

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH STEMPLEWSKI,

Plaintiff-Appellant,

v

DRAKE ENTERPRISES, INC.,

Defendant-Appellee.

UNPUBLISHED

May 15, 1998

No. 198738

Macomb Circuit Court

LC No. 95-004301 NO

Before: Neff, P.J., and White and D. A. Teeple,* JJ.

MEMORANDUM.

Plaintiff was injured in the course of his employment when his finger was crushed in an unguarded press that he was operating. Plaintiff predicates tort liability on the fact that the press was designed by defendant and lacked appropriate guards or other safety devices to prevent such injuries. However, defendant was granted summary disposition on the basis of the exclusive remedy provision of the Worker's Disability Compensation Act, MCL 418.131; MSA 17.237(131). Plaintiff appeals as of right. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff does not contend that any individual employee of defendant corporation intended harm to befall him. Accordingly, plaintiff must adduce circumstantial evidence to indicate that defendant, or one of its employees, had actual knowledge that injury was certain to occur, and willfully disregarded this knowledge, proximately causing plaintiff's injury. *Travis v Dreis & Krump, Mfg, Inc*, 453 Mich 149, 178-179; 551 NW2d 132 (1996).

Certainty of injury, however, has not been demonstrated. Plaintiff identifies no previous injuries to operators of the press, and suggests at most a high probability that, over time, injury would occur. Such proofs are inadequate. *Id.*, 453 Mich at 174; *Palazzolo v Karmazin Products Corp*, 223 Mich App 141, 154; 565 NW2d 868 (1997). Summary disposition was therefore properly granted. *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 223-224; 555 NW2d 481 (1996).

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

Affirmed.

/s/ Janet T. Neff

/s/ Helene N. White

/s/ Donald A. Teeple