STATE OF MICHIGAN

COURT OF APPEALS

TERESA GEST, as Personal Representative of the Estate of LARRY GEST, Deceased,

Plaintiff-Appellant,

v

BURR OAK TOOL & GAUGE COMPANY,

Defendant-Appellee.

UNPUBLISHED
May 24, 1996

No. 184136
LC No. 92-1007-NO

Before: Sawyer, P.J., and Griffin, and M. G. Harrison*, JJ

PER CURIAM.

Plaintiff appeals the grant of defendant's motion for summary disposition of plaintiff's intentional tort action against defendant in which she sought to recover for decedent's death by electrocution during his employment with defendant. We affirm.

Plaintiff challenges the trial court's grant of defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Such a motion may be granted when, after reviewing the entire record, including pleadings, affidavits, depositions, admissions and any other documentary evidence in a light most favorable to the nonmovant, the trial court determines that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 115; 512 NW2d 13 (1993). We review de novo a trial court's grant of summary disposition. *Cipri v Bellingham Frozen Foods, Inc*, 213 Mich App 32, 41; 539 NW2d 526 (1995).

As a general rule, an employee's work-related injury is covered by the exclusive remedy provision of the Worker's Disability Compensation Act [WDCA], MCL 418.131(1); MSA 17.237(131)(1); however, an exception exists where the injury is the result of an "intentional tort," which is defined in § 131 of the WDCA:

> . . . . An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An

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* Circuit judge, sitting on the Court of Appeals by assignment.

> employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge.
> . . .

We have repeatedly acknowledged the difficulty of determining what actions by an employer are sufficient to constitute an intentional tort. See, e.g., *Golec v Metal Exchange Corp*, 208 Mich App 380, 386; 528 NW2d 756 (1995); *Benson v Callahan Mining Corp*, 191 Mich App 443, 450-45; 479 NW2d 12 (1991) (Sawyer, J., concurring). It is clear, however, that under § 131 a plaintiff must allege more than mere knowledge on the part of a defendant employer that injury was certain to occur to someone, somewhere, sometime. *Agee v Ford Motor Co*, 208 Mich App 363, 367 n 3; 528 NW2d 768 (1995). Indeed, the intentional tort exception of § 131 "is not triggered simply because the employer had actual knowledge that an injury was likely to occur at some point during the performance of a given task." *Oaks v Twin City Foods, Inc*, 198 Mich App 296, 297; 497 NW2d 196 (1993).

In the present case, we conclude, as did the circuit judge, that plaintiff's complaint and the facts supporting it fail to meet the threshold requirements for alleging an intentional tort under § 131 of the WDCA. The documentary evidence, viewed in a light most favorable to plaintiff, reveal that defendant was repeatedly advised of the need to implement an electrical lockout procedure. Despite these advisements, however, defendant did nothing more than purchase a few locks prior to decedent's death, and did not fully implement a lockout system until after decedent's death. The evidence also reveals prior incidents of electrical injuries at defendant's plant; however, none of these incidents occurred under circumstances similar to decedent's situation, that is, while working on a press with the main power switch turned on.

It is without question that 440-volt electricity is dangerous and that decedent was not a formally trained electrician. Nonetheless, the evidence is uncontroverted that decedent often worked on the electrical components of the presses and was sent out on service calls.

These facts support the conclusion that defendant may have provided an unsafe working environment for its employees, who were expected to cross job titles and work with electricity. However, these facts fail to support the necessary conclusion that defendant had actual knowledge that an injury was certain to occur and yet wilfully disregarded that knowledge. MCL 418.131(1); MSA 17.237(131)(1). Defendant's failure to provide a safe working environment is insufficient to support an intentional tort claim under § 131 of the WDCA. The circuit judge properly granted defendant's motion for summary disposition.[1]

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael G. Harrison

[1] In view of our holding that plaintiff's complaint is barred by the exclusive remedy provision of the Worker's Disability Compensation Act, we find it unnecessary to address the issue of proximate cause.