2009CA131

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 08CV1758H
JUDGMENT:	Affirmed in part; Reversed in part and remanded
DATE OF JUDGMENT ENTRY:	September 15, 2010

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellees

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Hoffman, J.

{¶1} Plaintiff-appellant Brenda Stevens appeals the October 13, 2009 Judgment Entry of the Richland County Court of Common Pleas granting summary judgment in favor of Defendants-appellees Aaron Rental Properties, Inc. and Wurster Properties, Inc.

STATEMENT OF THE FACTS AND CASE

{¶2} At all times relevant herein, Appellant leased a residence owned by Appellees at 418 Taylor Street, Ashland, Ohio. Prior to renting the premises, Appellant advised the rental agent she intended to use the attic as her bedroom. Both parties stipulate the stairway leading to the attic lacked a handrail.

{¶3} Appellees conducted an inspection of the property on August 21, 2003, prior to Appellant moving into the residence. The inspection notes indicate, "Box of junk, bag, desk, headboard, treadmill, walls have been patched prior (cardboard) not doing anything up here. OK for attic, will need to do something next time pn."

{¶4} On January 27, 2004, Appellant descended the staircase from the attic, catching her heel and falling. She testified at deposition she grabbed for something, but could not catch herself and ended up at the end of the staircase. Appellant suffered a fracture in both wrists.

{¶5} Appellant later observed a protruding nail at the rear of the second step, which was cracked all the way across, but not readily apparent due to it being partially covered with carpet.

{¶6} Appellant initiated this action in the Richland County Court of Common Pleas seeking damages for her injuries. Appellees filed a motion for summary judgment, and Appellant filed a response thereto.

{¶7} Via Judgment Entry of October 13, 2009, the trial court granted summary judgment in favor of Appellees.

{¶8} Appellant now appeals, assigning as error:

{¶9} "I. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS-APPELLEES' MOTION FOR SUMMARY JUDGMENT BECAUSE A GENUINE ISSUE OF MATERIAL FACT EXISTED FOR A JURY'S DETERMINATION AS TO WHETHER THE DEFENDANTS-APPELLEES HAD SUFFICIENT CONSTRUCTIVE NOTICE OF THE DEFECTIVE STEPS.

{¶10} "II. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS-APPELLEES MOTION FOR SUMMARY JUDGMENT FINDING THAT THE ABSENCE OF A HANDRAIL AT THE RENTAL PREMISES WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF-APPELLANT'S FALL."

I.

{¶11} In the first assignment of error, Appellant asserts the trial court erred in granting summary judgment in favor of Appellees as a genuine issue of material fact exists as to whether Appellees had sufficient constructive notice of the defective steps.

{¶12} Civ. R. 56 states in pertinent part:

{¶13} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that

there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

{¶14} A trial court should not enter a summary judgment if it appears a material fact is genuinely disputed, nor if, construing the allegations most favorably towards the non-moving party, reasonable minds could draw different conclusions from the undisputed facts, *Houndshell v. American States Insurance Company* (1981), 67 Ohio St.2d 427, 424 N.E.2d 311. The court may not resolve ambiguities in the evidence presented, *Inland Refuse Transfer Company v. Browning-Ferris Industries of Ohio, Inc.* (1984), 15 Ohio St.3d 321, 474 N.E.2d 271. A fact is material if it affects the outcome of the case under the applicable substantive law, *Russell v. Interim Personnel, Inc.* (1999), 135 Ohio App.3d 301, 733 N.E.2d 1186.

{¶15} When reviewing a trial court's decision to grant summary judgment, an appellate court applies the same standard used by the trial court, *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 506 N.E.2d 212. This means we review the matter de novo, *Doe v. Shaffer,* 90 Ohio St.3d 388, 738 N.E.2d 1243, 2000-Ohio-186.

{¶16} In *Shroades v. Rental Homes, Inc*., (1981), 68 Ohio St.2d 20, the Ohio Supreme Court held,

{¶17} "In light of the public policy and drastic changes made by the statutory scheme of R.C. Chapter 5321, we hold that a landlord is liable for injuries, sustained on the demised residential premises, which are proximately caused by the landlord's failure to fulfill the duties imposed by R.C. 5321.04. ***

{¶18} "R.C. 5321.04 imposes duties on the landlord to make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. Furthermore, the purpose of the statute is to protect persons using rented residential premises from injuries. A violation of a statute which sets forth specific duties constitutes negligence per se. *Schell v. DuBois* (1916), 94 Ohio St. 93, 113 N.E. 664; *Patton v. Pennsylvania R. R. Co*. (1939), 136 Ohio St. 159, 24 N.E.2d 597; *Grieser v. Huntington Natl. Bank* (1964), 176 Ohio St. 291, 199 N.E.2d 556. However, in addition to negligence per se, proximate cause for the injuries sustained must be established. *Schell* and *Patton*, supra. Also it must be shown that the landlord received notice of the defective condition of the rental premises, that the landlord knew of the defect, or that the tenant had made reasonable, but unsuccessful, attempts to notify the landlord."

