

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1487**

Paul Boyum,
Appellant,

vs.

Federal National Mortgage Association "Fannie Mae", et al.,
Respondents.

**Filed June 7, 2021
Affirmed
Segal, Chief Judge**

Isanti County District Court
File No. 30-CV-18-959

Dean M. Salita, Schmidt-Salita Law Firm, Minneapolis, Minnesota (for appellant)

Cara C. Passaro, Stich, Angell, Kreidler & Unke, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Segal, Chief Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the district court's grant of summary judgment dismissing his negligence suit for injuries he sustained while touring a foreclosed home that had been listed for sale. Appellant claims that the district court erred in determining that appellant failed to establish a genuine issue of material fact concerning whether respondents had

constructive knowledge of the alleged defect that led to appellant's injury. Appellant also asserts that the district court erred in determining that Minn. Stat. § 541.051 (2020), which limits causes of action for injuries arising out of improvements to real property, was applicable. Because we conclude that appellant failed to establish a genuine issue of material fact on an essential element of his negligence claim, we affirm the grant of summary judgment in favor of respondents.

FACTS

The following facts are undisputed. Appellant Paul Boyum visited a single-family home (the property) on November 15, 2012, to view it for potential purchase. While touring the property, Boyum stepped on a sump-pump fixture in the basement. The sump pump was one of three in the basement. The cover of the sump-pump fixture flipped off, and Boyum's left leg fell into the basket of the sump pump where it struck a mechanical piece, causing significant injuries to Boyum's ankle.

The property was owned by respondent Federal National Mortgage Association (Fannie Mae) due to foreclosure. The house was listed for sale on an "as is" basis with respondents Century 21 Moline Realty, Inc. and Joslyn Panka Solomon, the Century 21 regional listing agent for Fannie Mae properties. Solomon was responsible for observing whether the property was vacant, changing the locks after the occupants left, examining the property, working with a safety contractor, ensuring utilities were working, and reporting safety issues to Fannie Mae.

Before Boyum's visit, a contractor for Fannie Mae had arranged for three professional inspections of the home, including an overall inspection, a septic-system

inspection, and a plumbing inspection. Neither the overall nor the septic-system inspection noted any safety hazards at the property. The plumbing-inspection report noted concerns with two of the sump-pump fixtures located in the basement as follows: “Both of them have electrical conduit as the drain pipe glued to some pvc. It’s a mess.” The report contained no notes or warnings concerning the condition of the third sump-pump fixture—the fixture involved in Boyum’s injury.

Boyum filed a complaint against Fannie Mae, Century 21, and Solomon in October 2018 alleging negligence and negligence per se. Respondents moved for summary judgment on the grounds that the suit was barred by the two-year statute of limitations set forth in Minn. Stat. § 541.051 and that they were entitled to judgment as a matter of law based on the undisputed facts. The district court found that, while Minn. Stat. § 541.051 was applicable, Boyum’s claims came within an exception to the two-year statute of limitations and were thus timely. The court held that respondents were, nevertheless, entitled to summary judgment because Boyum failed to establish a genuine issue of material fact on essential elements of both his negligence and negligence per se claims. Boyum appeals.

DECISION

Boyum argues in this appeal that the grant of summary judgment was in error because he established a genuine issue of material fact concerning whether respondents breached a duty of due care to discover and repair or warn him about the unsecured sump-

pump fixture cover.¹ Boyum also argues that the district court erred in applying the limitations period of Minn. Stat. § 541.051, even though the district court found that Boyum’s complaint was not time-barred because it was covered by an exception to the limitations period.

On appeal from a grant of summary judgment, we apply a de novo standard of review “to determine ‘whether there are genuine issues of material fact and whether the district court erred in its application of the law.’” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)). Summary judgment is appropriate if the party who bears the burden of proof fails to bring forward evidence sufficient to create a genuine issue of material fact in support of one or more essential elements of his or her claim. *Eng’g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013). We “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

I. The district court did not err in concluding that Boyum failed to establish a genuine issue of material fact on the issue of whether respondents had constructive knowledge of the unsecured sump-pump fixture cover.

The elements of a negligence claim include proof of (1) the existence of the duty of care, (2) a breach of that duty, and (3) an injury; and proof that (4) the breach of duty was the proximate cause of the injury. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn.

¹ Boyum did not appeal the grant of summary judgment on his claim of negligence per se.

1995). A defendant is entitled to summary judgment in a negligence action when there is a complete lack of proof on any of the four elements necessary for recovery. *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001).

