2018 IL App (2d) 170650-U
No. 2-17-0650
Order filed June 26, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LANA SEYLLER,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 15-L-344
	)	
THE ROSE RAKOWSKI DECLARATION OF TRUST, Dated February 16, 2005, ARNETT RAKOWSKI, and LINDA RAKOWSKI,	)	
	)	
Defendants-Appellees,	)	Honorable,
	)	James R. Murphy,
(Logan Myers, Defendant).	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing the plaintiff's complaint against the landlord because the landlord had not voluntarily assumed a duty to protect the plaintiff from their tenant's dog.

¶ 2 The plaintiff, Lana Seyller, was bitten by a dog that escaped from a home and yard owned by the the defendants, Arnett Rakowski and Linda Rakowski, which they rented to the dog's owner, Logan Myers. The plaintiff filed a personal injury complaint against both the

Rakowskis and Myers. Relying on this court's decision in *Sedlacek v. Belmonte Properties*, 2014 IL App (2d) 130969, the circuit court of Kane County dismissed the count against the Rakowskis, finding that they had not voluntarily assumed a duty to protect the plaintiff from Myers' dog. The plaintiff appeals from that order. We affirm.

¶ 3 BACKGROUND

¶ 4 On October 25, 2014, the plaintiff was walking past Myers' home in Elgin. As she passed the end of the driveway, she heard a dog growling from her left side. She turned and observed a large brown dog approaching her. She screamed and backed up as the dog charged at her. She swung her purse at the dog which caused her to fall. She subsequently felt extreme pain from her right ankle.

¶ 5 On July 28, 2015, the plaintiff filed a personal injury complaint against Myers. On May 19, 2016, she amended her complaint to add a count against the Rakowskis. She filed a second amended complaint on August 3, 2016. On November 28, 2016, she filed her third amended complaint.

¶ 6 In her third amended complaint, the plaintiff alleged that the Rakowskis knew that Myers' dog was a vicious and dangerous dog. She further alleged that the Rakowskis knew that the dog had previously escaped from Myers' yard because the fence in Myers' yard was broken. She asserted that Arnett Rakowski undertook a duty to repair the hole in the fence by entering into an agreement with Myers in which Myers would fix the fence and Arnett would reimburse him. She alleged that because the Rakowskis breached their duty to fix the fence, Myers' vicious dog escaped and attacked her.

¶ 7 On December 18, 2016, the Rakowskis filed a motion pursuant to 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)) to dismiss count II of the plaintiff's

complaint that pertained to them. They argued that they did not owe the plaintiff a duty to protect her from Myers' dog.

¶ 8 On May 17, 2017, the trial court dismissed count II of the plaintiff's complaint with prejudice. Relying on *Sedlacek*, the trial court found that the vague and unspecific promise that the Rakowskis had made to pay for Myers to fix the fence did not constitute a voluntary undertaking so as to impose a duty on them to protect the plaintiff from Myers' dog. The trial court also found that because the Rakowskis had promised to reimburse Myers for his repair of the fence six months prior to the dog attack and Myers had not fixed the fence, it could be inferred that the promise had been abandoned. The trial court subsequently made a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there was no reason to delay enforcement or appeal. The plaintiff thereafter filed a timely notice of appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, the plaintiff argues that the trial court erred in relying on *Sedlacek* to dismiss count II of her complaint because that case is distinguishable from the case at bar. Alternatively, she argues that, under a traditional duty analysis, dismissal of count II of her complaint was improper.

¶ 11 A motion to dismiss brought under section 2-615 tests the legal sufficiency of the complaint. On review, the inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to establish a cause of action upon which relief may be granted. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008). Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action. *Vernon v. Schuster*, 179 Ill. 2d 338, 344

(1997). A claim should not be dismissed pursuant to section 2-615 unless no set of facts can be proved which would entitle the plaintiff to recover. *Iseberg v. Gross*, 227 Ill. 2d 78, 86 (2007). We review *de novo* the circuit court's dismissal of the plaintiff's action. *Vitro v. Mihelic*, 209 Ill. 2d 76, 81 (2004).

¶ 12 In *Sedlacek*, this court recently considered the same issue that confronts us now. There, a dog broke through a fence and attacked the plaintiff who was walking on a public sidewalk. The plaintiff thereafter filed suit against the dog's owners as well as their landlord. The landlord moved for summary judgment against the plaintiff. *Sedlacek*, 2014 IL App (2d) 130969, ¶ 3. The evidence indicated that the dog's owners believed the gate on the fenced yard needed to be fixed and that the landlord agreed to fix it. The landlord denied making any representations that the fence would be fixed. *Id.* ¶ 5. The trial court found that the plaintiff's injury was caused by the dog, not by the condition of the gate, and therefore dismissed the plaintiff's action. *Id.* ¶ 8.

¶ 13 On appeal, this court affirmed. We explained that " 'it is well settled in Illinois that a landlord is not liable for injuries caused by a dangerous or defective condition on the premises leased to a tenant and under the tenant's control.' " *Id.* ¶ 13, quoting *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 50 (1999). As such, " 'a lessor who relinquishes control of property to a lessee owes no duty to a third party who is injured while on the leased property.' " *Id.*, quoting *Bier*, 305 Ill. App. 3d at 50. We noted that one exception to this rule permits a third party to recover damages from a landlord who does not control the premises on which the injury occurred when the landlord voluntarily undertakes to render a service. *Id.* ¶ 14. The plaintiff insisted that this exception applied because the landlord "knew about the damaged gate, made promises to repair it, and failed to do so." *Id.* ¶ 23. The plaintiff therefore maintained that the

landlord "had a duty to follow through on promises to repair the gate to prevent the attack from occurring." *Id.*

¶ 14 We rejected the plaintiff's argument, finding that " 'the essential element of the voluntary[-]undertaking doctrine is an undertaking, and the duty of care imposed on a defendant is limited to the extent of his undertaking.' " *Id.* ¶ 30, quoting (*Iseberg v. Gross*, 366 Ill. App. 3d 857, 865 (2006)). We found that the landlord's alleged promises to fix the fence did not amount to the undertaking of a duty to protect third parties off the premises from the tenant's dog. *Id.* ¶ 31. We noted that the landlord's promise pertained to a friendly Labrador that the tenants owned. However, the dog that attacked the plaintiff was a vicious Rottweiler that the landlord had told the tenants to get rid of. We found that "absent a specific promise to fix the fence to contain the Rottweiler, an undertaking to do so cannot be found." *Id.* We therefore held that, because the landlord did not undertake a duty, the landlord was not liable for injuries caused to a third person by a tenant's dog off of the leased property. *Id.* ¶ 32.

¶ 15 Here, like the landlord in *Sedlacek*, the Rakowskis never voluntarily assumed a duty to protect members of the public from their tenant's dog. Further, the "duty" that the Raskowskis allegedly assumed was even less than the landlord allegedly assumed in *Sedlacek*. In that case, the landlord agreed to fix the fence to contain a friendly dog. Here, the Rakowskis did not even promise that much. Rather, they only promised to reimburse their tenant if he fixed the fence. As their tenant did not fix the fence, the Rakowskis did not have an obligation to do anything. As such, there is no basis to impose any liability on them for the actions of their tenant's dog.

¶ 16 In so ruling, we find the plaintiff's attempt to distinguish *Sedlacek* unpersuasive. The plaintiff points out that in *Sedlacek*, the landlord promised to fix the fence in order to contain a dog different than the one that actually attacked the plaintiff. The plaintiff insists that fact is

significant because, since the Rakowskis were aware that the fence at issue was to contain a vicious dog, their promise to pay for the repairs imposed upon them a duty to follow-up with their tenant and ensure that the fence was fixed. This argument is without merit as it seeks to impose greater obligations on the Rakowskis than they ever voluntarily sought to assume. As noted earlier, the duty imposed on a landlord is limited to the duty he or she sought to undertake. *Iseberg*, 366 Ill. App. 3d at 865. As such, a promise to reimburse for a completed repair cannot transmute into a promise to ensure that the repairs are actually completed.

¶ 17 We also reject the plaintiff's argument that the trial court erred in finding that it "could be inferred" that the Rakowskis had abandoned their promise to reimburse the tenant for fixing the fence because that promise had been made six months prior to the dog attack. The plaintiff contends that at a hearing on a motion to dismiss pursuant to 2-615, all inferences must be drawn in favor of her as the nonmoving party. See *Napleton*, 224 Ill. 2d at 305. As such, it must be inferred that the Rakowskis had not abandoned their agreement. Although we agree with the principle that the plaintiff cites, it does not help the plaintiff. As explained above, the Rakowskis' promise to reimburse Myers for fixing the fence did not obligate them to fix the fence. Thus, whether they abandoned that promise is irrelevant since that promise could not serve as the basis for imposing a duty on the Rakowskis to protect the plaintiff from Myers' dog.

¶ 18 We also find unpersuasive the plaintiff's argument that this case is analogous to the Nevada Supreme Court's decision in *Wright v. Schum*, 781 P. 2d 1142 (1989). In that case, the Nevada Supreme Court held that a landlord was potentially liable for his tenant's vicious dog where he promised to do something about the dog but did not. *Wright*, 781 P. 2d at 1145-46. We considered the *Wright* court's holding in *Sedlacek* and noted that the Nevada Supreme Court had subsequently clarified its decision in *Wiseman v. Hallahan*, 945 P. 2d 945 (1997). In

Wiseman, the supreme court explained that a landowner may be held liable for a tenant's dog only if that landowner took affirmative action to assume a duty to protect third persons. *Wiseman*, 945 P. 2d at 947. Mere acquiescence to a dangerous condition did not impose a duty on the landowner. *Id.* We then determined that the holding in *Wiseman* was in accord with Illinois law on the assumption of duty. *Sedlacek*, 2014 IL App (2d) 130969, ¶ 28. Accordingly, for the same reasons set forth in *Sedlacek*, *Wright* does not require us to reach a different decision in the case at bar.

¶ 19 Finally, as an alternative argument, the plaintiff asks that we hold that *Sedlacek* was wrongly decided and that we instead analyze this case under a traditional duty analysis and find that the Rakowskis did owe her a duty to protect her from Myers' dog. However, as we believe that *Sedlacek* is a sound decision, we decline the plaintiff's invitation to depart from that authority.

¶ 20 CONCLUSION

¶ 21 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 22 Affirmed.