

STATE OF MICHIGAN
COURT OF APPEALS

CLYDE LYNOTT, Personal Representative of the
Estate of JAMES P. LYNOTT, Deceased,

Plaintiff–Appellant,

v

MASCOTECH BRAUN ENGINEERING
COMPANY,

Defendant–Appellee,

and

IVAN DOVERSPIKE CO., INC. and
ELCON DESIGN, INC.,

Defendants.

UNPUBLISHED

November 1, 1996

No. 185566

LC No. 93-325079

Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant Mascotech pursuant to MCR 2.116(C)(10)¹ in this wrongful death case. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted 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 judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine

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

whether a record might be developed 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).

Plaintiff argues that there existed a material factual dispute as to whether defendant Mascotech owed a duty to provide a reasonably safe work environment to the decedent by showing that the work performed by the decedent was inherently dangerous or by showing that defendant Mascotech retained control of the work. Generally, an employer of an independent contractor is not liable for the contractor's negligence or the negligence of its employees. *Bosak v Hutchinson*, 422 Mich 712, 724; 375 NW2d 333 (1985). An exception to the general rule exists where the employer or landowner retains control of the work being performed by the independent contractor or where the work performed by the contractor is inherently dangerous. *Funk v General Motors Corp*, 392 Mich 91, 101; 220 NW2d 641 (1974); *Bosak, supra* at 724. Upon careful review of the record, we conclude that plaintiff failed to make out a prima facie case under either exception. Defendant Mascotech's occasional visits to the decedent's worksite do not evidence the exercise of an "unusually high degree of control" over the decedent's task. *Funk, supra* at 105. Moreover, the decedent's injury resulted from the fact that he commenced his task without first disengaging the machine. In other words, the danger was not inherent in the task itself, but in the manner in which the decedent performed the task. *Oberle v Hawthorne Metal Products Co*, 192 Mich App 265, 268; 480 NW2d 330 (1991).

Affirmed.

/s/ Myron H. Wahls
/s/ Mark J. Cavanagh
/s/ John F. Kowalski

¹ Defendant moved for summary disposition on the basis of MCR 2.116(C)(8) and (10). However, because it appears that the trial court considered matters outside the pleadings in granting defendant's motion, we conclude that summary disposition was granted pursuant to MCR 2.116(C)(10).