

ORIGINAL

IN THE SUPREME COURT OF OHIO
CASE NO. 2012-1600

On Appeal from the Tenth Appellate District
Franklin County, Ohio
Court of Appeals Case No. 11AP-684

LAUREN J. MANN

Plaintiff-Appellee,

v.

NORTHGATE INVESTORS LLC, dba
NORTHGATE APARTMENTS,

Defendant-Appellant

REPLY BRIEF OF APPELLANT, NORTHGATE INVESTORS, LLC,
dba NORTHGATE APARTMENTS

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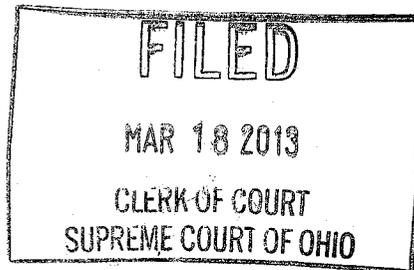


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CERTIFIED QUESTION

Whether Landlord Owes the Statutory Duties of R.C. §5321.04(A)(3) to a Tenant's Guest Properly on the Premises but on the Common Area Stairs at the Time of Injury?

I. INTRODUCTION

In answering the certified question, Northgate Investors, LLC, d.b.a. Northgate Apartments ("Northgate") argued that R.C. §5321.04(A)(3) did not impose a separate statutory obligation on the landlord for injuries to a guest while in a common area because the common area is within the exclusive possession and control of the landlord and a general, common law duty of care applies. Moreover, Northgate argued that even if R.C. §5321.04(A)(3) were applicable to a guest in a common area, a violation of the specific subsection of the statute at issue in this case did not impose negligence per se because the statute embodies only a common law duty of reasonable care and does not set forth a specific statutory obligation separate and distinct from the common-law duty.

In response, Ms. Mann asserts that the well-established precepts of the common-law duty that a landlord owes to invitees were not applicable because the duty of care was supplanted with the enactment of Ohio's Landlord Tenant Act. Ms. Mann urges an expansive application of this court's holding in *Shump*. Specifically, Ms. Mann argues that all violations of every section of the Landlord-Tenant Act should give rise to a claim of negligence per se by any person anywhere in the leased building without regard to common-law defenses such as the open obvious doctrine. This court has never so held and such an expansion of liability was not intended when the Landlord Tenant Act was enacted. The judgment of the 10th District Court of Appeals should be reversed and summary judgment in favor of Northgate reinstated.

II. Legal Analysis

Ms. Mann has asserted that, prior to the enactment of R.C. §5321.04, a landlord owed no duty to its tenants or its tenants' guests for injuries occurring on the leased premises unless there was a concealment of a known danger. Merit Brief of Ms. Mann, pg. 5. She goes on to assert that, as a result, a landlord had virtually no common-law duty of care. She further asserted that, because the common law provided little or no protection to a tenant, the Landlord-Tenant Act was enacted to provide specific statutory duties, the violation of which imposed liability on the landlord. Ms. Mann's description of a landlord's common-law duty, however, is inaccurate. A landlord owed a duty of reasonable care to its tenant and their guests while in areas of the premises that the landlord retained possession and control over like hallways and stairs. Northgate submits that it was this common law duty which was memorialized in R.C §5321.04(A)(3).

This court has long held that a landlord owes a duty to exercise ordinary care to keep common areas of a leased premise in a reasonably safe condition. *Davies v. Kelley*, 112 Ohio St. 122 (1925), paragraph one of syllabus. Moreover, where common area like a stairway are provided, maintained, and controlled by a landlord for the use of several tenants of his building the landlord generally is liable for any injuries arising from his neglect to keep the same in proper repair; such duty and liability extend not only to the tenant himself, but also to members of his family, employees, guests, and invitees. *Id*, paragraph 2 of syllabus.

Similarly, R.C. §5321.04(A)(3) obligates a landlord who is a party to a rental agreement to “[k]eep all common areas of the premises in safe and sanitary condition.” The statute sets forth a general duty of care analogous to duty articulated in *Davies*. Other subsections of R.C. §5321.04, however, contain specific obligations separate and apart from a general duty of care. For example, R.C. §5321.04(A)(1) requires a landlord to comply with applicable housing, safety and building codes. Moreover, R.C. §5321.04(A)(2) requires a landlord to make all repairs necessary to keep the premises in a fit and habitable condition. This court has concluded that these more specific statutory duties impose an obligation on landlords to protect both tenants and their guests while they are within the confines of a tenant’s unit. *Shump v. First Continental-Robinwood Assoc.*, 71 Ohio St.3d 414 (1994). This court has also concluded that the violation of these specific subsections amounts to negligence per se. *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362.