{¶19} Upon our review of the record, we agree with the trial court Appellant has not established Appellees had actual or constructive notice of the protruding nail nor has she established she made any attempt whatsoever to notify Appellees of the alleged defect. Accordingly, the trial court did not err in finding no genuine issue of material fact remains as to this portion of her claim, and in granting summary judgment on this issue.

{¶20} The first assignment of error is overruled.

II.

{¶21} In the second assignment of error, Appellant asserts the trial court erred in granting summary judgment in favor of Appellees because whether the absence of a handrail was a proximate cause of Appellant's injuries is an issue to be determined by the trier of fact.

{¶22} Again, Appellees concede there was not a handrail in place on the staircase. Ashland, Ohio codified City Ordinance 1335.01 requires a handrail on at least one side of the stairway.

{¶23} As set forth in our analysis and disposition of Appellant's first assignment of error, *Shroades*[1] requires a landlord comply with the requirements of all applicable building, housing, health and safety codes. Accordingly Appellees are negligent per se for failing to have a handrail. However, Appellees argue the lack of a handrail was not the proximate cause of Appellant's injuries.

{¶24} "Proximate causation" is described as "some reasonable connection between the act or omission of the defendant and the damage the plaintiff has suffered." Prosser, Law of Torts (5 ed.1984) 263, Section 41. There may be more than one proximate cause of an injury. *Taylor v. Webster* (1967), 12 Ohio St.2d 53, 57, 231 N.E.2d 870. When the negligent act or failure to act continues and combines to produce the injury, both causes may be proximate to the injury. Id. The lack of a handrail need not be the initial or sole cause of Appellant's fall; rather, Appellant need only prove it was a proximate cause of her injuries.

[1] We note the Ohio Supreme Court's decision in *Sikora v. Wenzel* (2000), 88 Ohio St.3d 493, reaffirmed the Court's holding in *Shroades*.

{¶25} Here, we find there is a genuine issue of material fact as to whether the lack of a handrail, as required by statute, was a proximate cause of Appellant's injury. At deposition, Appellant testified she attempted to grab something to stop her fall, but could not:

{¶26} "A. When I was coming back down I stepped on like the second step and something caught my heel and I started falling. I grabbed for whatever. I couldn't catch myself and ended up at the end of the stairway knocked out. I don't know how long I laid there. Not long, but I don't know how long. I got up, was still a little lightheaded, and went to the stairway to sit down, scooted down. * * *"

{¶27} Tr. at 30-31

{¶28} We find persuasive the Tenth District Court of Appeals decision in *Dahlem v. C&W Investment Company, et al.* (October 5, 1989) Franklin App. No 89-AP-434, holding:

{¶29} "The trial court held that the absence of a handrail in the present case failed to establish that plaintiff's injuries were proximately caused by the missing handrail and, therefore, defendant was entitled to judgment as a matter of law. ***

{¶30} "We find that defendants have failed in their burden to demonstrate that there exists no genuine issue as to any material fact as we believe that plaintiff's affidavit sufficiently indicates that the availability of a handrail may have prevented his fall. As defendants failed in their burden to counter plaintiff's affidavit that the absence of a handrail in the present case was a proximate cause of his fall and resulting injury, we find that the trial court erred in granting summary judgment in defendants' favor on this issue."

{¶31} Based upon the above, we find there remains a genuine issue of material fact as to whether the lack of a handrail on the staircase was a proximate cause of injury to the Appellant, and the trial court erred in granting summary judgment in favor of Appellees on the issue.

{¶32} The second assignment of error is sustained.

{¶33} The October 13, 2009 Judgment of the Richland County Court of Common Pleas is affirmed in part; reversed in part, and remanded for further proceedings in accordance with the law and this opinion.

By: Hoffman, J.

Edwards, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRENDA S. STEVENS	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
AARON RENTAL PROPERTIES, INC., ET AL.	:	
Defendant-Appellees	:	Case No. 2009CA131

For the reasons stated in our accompanying Opinion, the October 13, 2009 Judgment Entry of the Richland County Court of Common Pleas is affirmed in part; reversed in part, and remanded in accordance with the law and our Opinion. Costs to be divided.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ John W. Wise
HON. JOHN W. WISE