

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

LISA HALITZKA

C.A. No. 25CA012362

Appellant

v.

SANDSTONE REALTY

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. CV-24-213826

Appellee

DECISION AND JOURNAL ENTRY

Dated: September 8, 2026

MANNING, Judge.

{¶1} Plaintiff-Appellant, Lisa Halitzka (“Tenant”), appeals from the judgment of the Lorain County Court of Common Pleas, awarding summary judgment to Defendant-Appellee, Sandstone Realty (“Sandstone”). This Court affirms.

I.

{¶2} Tenant lives on the top floor of a vertical duplex in Lorain (“the Property”). She has resided at the Property for over ten years. During her tenancy, the Property changed ownership. The new owner hired Sandstone, a property management company, to manage the Property. Per the lease agreement Tenant signed, she agreed to report any damage or problems she discovered on the Property to the owner or Sandstone for repair.

{¶3} The Property has a communal basement that is equipped with a washer and dryer. The basement is accessible by way of a detachable wooden stairway comprised of five steps. As

Tenant was carrying a load of laundry down the basement steps, the stairway collapsed. Tenant fell forward onto the concrete floor, incurring injury.

{¶4} Tenant filed a negligence suit against Sandstone. She alleged that Sandstone had allowed the Property to fall into a state of disrepair and had failed to inspect the Property, warn her of any defects, and correct those defects. Sandstone moved for summary judgment on the complaint. Tenant filed a brief in opposition, and Sandstone filed a reply brief. Upon review of the written filings, the trial court awarded summary judgment to Sandstone.

{¶5} Tenant now appeals from the trial court's judgment. She raises one assignment of error for review.

II.

ASSIGNMENT OF ERROR

TRIAL COURT ERRED IN NOT FINDING [SANDSTONE] TO HAVE CONSTRUCTIVE NOTICE OF THE DEFECTIVE STAIRWAY LEADING TO THE BASEMENT WHICH BROKE AWAY CAUSING [TENANT] TO FALL TO THE CONCRETE FLOOR BELOW AND SUSTAIN INJURY; WHERE [SANDSTONE] KNOWINGLY BOUGHT A CENTURY OLD HOME WITHOUT CUSTOMARY INSPECTION WITH ACTUAL INTENT TO RENT SAID HOME OUT TO THE GENERAL PUBLIC AND WHERE [SANDSTONE] OWNED THE HOME FOR THREE TO FOUR YEARS PRIOR TO [TENANT'S] INJURY.

{¶6} In her sole assignment of error, Tenant argues the trial court erred when it awarded summary judgment to Sandstone. She argues that Sandstone had constructive notice of the defect or dangerous condition that caused her injury and, by failing to inspect the stairway, breached a duty to her. For the following reasons, we reject her argument.

{¶7} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Under Civ.R. 56(C), summary judgment is appropriate if:

[n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶8} A summary judgment movant bears the initial burden of demonstrating the absence of genuine issues of material fact concerning the essential elements of the nonmoving party’s case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). Specifically, the moving party must support the motion by pointing to some evidence in the record of the type listed in Civ.R. 56(C). *Id.* at 292-293. If the moving party satisfies this burden, the nonmoving party has a “reciprocal burden” to “set forth specific facts showing that there is a genuine issue for trial.” *Id.* at 293, quoting Civ.R. 56(E). The non-moving party may not rest upon the mere allegations or denials in the pleadings but must point to or submit evidence of the type specified in Civ.R. 56(C). *Dresher* at 293; Civ.R. 56(E).

{¶9} A negligence claim requires a plaintiff to prove “the existence of a duty, a breach of that duty, and an injury that was proximately caused by the breach.” *Rieger v. Giant Eagle, Inc.*, 2019-Ohio-3745, ¶ 10. When a dangerous condition results in injury to a tenant, “a landlord’s notice of the condition . . . is a prerequisite to liability.” *Sikora v. Wenzel*, 88 Ohio St.3d 493, 495 (2000). Notice can be actual or constructive. *Boyd v. Hariani*, 2005-Ohio-4536, ¶ 24-25 (9th Dist.). “[A] landlord will be excused from liability . . . if he neither knew nor should have known of the factual circumstances that caused the [dangerous condition].” *Sikora* at 498. *Accord Wright v. Bryce*, 2005-Ohio-5102, ¶ 10 (9th Dist.).

{¶10} Initially, we note that Tenant concedes “[t]his is a constructive notice case.” Tenant does not argue that Sandstone had actual knowledge of any defect or dangerous condition

regarding the basement stairway. Accordingly, we limit our review to the issue of constructive notice.

{¶11} In its motion for summary judgment, Sandstone argued that it never had constructive knowledge of any issue with the basement stairway. The trial court found that Sandstone met its burden in that regard based on deposition testimony and an affidavit supplied by one of Sandstone's owners. Meanwhile, the trial court found that Tenant failed to set forth specific facts to show a genuine issue of material fact for trial on the issue of constructive notice. Because it concluded that Tenant failed to meet her reciprocal burden, the court awarded summary judgment to Sandstone.