Ms. Mann and her *amicus* urge this court to broadly interpret R.C. §5321.04(A)(3) and hold that it imposes a separate, statutory duty on a landlord for a tenant’s guest who decides to descend an unlit stairway, a violation of which will impose liability for injuries to a tenant’s guest without regard to the application of common law defenses such as the open and obvious doctrine. They incorrectly assert that there is no reason to treat the interpretation and application of these sections in a disparate manner.

In analyzing the obligations imposed upon a landlord to comply with all applicable safety codes imposed by R.C. §5321.04(A)(1), this court concluded that it would not distinguish between the duties a landlord owed to a tenant and the duties a landlord owed to persons lawfully upon the leased premises. *Shump*, 112 Ohio St.3d at 419. The court, however, did not define the phrase leased premises. It makes sense that the phrase leased premises means the dwelling unit leased by the tenant.

R.C. §5321.01(F) defines "dwelling unit" as meaning a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. A dwelling unit leased to a tenant is generally within the exclusive possession and control of the tenant. As such, the landlord is not liable to the tenant or other persons rightfully in the dwelling unit absence a liability created by statute. *Stackhouse v. Close*, 83 Ohio St. 339 (1911), paragraph one of the syllabus. Because the landlord owes no common law duty of care to a guest on a portion of the premises that are within the exclusive possession and control of the tenant, the court properly determined that the landlord owes a statutory duty under R.C. §5321.04(A)(1) to a guest while in a leased dwelling unit. Absent this statutory duty, the landlord owed no duty of care for injuries occurring in the unit that was under the exclusive possession and control of the tenant.

As it relates to common areas, however, the landlord remains liable for its failure to exercise reasonable care because the common areas are within the exclusive possession and control of the landlord. The landlord is legally responsible for the maintenance and upkeep of the portion of the property within its control. Consequently, there is no need to impose a separate, statutory duty on the landlord. Duties imposed on a landlord under the Landlord-Tenant Act serve different purposes for different areas contained within the residential premises. While the leased premises is not defined in R.C. Chapter 5321, residential premises is defined in R.C. §5321.01(C) to include not only the "dwelling unit" but also the grounds, areas, and facilities for the use of tenants generally.

As indicated in Northgate's merit brief, the 5th, 7th, 9th, and 12th appellate districts have all concluded that the obligations imposed on a landlord under R.C. §5321.04 do not apply to a tenant's guest while in common areas of leased property. The legislative purpose of the Landlord-Tenant Act was to codify the law regarding rental agreements for residential premises, and to govern the rights and duties of landlords and tenants. It was not enacted for the benefit of protecting guests who are not parties to the written rental agreement.

Moreover, even if R.C. §5321.04(A)(3) imposes an obligation on the landlord to keep common areas safe for the benefit of guests, the violation of the statute does not constitute negligence per se. It is a firm principle of statutory construction that liability imposed by statute shall not be extended beyond the clear import of the terms of the statute. *Eiher v. Phillips*, 103 Ohio St. 249 (1921), paragraph one of

the syllabus. Courts may not presume that a statute was intended to abrogate the common-law. *LaCourse v. Fleitz*, 28 Ohio St.3d 209 (1986). In *LaCourse*, this court specifically refused to expand the requirements of R.C. §5321.04(A)(3) to impose a "novel duty" on landlords to keep common areas free from ice and snow. In doing so, the court observed that it would be "judicially untenable" to create liability for injuries by expanding the statutory duty to keep common areas in a safe and sanitary condition.

So too here. This court should not expansively construe the obligations imposed under R.C. §5321.04(A)(3) on a landlord for a tenant's injury that occurs in a common area. The duty imposed under R.C. §5321.04(A)(3) is a duty to use reasonable care to keep common areas of residential premises safe. The statutory purpose is not furthered by permitting an injured guest to impose liability on a landlord for the injured guest's decision to proceed down a dark stairwell despite an appreciation for the obvious hazard presented by the darkness.

III. CONCLUSION

For these reasons and for those set forth in Northgate's merit brief, the judgment of the 10th District Court of Appeals should be reversed and summary judgment in favor of Northgate reinstated.

Respectfully submitted,



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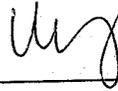
CERTIFICATE OF SERVICE

A copy of the foregoing *document* was sent by regular U.S. mail this 18

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