

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 130200-U
NO. 4-13-0200
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
November 27, 2013
Carla Bender
4th District Appellate
Court, IL

SHERRY WHITE,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
GREG CLEVINGER,)	No. 10L240
Defendant-Appellee.)	
)	Honorable
)	Peter C. Cavanagh,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the undisputed facts show defendant acted reasonably under the circumstances, the trial court properly granted summary judgment in favor of defendant.
- ¶ 2 In October 2010, plaintiff, Sherry White, filed a negligence complaint against defendant, Greg Clevenger, her former landlord, for her injuries sustained when trying to exit her basement apartment during a 2006 fire. In June 2012, defendant filed his third motion for summary judgment. After a February 2013 hearing, the Sangamon County circuit court granted defendant's motion, finding no proximate cause between the alleged code violation and plaintiff's injuries.
- ¶ 3 Plaintiff appeals, asserting the trial court erred by granting defendant's third motion for summary judgment because questions of fact exist. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On June 22, 2006, plaintiff was residing in the basement apartment of a building located at 214 East Canedy Street in Springfield, Illinois. Defendant had been the owner of the apartment building since September 1996. At around 4 a.m. on that date, plaintiff was sleeping in the apartment's living room when a smoke alarm sounded. She discovered a fire outside the door of her apartment and called 9-1-1 for assistance. Plaintiff then attempted to exit the apartment through a window in the living room. When the police arrived, they advised plaintiff to stop trying to exit that window. After discussing the situation, the police instructed plaintiff to go to the bathroom. The police broke out the bathroom window, and on her first attempt to exit that window, plaintiff's foot slipped from the back of the toilet, and she allegedly injured her neck. With the assistance of the police, plaintiff was eventually able to escape from the basement through the bathroom window.

¶ 6 On October 25, 2010, plaintiff filed a negligence complaint against defendant, asserting (1) he allowed occupancy of a basement apartment without providing adequate means of exiting the apartment in case of a fire and (2) violated Springfield's building code provisions requiring multiple exits from basement apartments. Defendant denied the allegations and asserted the affirmative defenses of (1) plaintiff's negligence, in that she failed to attempt to exit the basement through the bedroom window; and (2) third-party fault as the fire was started by an unknown individual.

¶ 7 In July 2011, defendant filed his first and second motions for summary judgment. The first motion asserted plaintiff could not produce the expert medical testimony necessary to meet her burden of proving her injuries were caused by the accident during the fire. The second

motion alleged plaintiff cannot establish defendant's negligence because he acted reasonably at all times. To the second motion, defendant attached many exhibits.

¶ 8 One of the second motion's exhibits was an affidavit by defendant, stating he learned in October 1996 the basement apartment was not in compliance with the Springfield fire code because it lacked a step for the bedroom's window and the bedroom window could not be removed without tools. Thereafter, defendant installed a step and a new window that could be removed without tools in the bedroom. The basement apartment was again inspected and determined to be free of violations of the fire code. Defendant never altered the step or the window after the reinspection and was not cited for any other violations. Defendant included a December 31, 1996, letter from Joseph Langfelder, captain of the Springfield fire department's fire safety division, in which Langfelder noted a reinspection of 214 East Canedy Street was conducted on November 19, 1996, to ensure compliance with the August 6, 1996, and October 14, 1996, orders. During the reinspection, "[n]o apparent violations of the Uniform Fire Code, 1982 Edition were found at this time." Defendant also provided the October 14, 1996, letter from Langfelder that found an improper-basement-means-of-egress violation and contained the language of the provision violated, which was described as "Section 809.4, B.O.C.A. [(Building Officials and Code Administrators)], Emergency Escape." In his second summary-judgment motion, defendant noted the "B.O.C.A. Codes" were the predecessor to the International Building Code and section 1026 of the 2006 International Building Code governs emergency escape and are "substantially similar and contain the same requirements" as section 809.4 of the "1982 B.O.C.A. Code."

