MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MICHELLE EICKHOFF, ET AL.

APPELLANTS,

v.

DOUGLAS GELBACH, ET AL.

RESPONDENTS.

DOCKET NUMBER WD83433

DATE: September 15, 2020

Appeal From:

Johnson County Circuit Court
The Honorable R. Michael Wagner, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge and Thomas N. Chapman, Judge

---

Attorneys:

Richard S. Fisk, Overland Park, KS, for appellants.

Paul D. Cowing and Andrew S. Mendelson, Lee's Summit, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MICHELLE EICKHOFF, ET AL., APPELLANTS,
v.
DOUGLAS GELBACH, ET AL., RESPONDENTS.

WD83433 Johnson County

Before Division Three Judges: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge, and Thomas N. Chapman, Judge

Appellants Michelle Eickhoff and John Eickhoff (collectively "the Eickhoffs") appeal the judgment of the Circuit Court of Johnson County, Missouri, entering summary judgment in favor of Douglas Gelbach and Rhonda Gelbach (collectively "the Gelbachs") against the Eickhoffs on claims of general negligence, negligence *per se*, premises liability, and loss of consortium.

On February 18, 2016, the Eickhoffs' son, Tyler, and three other individuals (collectively "the Tenants") executed an agreement to lease residential property ("Property") from the Gelbachs for a term of August 1, 2016, through July 31, 2017. The lease provided that the Tenants "shall not decorate, make repairs, structural alterations in or additions to the buildings or equipment on the leased premised [sic] without the prior, express and written consent of the landlord." The lease prevented the Tenants from changing the locks. Further, the Gelbachs "reserve[d] the right to enter upon the leased premises at all reasonable hours for the purpose of inspecting the same, or of making repairs, additions or alterations to the building in which the lease premises are located . . . ."

Before the lease term began, the Gelbachs made extensive repairs, modifications, and improvements to the Property. When the Tenants took possession of the property from the Gelbachs, the staircase where Michelle fell did not have a handrail installed. Douglas and the Tenants had a conversation regarding the lack of a handrail and the installation of one, and it was agreed between them that a handrail would not be installed. The City of Warrensburg had adopted the International Residential Code, which required that "[h]andrails [] be provided on at least one side of each continuous run of treads or flight [of stairs] with four or more risers." On October 30, 2016, Michelle visited Tyler at the Property and fell down a flight of stairs with more than four risers, on which no handrail had been installed on either side.

The Eickhoffs filed a petition asserting four claims against the Gelbachs: general negligence, negligence *per se*, premises liability, and loss of consortium. The Gelbachs moved for summary judgment on all of the claims, and after substantial briefing and a hearing on the issues, the circuit court entered summary judgment in favor of the Gelbachs dismissing the case with prejudice.

REVERSED AND REMANDED.

Division Three holds:

(1) The circuit court erred in granting summary judgment because there was a genuine issue of material fact as to whether the Gelbachs exercised control of the Property in that the lease agreement prevented the Tenants from making repairs or changing the locks and the Gelbachs retained a key to the Property along with right to enter the premises at all reasonable hours to inspect the Property and make repairs without the Tenants' permission.

(2) While the circuit court did not err in finding that an ordinance cannot change the common law, the court erred in granting summary judgment because the Warrensburg ordinance did not impose new duties on the Gelbachs, the ordinance merely defined the duty already owed at common law.

(3) The circuit court did not err in finding as a matter of law that the Gelbachs did not have a duty to inform the Tenants and their invitees of the ordinance's requirement that a handrail be installed on the stairway. The ordinance did not create the dangerous condition; the alleged dangerous condition was the lack of a handrail.

Opinion by: Gary D. Witt, Judge September 15, 2020

****

This summary is UNOFFICIAL and should not be quoted or cited.