[Cite as *Renzi v. Hillyer,* 2012-Ohio-5579.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

JOHN RENZI, et al.,	:	**O P I N I O N**
Plaintiffs-Appellants,	:	**CASE NO. 2012-L-041**
- vs -	:	
MARK HILLYER, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 11 CV 001639.

Judgment: Affirmed.

James V. Loiacono, Denman & Lerner Co., L.P.A., 8039 Broadmoor Road, Suite 21, Mentor, OH 44060 (For Plaintiffs-Appellants).

Christopher J. Ankuda, 815 Superior Avenue East, 1615 Superior Building, Cleveland, OH 44114 (For Defendants-Appellees).

TIMOTHY P. CANNON, P.J.

{¶1} Appellants, John and Cecily Renzi, appeal the judgment of the Lake County Court of Common Pleas granting appellees, Mark and Jessica Hillyer's, motion for summary judgment. At issue is whether the trial court erred in granting summary judgment when tenant John Renzi sustained injuries after falling through his condominium stairs and when the landlords had no knowledge or reason to know the stairs were defective. For the reasons that follow, the judgment is affirmed.

{¶2} Since 2007, John and Cecily Renzi have rented a condominium in Painesville, Ohio, from owners Mark and Jessica Hillyer. In the rear of the condominium, sliding glass doors lead to the Renzis' private outdoor patio. The patio is elevated and connects to the ground level with several wooden steps. Prior to the accident, Mr. Renzi used the patio and adjoining steps on a regular and consistent basis. Though using the stairwell frequently, Mr. Renzi never noticed any issues with the stairs such as creaking or wobbling.

{¶3} On September 27, 2010, at around 6:30 p.m., Mr. Renzi was outside with his stepdaughter's dog. Walking at a "natural pace," Mr. Renzi descended the stairs, as he had done countless times before. As usual, the stairs felt "sturdy and normal." On this specific occasion, however, one stair suddenly gave way. As a result, Mr. Renzi fell and sustained injuries. Though there were no witnesses, Mrs. Renzi heard the commotion from inside the condominium and quickly came to her husband's rescue.

{¶4} The Renzis subsequently filed a complaint alleging negligence and loss of consortium. Specifically, the Renzis contended the Hillyers failed to meet their statutory duty as landlords under R.C. 5321.04 by failing to maintain the stairs, failing to fix the defective stairs, and failing to sustain the premises in a fit condition.

{¶5} The Hillyers filed a motion for summary judgment on the grounds they had no notice—actual or constructive—of any defective condition and, therefore, no knowledge or reason to know there was any defect. In support, they highlighted Mr. Renzi's deposition testimony, wherein he explained there were never any issues with the steps, and as such, the Hillyers never had notice of any issues concerning the

steps. The motion also pointed to the deposition testimony of Mrs. Renzi, which affirmed that the Hillyers had no notice of any defective condition involving the stairs.

{¶6} The trial court granted the motion. The Renzis now timely appeal and assert one assignment of error for consideration by this court:

{¶7} "The trial court committed prejudicial error when it found that Appellants failed to provide evidence that the subject injury was foreseeable, that Appellees had no duty to inspect the subject stairs, there was no genuine issue of material fact and that the Appellees were entitled to summary judgment as a matter of law."

{¶8} Pursuant to Civil Rule 56(C), summary judgment is proper if:

{¶9} (1) No 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).

{¶10} To prevail on a motion for summary judgment, the moving party has the initial burden to affirmatively demonstrate that there is no genuine issue of material fact to be resolved in the case, relying on evidence in the record pursuant to Civ.R. 56(C). *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). If this initial burden is met, the nonmoving party then bears the reciprocal burden to set forth specific facts which prove there remains a genuine issue to be litigated, pursuant to Civ.R. 56(E). *Id*.

{¶11} An appellate court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105 (1996). Thus, the court of appeals applies "the same standard as the trial court, viewing the facts in the case in a light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party." *Viock v. Stowe-Woodward Co*., 13 Ohio App.3d 7, 12 (6th Dist.1983).

{¶12} Though conceding the trial court's analysis in granting summary judgment was "generally correct," the Renzis nonetheless argue the Hillyers, as owners or landlords of the subject property, had an affirmative duty to inspect the premises, detect a potential danger in the stairs, and repair them. The Renzis contend R.C. 5321.04 and the Painesville Property Maintenance Code impose such a duty.[1]

{¶13} R.C. 5321.04 outlines the obligations of a landlord and states, in pertinent part:

> **{¶14}** (A) A landlord who is a party to a rental agreement shall do all of the following:
>
> **{¶15}** (1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;
>
> **{¶16}** (2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.