¶ 9 In September 2011, defendant filed a supplement to his second motion for

summary judgment that attached the deposition of Tyrone Pickens, who purchased 214 East Canedy Street from defendant in January 2007. After Pickens purchased the apartment building, he confirmed with the State of Illinois Fire Marshall the certificate of occupancy for the building provided by defendant at the real-estate closing. Pickens had not changed the step under the bedroom window but did replace the bedroom window. When he replaced the window, Pickens used a similar window and did not change the dimensions of the window in the basement bedroom. According to Pickens, the older window that he described as "sliding" could be removed from the inside. Pickens stated he has had both panels out to install an air conditioner in one of the panels.

¶ 10 Plaintiff responded to the motions for summary judgment and attached a "Complaint File Recap" from the housing division of the Springfield building and zoning department for 124 East Canedy. The document noted a June 22, 2006, violation found by inspector Elizabeth Johnstone. The violation was described as follows: "702.4 windows do not meet minimum requirements for emergency escape openings." Johnstone prohibited occupancy of the structure until the violation was corrected.

¶ 11 After a September 12, 2011, hearing, the trial court reserved ruling on the first motion for summary judgment and denied the second motion. The record contains no evidence the first motion for summary judgment was ever decided. In June 2012, defendant filed his third motion for summary judgment, asserting (1) no evidence demonstrated defendant breached any duty owed to plaintiff and (2) Johnstone's testimony is unreliable and based on assumption and speculation. Defendant attached (1) the deposition of Rick Weber, deputy chief of the Springfield fire department and city fire marshal; (2) his April 2011 discovery deposition with attach-

ments; (3) Johnstone's deposition; (4) Picken's deposition; and (5) reports related to the police's and the fire department's investigation of the June 2006 fire.

¶ 12 Weber testified about the various code provisions and documents regarding 124 East Canedy. Weber believed the 2003 International Fire Code was in effect at the time of the June 2006 fire, and section 1025 of the 2003 International Fire Code addressed emergency escape and rescue was the same as the 1982 BOCA Code. Weber also discussed the fire investigation reports and noted the fire was determined to be incendiary arson.

¶ 13 Johnstone testified that, on June 22, 2006, she was a housing inspector for the City of Springfield. She physically inspected the apartment building at 214 East Canedy on the day of the fire. Her reference to "702.4" was to that section of the "BOCA codes" that were in effect at that time. According to Johnstone, the building code had provisions similar to the fire code. Johnstone stated the windows in the basement apartment were small and did not provide egress. She did not believe she needed to measure the windows because the violation "was quite visible." Johnstone believed the deficiency was the height of the window. After finding the window-size violation, she put a green sticker on the window prohibiting occupancy of the structure.

¶ 14 In July 2012, plaintiff filed a response to defendant's third motion for summary judgment, asserting questions of fact existed regarding whether defendant acted reasonably and Johnstone's credibility was a question for the trier of fact. She attached her affidavit to her response, and that testimony is discussed in our analysis. Plaintiff also attached defendant's July 2012 evidence deposition.

¶ 15 In September 2012, defendant filed an addendum to his third motion for summary

judgment, noting the deposition testimony of Langfelder supported his contention he acted reasonably under the circumstances because he corrected the violations with the bedroom window in 1996 and Langfelder found no violations upon reinspection. In January 2013, plaintiff filed a supplemental response, noting David Farris had measured the bedroom window at issue in this case and it was 34 ½ inches wide and 19 ½ inches high. Plaintiff pointed out the window height did not meet the minimum height requirement and the area was also less than 5.7 square feet. Plaintiff did not attach Farris's deposition to her response. Also, in January 2013, defendant filed a reply to plaintiff's response, asserting (1) the undisputed facts show he acted reasonably under the circumstances, and (2) any violation of the Springfield building code was not the cause of plaintiff's injuries.

¶ 16 On February 13, 2013, the trial court heard arguments on defendant's third motion for summary judgment. On February 22, 2013, the trial court entered a written order, granting summary judgment in favor of defendant. The court found plaintiff failed to (1) show any nexus between the alleged code violation and her injuries and (2) provide support for her argument defendant had a duty to provide notice of the egress window in the bedroom. On March 8, 2013, plaintiff filed a timely notice of appeal from the February 22, 2013, judgment in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008), and thus this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 17

II. ANALYSIS

¶ 18 In this case, plaintiff challenges the trial court's grant of summary judgment in favor of defendant. A grant of summary judgment is only appropriate when the pleadings, depositions, admissions, and affidavits demonstrate no genuine issue of material fact exists and

the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012); *Williams v. Manchester*, 228 Ill. 2d 404, 417, 888 N.E.2d 1, 8-9 (2008). With regard to analyzing summary-judgment motions, our supreme court has stated the following:

"In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt. [Citation.] If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper." *Williams*, 228 Ill. 2d at 417, 888 N.E.2d at 9.

Additionally, a reviewing court "may affirm a grant of summary judgment on any basis appearing in the record, regardless of whether the trial court relied upon that ground." *Perez v. Sunbelt Rentals, Inc.*, 2012 IL App (2d) 110382, ¶ 7, 968 N.E.2d 1082. We review *de novo* the trial court's ruling on a motion for summary judgment. See *Williams*, 228 Ill. 2d at 417, 888 N.E.2d at 9.

¶ 19 This case involves negligence based on a building code violation. Our supreme

court has explained the applicable law as follows:

"A violation of a statute or ordinance designed to protect human life or property is *prima facie* evidence of negligence. [Citation.] A party injured by such a violation may recover only by showing that the violation proximately caused his injury and the statute or ordinance was intended to protect a class of persons to which he belongs from the kind of injury that he suffered. [Citations.] The violation does not constitute negligence *per se*, however, and therefore the defendant may prevail by showing that he acted reasonably under the circumstances." *Kalata v. Anheuser-Busch Companies, Inc.*, 144 Ill. 2d 425, 434-35, 581 N.E.2d 656, 661 (1991); see also *Gouge v. Central Illinois Public Service Co.*, 144 Ill. 2d 535, 543, 582 N.E.2d 108, 112 (1991) (listing the factors the plaintiff must show to recover for a defendant's violation of a statute or rule designed to protect human life or property).

Here, we do not address plaintiff's proximate-cause argument because, even assuming she could establish proximate cause and a protected injury, the undisputed evidence shows defendant acted reasonably under the circumstances. After buying the building at 214 East Canedy Street, defendant learned the basement apartment was not in compliance with the Springfield fire code. In his affidavit, defendant stated the basement apartment violated the code because (1) it lacked a step for the bedroom's window and (2) the bedroom window could not be

removed without tools. Langfelder's October 1996 letter notifying defendant of the violation stated "[i]mproper basement means of egress" and recited section 809.4 of "B.O.C.A.," which addressed the ease of removing the window, the height of the window from the floor, and the dimensions for the window's opening. In response, defendant installed a step under the bedroom window and a new window that could be removed without tools in the bedroom. After defendant's work on the basement apartment's bedroom, Langfelder, with the Springfield fire department, inspected the basement apartment and found it free of violations of the fire code.

Defendant received a December 1996 letter from Lanfelder, stating "[n]o apparent violations of the Uniform Fire Code, 1982 Edition were found at this time." Defendant never altered the bedroom step or window after the reinspection and was not cited for any other violations. No evidence was presented defendant knew the bedroom window was too small or had knowledge of the Springfield building or fire code. Under the aforementioned facts, a reasonable person in defendant's position would believe the basement bedroom's window complied with the applicable codes related to an emergency escape window and no further action was needed. Thus, the only possible conclusion is defendant acted reasonably under the circumstances. Accordingly, defendant was entitled to summary judgment in his favor.

¶ 20

III. CONCLUSION

¶ 21 For the reasons stated, we affirm the Sangamon County circuit court's grant of summary judgment in defendant's favor.

¶ 22 Affirmed.