

ENTERED

MAR 27 2014

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Hon. Leslie Ghiz

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

FOR COURT USE ONLY	
S. C. Line # :	18

VIVYKA RIVERA, a minor, et al.,  
Plaintiff,

CASE NO. A1104516

-v-

JUDGE LESLIE E. GHIZ

CINCINNATI-HAMILTION COUNTY  
COMMUNITY ACTION AGENCY, et  
al.

ENTRY GRANTING SUMMARY  
JUDGMENT IN FAVOR OF  
DEFENDANT CINCINNATI-  
HAMILTON COUNTY  
COMMUNITY ACTION AGENCY

Defendants.

Presently before the Court is a Motion for Summary Judgment filed by the Defendant Cincinnati-Hamilton County Community Action Agency (hereafter CAA). This summary judgment issue involves a personal injury sustained by the plaintiff and weather the defendant had a duty to supervise the Plaintiff, safeguard the tools of Mr. Rivera or to make the premises safe for an entrant.

**FACTUAL BACKGROUND**

On April 15, 2010, Plaintiff Vivyka Rivera cut her fingers with a box cutter that belonged to her father, Plaintiff Ruben Rivera.<sup>1</sup> The unwitnessed incident occurred in the upstairs of the rented townhome of Vivyka's mother, Plaintiff Jennifer Sanchez.<sup>2</sup>

At some point before the accident, Ms. Sanchez requested that maintenance be performed to an area of drywall in her upstairs bathroom.<sup>3</sup> On the afternoon of April 15, 2010, Josh Hill, a

<sup>1</sup> Deposition of Ruben Rivera attached as Defendant's Exhibit A to Motion for Summary Judgment.

<sup>2</sup> *Id.*

<sup>3</sup> Deposition of Jennifer Sanchez attached as Exhibit B to Motion for Summary Judgment.

COURT OF COMMON PLEAS ENTER	
HON. LESLIE GHIZ	
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.	

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY

RESEARCH REPORT  
NO. 1000

BY  
J. H. GOLDSTEIN  
AND  
R. F. W. WILSON

RESEARCH REPORT  
NO. 1000

BY  
J. H. GOLDSTEIN  
AND  
R. F. W. WILSON

RESEARCH REPORT  
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AND  
R. F. W. WILSON

maintenance man, went to Ms. Sanchez's home to perform the drywall repair.<sup>4</sup> As Mr. Hill began working on the drywall, Mr. Rivera believed that Mr. Hill lacked experience and offered his opinion on how to repair the drywall.<sup>5</sup> Mr. Rivera supplied Mr. Hill with tools to fix the drywall; of these was the box cutter in question.<sup>6</sup>

Around this time Ms. Sanchez, who was downstairs with the children, called Mr. Rivera downstairs for his assistance.<sup>7</sup> Mr. Rivera admitted that he did not give instructions to Mr. Hill as to what he was supposed to do with his box cutter after he completed the repair.<sup>8</sup> Mr. Hill later finished the work leaving Mr. Rivera's box cutter in the bathroom.<sup>9</sup> Vivyka and her brother Ruben II later went upstairs by themselves.<sup>10</sup> At some point while the children were upstairs and while Ms. Sanchez and Mr. Rivera were downstairs they heard Vivyka scream, where they found that Vivyka had cut herself with the box cutter.<sup>11</sup>

Defendant CAA filed a Motion for Summary Judgment on June 24, 2013 arguing that CAA had no duty to supervise Vivyka Rivera or to Safeguard Mr. Rivera's Tools and that there are no facts supporting a Landlord-Tenant Act violation. The Plaintiff filed a Reply Memorandum on September 10, 2010 and the Defendant filed a Reply on September 30, 2013. The Court then heard oral arguments on this matter on March 4, 2014.

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<sup>4</sup> *Rivera* Deposition.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

## SUMMARY JUDGMENT STANDARD

Summary judgment is a procedural device that is employed to dispose expeditiously and economically legal claims that have no factual foundation.<sup>12</sup> Summary judgment was born of the belief that litigation should be promptly terminated whenever there is nothing to try.<sup>13</sup>

The granting of summary judgment in Ohio is governed by Rule 56(C) of the Ohio rules of Civil Procedure, which states in pertinent part as follows:

“Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of facts, if any, timely filed in the action, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence of stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion are adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence of stipulation construed most strongly in his favor.”

