

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN THRIFT and BRENDA
THRIFT, Individually and as Next Friend
of JAMIE L. THRIFT, JOSEPH S.
THRIFT and JUSTIN D. THRIFT, minors

UNPUBLISHED

October 15, 1996

Plaintiffs–Appellants,

v

No. 182045

LC No. 93-460447

DETROIT EDISON,

Defendant–Appellee.

Before: Taylor, P.J. and Markey and N. O. Holowka,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court’s order granting summary disposition in favor of defendant, pursuant to MCR 2.116(C)(10), in this negligence action. We affirm.

Plaintiff, Stephen Thrift, and a coworker (Copeland), were members of a paving crew attempting to pave a driveway in Oxford, Michigan. Copeland was operating a lever that controlled a mobile dumping box on the crew’s dump truck. After Copeland raised the box, its top came into contact with defendant’s power lines. Plaintiff then attempted to pull Copeland from the lever and both suffered electrical shock. Plaintiffs sued defendant, alleging that it had breached a duty to prevent potential hazards to life resulting from the installation and maintenance of high voltage power lines. The trial court granted summary disposition holding that defendant owed no duty.

Plaintiffs contend that the trial court erred in holding that defendant did not owe a duty. We disagree. A motion for summary disposition is warranted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to

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

judgment as a matter of law. Giving the benefit of every reasonable doubt to the nonmoving party, the trial court must determine whether a record might develop that would leave open an issue upon which reasonable minds might differ. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

In general, negligence is conduct involving an unreasonable risk of harm. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993). The elements of negligence are (1) a legal duty owed by the defendant to the plaintiff, (2) a breach or violation of the legal duty by the defendant, (3) damages suffered by the plaintiff, and (4) the breach was a proximate cause of the damages suffered. *Id.* Duty involves the question of whether the defendant is under any obligation for the benefit of the particular plaintiff and is a question for the court to decide as a matter of law. *Premo v General Motors Corp*, 210 Mich App 121, 124; 533 NW2d 332 (1995).

In *Koehler v Detroit Edison Co*, 383 Mich 224, 231; 174 NW2d 827 (1970), the Supreme Court, in holding that the defendant owed no duty, found dispositive the fact that the decedent and his coworkers were aware of the importance of staying away from the power lines as well as the fact that the defendant had not been apprised that construction was to take place in that area on that day. See also *Carr v Detroit Edison Co*, 49 Mich App 332, 340; 212 NW2d 70 (1973). We have recently determined that, in order to find a duty, the defendant must at least be notified of the activities near power lines. *Parcher v Detroit Edison Co*, 209 Mich App 495, 496-499; 531 NW2d 724 (1995), lv granted 450 Mich 998 (1996). Furthermore, where the plaintiff is aware of the location of wires and has been warned to avoid them, the defendant owes no duty to move the wires or otherwise warn the plaintiff of potential dangers presented by them. *Id.*

Our review of the record reveals that neither plaintiff, Copeland, nor the homeowners informed defendant that construction on the driveway involving the use of commercial vehicles was to occur. Moreover, plaintiff and Copeland testified that they were well aware of the need to stay away from the power lines with the paving equipment on the day of the accident. Under these circumstances, the trial court properly held that defendant did not owe a duty to inform the construction crew of the hazards of working near the overhead lines.

Having determined that defendant owed no duty to plaintiffs, it is not necessary to address plaintiffs' argument that the trial court improperly determined that defendant did not breach its duty.

Affirmed.

/s/ Clifford W. Taylor

/s/ Jane E. Markey

/s/ Nick O. Holowka