{¶12} Tenant argues the trial court erred when it awarded summary judgment to Sandstone because genuine issues of material fact remain as to whether Sandstone had constructive knowledge of an issue with the basement stairway. Tenant notes that evidence showed the Property was built sometime in the early 1900s. Despite the age of the Property, Tenant argues, Sandstone never inspected it. She notes that the stairway collapsed several years after Sandstone became responsible for the Property. According to Tenant, several years "is ample time for a landlord to have constructive notice of a latent defect in the form of a defect/hazardous steps leading to [] cement in the basement of a century home." She asks this Court to take judicial notice of the fact that century homes "are replete with conditions that represent safety concerns for those that dwell within them."

{¶13} In her deposition, Tenant testified that she had lived at the Property for ten years and routinely used the basement stairway when doing laundry. She testified that she was injured when the stairway "collapsed backwards." She admitted that, before her fall, she never had any problems with the stairway. Tenant acknowledged that her lease agreement required her to report

any damage or problems to Sandstone so that it could repair or otherwise redress any issues. Tenant testified that she never reported an issue with the stairway to Sandstone “[b]ecause there was no indication that the steps were going to fall.” Tenant was not aware of the reason the stairway collapsed. Nor did she notify Sandstone that the stairway had collapsed. She testified that someone “put these steps back up” about two months after her fall. Tenant did not identify the person who did so.

{¶14} Steven Taylor submitted an affidavit on behalf of Sandstone. In his affidavit, he wrote that he was the owner of Sandstone and that it was responsible for managing the Property. He wrote that, before assuming management of the Property, Sandstone did not inspect its interior. Mr. Taylor averred that neither he nor Sandstone had knowledge of any issue, hazard, or defective condition affecting the basement stairway before Tenant’s fall. He further averred that, before Tenant’s fall, Sandstone never repaired the basement stairway or received any requests to repair or replace it.

{¶15} Mr. Taylor also testified by deposition. He testified that Sandstone did not inspect the properties it managed because tenants knew to contact Sandstone if any issues arose. He testified that Sandstone first learned Tenant’s stairway had collapsed when it received notice of her lawsuit. Sandstone then sent a representative to examine the stairway. Mr. Taylor testified that its representative discovered the stairway had already been reattached and “didn’t find anything wrong with the steps.” Mr. Taylor testified that Sandstone would have repaired the stairway had it been advised there was an issue with it.

{¶16} Upon review, we cannot conclude the trial court erred when it entered summary judgment in favor of Sandstone. Sandstone set forth Civ.R. 56(C) evidence that it did not have constructive knowledge of any dangerous condition or defect regarding the basement stairway.

See Sikora, 88 Ohio St.3d at 495 (prior notice of a condition is a prerequisite to liability). Mr. Taylor's deposition and affidavit showed that Sandstone never inspected the stairway, was never notified of any issue with it, and was unable to identify any problems with it when inspecting it two months after Tenant's fall. In her brief in opposition to summary judgment, Tenant failed to set forth any Civ.R. 56(C) evidence tending to show Sandstone should have known about a defect or dangerous condition regarding the stairwell. She specifically testified that she had been using the stairway for many years and there was "no indication that the steps were going to fall." Moreover, there was no evidence about the specific defect or condition that caused the stairway to fall. Mr. Taylor testified that the stairway had already been reattached when Sandstone examined it, and its representative "didn't find anything wrong with the steps." Tenant seeks to circumvent this lack of evidence by asking us to take judicial notice of the fact that older homes "are replete with" dangerous conditions. We decline to do so. A judicially noticed fact "must be one not subject to reasonable dispute" Evid.R. 201(B). This Court will not presume that the Property was dangerous strictly due to its age. The structural integrity of an older home is highly dependent on a number of factors and variables.

{¶17} In essence, Tenant argues Sandstone is liable for her injuries because it had an affirmative duty to inspect the Property and discover there was a defect with the stairwell. Yet, Tenant set forth no law to establish an affirmative duty on the part of Sandstone. *See Cook v. The Crossings, L.L.C.*, 2015-Ohio-923, ¶ 12 (9th Dist.); *Boyd*, 2005-Ohio-4536, ¶ 31-32 (9th Dist.) (rejecting argument that landlords have an affirmative duty to make reasonable inspections of properties). Moreover, Tenant set forth no Civ.R. 56(C) evidence tending to show what caused the basement stairwell to collapse. Because there was no evidence as to the cause of the collapse, it is impossible to know whether a reasonable inspection would have disclosed a defect or

dangerous condition. Tenant failed to show that there was a genuine issue of material fact for trial regarding whether Sandstone had constructive knowledge of a defect or dangerous condition. Accordingly, we cannot conclude that the trial court erred when it awarded summary judgment to Sandstone. Tenant's assignment of error is overruled.

III.

{¶18} Tenant's sole assignment of error is overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

NATHAN MANNING
FOR THE COURT

FLAGG LANZINGER, P. J.
STEVENSON, J.
CONCUR.

APPEARANCES:

E. TASSO PARIS, Attorney at Law, for Appellant.

STEVEN J. FORBES and SPENCER M. SUKEL, Attorneys at Law, for Appellee.