Owners and possessors of real property generally owe a duty to use reasonable care for the safety of those permitted to enter their property. *Peterson v. Balach*, 199 N.W.2d 639, 647 (Minn. 1972). This duty includes the continuing duty to inspect and maintain the premises in a “reasonably safe condition for their use.” *Bonniwell v. St. Paul Union Stockyards Co.*, 135 N.W.2d 499, 502 (Minn. 1965). “If dangerous conditions are discoverable through reasonable efforts, the landowner must either repair the conditions or provide invited entrants with adequate warnings.” *Olmanson v. LeSueur County*, 693 N.W.2d 876, 881 (Minn. 2005) (citing Restatement (Second) of Torts § 343 cmt. d (1965)). However, “[i]f a reasonable inspection does not reveal a dangerous condition, such that the landowner has neither actual nor constructive knowledge of it, under the theory of negligence the landowner is not liable for any physical injury caused to invited entrants by the dangerous condition.” *Id.* (citing *Hanson v. Christensen*, 145 N.W.2d 868, 873-74 (Minn. 1966)).

Here, the district court found, based on the undisputed facts, that respondents were either owners or possessors of the house and, thus, owed a duty of care to Boyum as an

invitee on the property.² But the district court concluded that Boyum presented no evidence that respondents “failed to exercise the reasonable care necessary.” We agree.

Three inspections of the house were conducted by professional contractors, including an overall inspection and a plumbing inspection. And Boyum failed to present evidence that the inspections were not competently performed or otherwise failed to satisfy the duty of reasonable care. In his opposition to the motion for summary judgment, Boyum submitted a declaration from his expert witness, but the declaration contains no opinion questioning the competence of the inspectors or that their reports fell below reasonable standards of due care. Boyum also presented no evidence, and has not argued on appeal, that respondents otherwise had actual knowledge of the alleged defect. Instead, his argument focuses solely on the claim that the question of whether respondents had constructive knowledge of the alleged defect is a question for a jury to resolve and that the district court erred in deciding it as a matter of law. We are not convinced.

Boyum raises several arguments on the issue of constructive knowledge. First, he claims that constructive knowledge can be imputed to an owner or possessor if the condition has persisted long enough that a reasonable inspection should have revealed it. While this may be true, Boyum ignores the fact that, in response to a motion for summary judgment, the burden was on him to bring forward evidence to support his assertion. *Messner v. Red Owl Stores*, 57 N.W.2d 659, 661-62 (Minn. 1953). Boyum presented no

² Respondents argue that not all of the respondents were owners or possessors of the property. Nevertheless, for the purposes of our analysis, we assume without deciding that the district court was correct and that they all owed a duty to Boyum.

evidence about how long the alleged defect had existed or how long respondents had been in possession of the property. *See Rinn v. Minn. State Agric. Soc’y*, 611 N.W.2d 361, 365 (Minn. App. 2000) (“[S]peculation as to who caused the dangerous condition, or how long it existed, warrants judgment for the landowner.”). Boyum’s remaining arguments all essentially focus on his claim that, when there is a “close case,” the courts should avoid summary judgment and allow a case to proceed to a jury. Again, however, Boyum has failed to present the evidence necessary to make this a “close case” on the issue of constructive knowledge.

Three professional inspections were conducted on behalf of respondents with no safety issue noted in connection with the sump-pump fixture at issue in this case. Fannie Mae only owned the house through foreclosure and the other two respondents were real-estate agents for a house that was listed for sale “as is.” We further note that Boyum testified in his deposition that the sump-pump fixture cover at issue in this case was flush with the floor, thereby rendering it more difficult for respondents to be aware of any hazard posed by the cover. Under these circumstances, we discern no error in the district court’s ruling that Boyum failed to create a genuine issue of material fact on the question of constructive knowledge of the alleged defect.

II. This court need not decide the statute-of-limitations issue.

Boyum devotes a significant portion of his brief, as do respondents, to the issue of whether the limitations period set forth in Minn. Stat. § 541.051, subd. 1(a), is applicable

to Boyum’s action.³ The district court found the section to be applicable, but held that the claim was not time-barred because it fell within an exception to the limitations period that applies to “actions for damages resulting from negligence in the maintenance, operation or inspection of the real property improvement against the owner or other person in possession.” Minn. Stat. § 541.051, subd. 1(d). Because we affirm the district court’s grant of summary judgment on Boyum’s underlying negligence claim, we need not address the Minn. Stat. § 541.051 issues. Moreover, we note that the district court’s application of Minn. Stat. § 541.051 to this case does not alter in any way the negligence analysis. *See, e.g., Olmanson*, 693 N.W.2d at 881-82 (“[U]nder the plain language of Minn. Stat. § 541.051, [what is now subdivision 1(d)], owners or other persons in possession retain their ordinary landowner liability for negligent maintenance, operation, and inspection of real property improvements.”); *Monson v. Suck*, 855 N.W.2d 323, 329 (Minn. App. 2014) (accord), *review denied* (Minn. Dec. 30, 2014).

Affirmed.

³ Minn. Stat. § 541.051, subd. 1(a), provides in relevant part: “[N]o action by any person in contract, tort, or otherwise to recover damages for any injury . . . arising out of the defective and unsafe condition of an improvement to real property, shall be brought against . . . the owner of the real property more than two years after the cause of action accrues.”