{¶17} With regard to R.C. 5321.04(A)(1), the Renzis highlight the Painesville Property Maintenance Code. They cite, inter alia, Sec. 1349.05 ("owner shall be

1. In a footnote in their reply brief, the Hillyers contend this argument is not appropriate because any alleged violation of the Painesville Property Maintenance Code is not mentioned anywhere in the Renzis' original complaint. However, as the Renzis' complaint alleges a violation of R.C. 5321.04(A)(1) which, pursuant to our decision in *Lewis v. Wall*, 11th Dist. No. 2007-A-0048, 2008-Ohio-3387, ¶28-32, necessarily involves the application of a relevant building, housing, health, or safety code, we conclude subsequent mention of a specific code—the Painesville Property Maintenance Code—is not tantamount to raising a new claim.

responsible for ensuring that premises are maintained in good repair"); Sec. 1349.06 ("exterior parts of every dwelling structure * * * shall be maintained in a safe condition"); and Sec. 1349.08 ("[e]very stair * * * shall be kept in sound condition and good repair as to be safe to use").

{¶18} The Ohio Supreme Court addressed R.C. 5321.04 in *Shroades v. Rental Homes*, Inc., 68 Ohio St.2d 20 (1981). There, the Court concluded a landlord's failure to make repairs under the statute constituted negligence per se, but that a landlord's notice of the condition causing the violation is a prerequisite to liability. The Court's ruling was later clarified in *Sikora v. Wenzel*, 88 Ohio St.3d 493 (2000). In *Sikora*, the Court held "that a landlord's violation of the duties imposed by R.C. 5321.04(A)(1) or 5321.04(A)(2) constitutes negligence per se, but a landlord will be excused from liability under either section if he neither knew nor should have known of the factual circumstances that caused the violation." *Id*. at 498. It also noted negligence per se is not tantamount to liability per se, and the injured party must also prove proximate cause and damage. *Id*. at 496, citing *Chambers v. St. Mary's School*, 82 Ohio St.3d 563, 565 (1998).

{¶19} Thus, *Shroades* and *Sikora* paired the well-founded and long-established notice requirement with the statute, a condition the General Assembly did not purport to abrogate when the statute was enacted in 1974. Indeed, as noted above, the statute was not meant to impose strict liability (or "liability per se"). This is based upon the recognition that there must be some element of notice prior to the imposition of landlord liability. *Sikora*, *supra*, 496.

{¶20} It is equally important to recognize what *Shroades* and *Sikora* did not do: they did not impose a duty on landlords to inspect premises and be an insurer of a tenant's safety at all times. That is, under R.C. 5321.04, a landlord or owner has no affirmative duty to inspect a tenant's premises to find prospective dangers. *Lily v. Bradford Inv. Co*., 10th Dist. No. 06AP-1227, 2007-Ohio-2791, ¶29; *Boyd v. Hariani*, 9th Dist. No. 22500, 2005-Ohio-4536, ¶32; *Butler v. Wyndtree Hous. Ltd. Partnership*, 12th Dist. No. CA2011-03-056, 2012-Ohio-49, ¶13. Further, this court has previously noted that appellate courts have applied the notice requirement introduced in *Shroades* "even in cases where the tenants were not aware of the defective condition which caused the injury." *Davis v. Tell Reality*, 11th Dist. Nos. 2000-P-0006 & 2000-P-0007, 2001 Ohio App. LEXIS 1124 (March 9, 2001), citing *Rice v. Reid*, 3d Dist. No. 3-91-34, 1992 Ohio App. LEXIS 2145 (Apr. 23, 1992), *Harmon v. Schroeder*, 3d Dist. No. 4-85-17, 1986 Ohio App. LEXIS 9391 (Dec. 17, 1986), and *Harden v. Murphy*, 6th Dist. No. L-81-216, 1982 Ohio App. LEXIS 11563 (Jan. 29, 1982). We therefore reject the Renzis' argument to the contrary—that R.C. 5321.04 and the Painesville Property Maintenance Code impose such a duty to inspect.

{¶21} In this summary judgment exercise, the Hillyers attached deposition testimony which illustrated they had no notice—actual or constructive—concerning any defective condition of the stairs. In fact, Mr. Renzi testified he did not realize the stairs were defective, nor did he have any reason to suspect the stairs were defective. Mr. Renzi was in the best position to detect any potential defect because he used the steps on a regular basis and assessed property defects for a living, working for an apartment

maintenance group which finishes apartments by ensuring the premises are equipped for habitation within 24 hours.

{¶22} Even assuming there was a duty to inspect, there is no evidence to suggest an inspection would have disclosed any defect in the stairs. Though the Renzis argue the Hillyers had a duty to find and repair the defective stairs, there is no evidence the stairs showed any sign of a defect. Rather, as explained above, the converse is true: Mr. Renzi noted the stairs seemed "sturdy and normal". As the burden shifted to the Renzis, it was incumbent upon them to place evidence in the record which might have indicated the Hillyers had some type of notice. As a result, summary judgment was wholly appropriate.

{¶23} The Renzis' sole assignment of error is without merit.

{¶24} The judgment of the Lake County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.