Today, the standard for rendering summary judgment is equated with that used for directed verdicts: whether there is but one reasonable conclusion as to the verdict when the

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<sup>12</sup> See *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 106 S. Ct. 2548.

<sup>13</sup> See *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St. 2d 1, 433 N.E.2d 615.

evidence is construed most strongly in the non-moving party's favor.<sup>14</sup> Unique to the issue of summary judgment is the question of whether there is a genuine issue of material fact that must be decided by the fact finder.<sup>15</sup>

In response to a motion for summary judgment, the non-moving party may not simply rely on his pleadings if he bears the burden of proof at trial.<sup>16</sup> The law requires that the non-moving party must produce evidence, in some form permitted by Civil Rule 56(C), sufficient to justify the court's conclusion that a trier of fact could properly render a verdict in his or her favor.<sup>17</sup>

Following the principles of law in the cases cited above, and construing the evidence most strongly against the moving party as the rule requires, if there is not a genuine issue of material fact, a court is required to grant summary judgment in favor of the moving party.<sup>18</sup>

### LEGAL ANALYSIS

The Court believes the correct resolution of the issue requires a determination, viewing the evidence in the Plaintiff's favor, of whether the Defendant had a duty to supervise Vivyka Rivera, to Safeguard Mr. Rivera's Tools and whether the defendant violated the Landlord-Tenant Act.

The Supreme Court of Ohio held in *Shump v. First Continental-Robinwood Assocs.*, that a landlord only has a duty with respect to the concealment or failure to disclose known, non-obvious latent defects. Additionally, the Supreme Court of Ohio held in *Huston v. Konieczny.*,

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<sup>14</sup> See *Celotex*.

<sup>15</sup> See *Rayburn v. J.C. Penney Outlet Store* (1982), 4 Ohio App. 3d 463, 455 N.E.2d 1167.

<sup>16</sup> See *Celotex*.

<sup>17</sup> *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 106 S. Ct. 2505.

<sup>18</sup> *Harless v. Willis Day Warehouse Co.* (1978), 54 Ohio St. 2d 64, 375 N.E.2d 46.

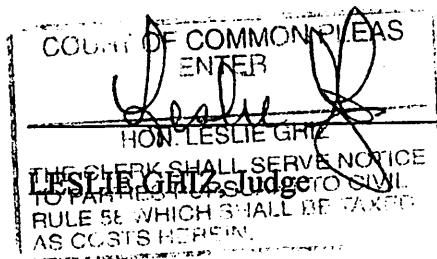
that "A parent may ... be held responsible for failure to exercise reasonable control of the child when the parent knows or should know that injury to another is a probable consequence."<sup>19</sup>

Here it was Mr. Rivera's tool that was left in the apartment.<sup>20</sup> Further, Mr. Rivera knew that his tools were unattended and the tools were a possible source of harm to his child.<sup>21</sup> Therefore, because Mr. Rivera knew about the existence of a possible source of harm to the child and failed to take steps to warn or supervise the Plaintiff, there was no duty on the landlord to supervise or safeguard the Plaintiff. Additionally, there is no genuine issue of material fact with regard to the alleged Landlord-Tenant Act Violation. Therefore the Defendant is entitled to Summary Judgment on all claims.

### CONCLUSION

Based on the above facts and analysis, it is the Court's determination that a fact finder could not rationally return a verdict in the Plaintiff's favor. Construing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact with regard to the duty owed to the Plaintiff by the Defendant, Cincinnati-Hamilton County Community Action Agency. Therefore, the Court finds that Defendant is entitled to Summary Judgment and is dismissed from the claim.

SO ORDERED



<sup>19</sup> *Houston v. Konieczny*, 52 Ohio St. 3d 214 (1990).

<sup>20</sup> *Rivera* Deposition.

<sup>21</sup> *Id.*

**CERTIFICATE OF SERVICE**

The Court hereby certifies that a copy of the above Entry Granting Summary Judgment was served upon the following on March 27, 2014:

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