STATE OF MICHIGAN

COURT OF APPEALS

DAVID J. WADE,

Plaintiff-Appellant,

v

ROUGE STEEL COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 13, 1996

No. 187781
LC No. 94-418426

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). 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 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 this is a premises liability case, but the trial court incorrectly assessed it as an independent contractor case under the rule of *Funk v General Motors Corp,* 392 Mich 91; 220 NW2d 641 (1974). Plaintiff, relying on *Perry v McLouth Steel Corp,* 154 Mich App 284, 299-300; 397 NW2d 284 (1986), argues that the *Funk* standard should not have been applied to his case because defendant should be held liable for its own negligence in maintaining unsafe premises.

As a general rule, an owner of property is not liable to an employee of an independent contractor for negligence. *Butler v Ramco-Gershenson, Inc,* 214 Mich App 521, 531; 542 NW2d 912 (1995). In such situations, the actual employer of the worker is immediately responsible for job safety and for maintaining a safe workplace. *Id*. at 531-532. We conclude that the trial court did not err. Unlike the situation in *Perry*, plaintiff's injuries were related to the performance of his duties, not

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

the condition of the premises. See *Perry*, *supra* at 298. Plaintiff has presented no evidence that defendant maintained unsafe premises. Plaintiff thus has failed to establish a genuine issue of fact regarding whether defendant's premises were unsafe.

Plaintiff argues that even if defendant's conduct falls under the general rule that a business owes no duty to a subcontractor's employee for negligence, summary disposition was nevertheless inappropriate because defendant's conduct falls under an exception to that rule. This exception provides that the business owner owes the subcontractor's employee a duty where the owner retains control of the subcontractor's work. See *Perry*, *supra* at 299. However, the exception requires that the owner retain at least partial control and direction of the actual work. *Samodai v Chrysler Corp*, 178 Mich App 252, 256; 443 NW2d 391 (1989).

In the present case, defendant did not maintain sufficient control over plaintiff's work to fall under the exception. Plaintiff received all of his training and direction from his supervisor at ESM II, Inc., not from defendant. It was plaintiff's supervisor, not anyone from defendant's staff, who told plaintiff to do the pipe replacement that required plaintiff to climb the extension ladder. Defendant did not supply the ladder specifically for plaintiff's use in repairing the pipe; rather, plaintiff simply utilized the first ladder he found. We cannot say that defendant exercised sufficient control over plaintiff's work to bring defendant within the exception to the rule set out in *Funk* and its progeny.

In his final issue, plaintiff contends that the trial court erred in failing to find a genuine issue of material fact that defendant owed plaintiff, a business invitee, a duty to warn of the danger presented by the ladder used by plaintiff. We disagree. As an employee of an independent contractor hired by defendant, plaintiff was a business invitee on defendant's property. *Butler*, *supra* at 532. An invitor may be held liable for an invitee's injuries that result from a failure to warn of a hazardous condition or from the negligent maintenance of the premises or defects in the physical structure of the building. *Id*. at 535. Although an invitor must warn of hidden defects, there is no duty to warn of open and obvious dangers unless the invitor anticipates harm to the invitee despite the invitee's knowledge of the peril. Whether a danger is open and obvious depends upon whether it is reasonable to expect that an average user with ordinary intelligence will discover the danger upon casual inspection. *Eason v Coggins Memorial Christian Methodist Episcopal Church,* 210 Mich App 261, 264; 532 NW2d 882 (1995).

Plaintiff does not argue that there was a hazardous condition on the premises or that the ladder he used was defective. Rather, he argues that ladder should not have been available for his use. However, the ladder used by plaintiff, the top half of an extension ladder, posed a danger that plaintiff could have discovered upon casual inspection. See *Muscat v Khalil*, 150 Mich App 114, 121-122; 388 NW2d 267 (1986). Because any danger posed by the ladder was open and obvious to plaintiff, defendant was under no duty to warn. Furthermore, it was the duty of plaintiff's employer, the independent contractor, to ensure plaintiff's job safety and provide a safe workplace. *Butler*, *supra* at 531.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros