STATE OF MICHIGAN

COURT OF APPEALS

RENA PAXTON,

Plaintiff-Appellant,

v

OAK STREET SENIOR APARTMENTS, INC. and PREMIER PROPERTY MANAGEMENT, LLC,

Defendants-Appellees,

and

COMMUNITIES FIRST, INC.,

Defendant.

UNPUBLISHED
May 13, 2021

No. 354151
Genesee Circuit Court
LC No. 19-112832-NO

Before: MURRAY, C.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

Rena Paxton fell as she exited the shower in her apartment at Oak Street Senior Apartments, Inc. Paxton filed suit against Oak Street, asserting that the landlord violated MCL 554.139(1)(a)'s mandate that the premises be fit for their intended purpose. Specifically, Paxton alleged that grab bars should have been installed in her bathroom. The circuit court summarily dismissed Paxton's action for failure to create a genuine issue of material fact. We affirm.

I

Rena Paxton moved into Oak Street Senior Apartments in December 2014. In her application for occupancy, Paxton indicated that she did not require "accessibility features" in her apartment. As such, Paxton was provided an apartment without grab bars in the bathroom. On June 19, 2017, Paxton became light-headed and fell as she exited her shower. Paxton tried "to catch ahold" of the side of the shower, but was unable to catch herself. Had grab bars been installed, Paxton asserted, she could have prevented her fall.

Paxton claimed that on several occasions she had asked the apartment manager to install grab bars in her bathroom, but the bars were never installed. She admitted that none of her requests

were submitted in writing. Kathy Powell, the property manager, denied that Paxton had ever mentioned the issue to her. Indeed, Powell indicated that had Paxton requested bathroom grab bars, Paxton would have been asked to complete a "504 compliance" form that would have been submitted to Paxton's doctor for a determination of whether the requested accommodation was needed. Paxton claims that she also brought up the need for grab bars at a residents' meeting and that the owner of the complex, Robert Beale, offered to look into it. Beale does not recall that discussion.

Paxton filed suit against Oak Street raising counts of negligence, violation of the Americans with Disabilities Act (ADA), and violation of MCL 554.139. Paxton later filed an amended complaint more specifically raising a premises liability count. In two separate orders, the circuit court summarily dismissed Paxton's claims.

Paxton challenges only the dismissal of her statutory count. In its summary disposition motion, Oak Street argued that it could not have violated MCL 554.139(1)(a), which imposes a duty on landlords to ensure that leased premises "are fit for the use intended by the parties," because Paxton admitted the bathroom was fit for its intended purpose. In dismissing this count, the court simply stated that it "agree[d] with defense counsel on the landlord tenant statute."

II

We review de novo a trial court's decision on a motion for summary disposition. *Wayne Co v Wayne Co Retirement Comm*, 267 Mich App 230, 243; 704 NW2d 117 (2005). A motion under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App at 621. "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." *West*, 469 Mich at 183.

MCL 554.139(1)(a) provides that in every lease or license of residential premises, the lessor or licensor covenants that "the premises and all common areas are fit for the use intended by the parties." "MCL 554.139 provides a specific protection to lessees and licensees of residential property in *addition* to any protection provided by the common law." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008) (emphasis in original). *Allison* outlines a two-step test for determining liability under MCL 554.139. The first step is to ascertain whether the area falls within the definition of "common areas" or "premises." *Allison*, 481 Mich at 427-431. Next, the court must determine if a fact question exists regarding whether the challenged condition rendered the area unfit for its intended purpose. *Id*.

Paxton argues that the circuit court erred in granting Oak Street's motion as there are questions of fact regarding whether the bathroom was fit for its intended purpose. Under the test outlined in *Allison*, Paxton contends, the bathroom was not fit for its intended purpose because it

lacked grab bars. In support of this argument, Paxton relies heavily on *Hadden v McDermitt Apartments, LLC*, 287 Mich App 124; 782 NW2d 800 (2010), which held summary disposition improper if "there could be reasonable differences of opinion regarding whether a [condition] was fit for its intended purpose." She contends that there could be differences of opinion as to whether her bathroom was fit for its intended purpose of providing access to bathroom facilities for elderly residents. The absence of grab bars created more than a "mere inconvenience of access," she insists, because she was an elderly tenant and under the lease could not modify the bathroom herself. Paxton also argues that Oak Street is not immune from liability under the statute merely because she had used the bathroom without incident in the three years prior to her fall. In support of this proposition, Paxton cites *Martin v Milham Meadows I Limited Partnership*, unpublished opinion of the Court of Appeals, issued July 19, 2016 (Docket No. 328240), p 10, which states that "a tenant's ability to avoid an unfit condition does not render the premises fit for their intended use."

However, Paxton failed to present any actual evidence or law supporting that the bathroom was unfit for its intended purpose. Paxton expressly indicated in her housing application that she did not require special accessibility features. More pertinently, Paxton has not identified a standard, law, regulation, or common-law principle supporting that bathrooms must have grab bars in order to qualify as fit for their intended use, even when foreseeably used by elderly apartment dwellers. Paxton identifies U.S. Department of Housing and Urban Development (HUD) guidelines found at 24 CFR Part 100 as support for her claim, but the regulation on which she relies required Oak Street to have reinforced walls for grab bars. Paxton does not contend that Oak Street failed to have reinforced walls, rendering this regulation irrelevant. And the fact that Oak Street installed grab bars after Paxton's fall supports that the walls of her bathroom were adequately reinforced.

Paxton has not asserted or supplied evidence that her bathroom's design ran afoul of the ADA, 42 USC 12101 *et seq*., any building codes, or any federal regulations, or any Michigan law provisions. She has not produced an expert. Nor has she explained why the bathroom was unfit for use as a bathroom in the absence of grab bars. This deficiency dooms her claim. Unlike the inherently slippery basement stairs at issue in *Martin*, or stairs coated with ice discussed in *Hadden*, Paxton's bathroom was not inherently unusable as a bathroom. Accordingly, the circuit court properly dismissed her claim.

We affirm.

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher