

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CAROLYN PACKER-BELL,

Plaintiff-Appellant,

v

COUNTY OF WAYNE and MARY AVERY,

Defendants-Appellees.

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UNPUBLISHED

January 28, 2000

No. 212371

Wayne Circuit Court

LC No. 97-720318-NI

Before: O’Connell, P.J., and Meter and T. G. Hicks\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendants’ motion for summary disposition pursuant to MCR 2.116(C)(10) in this intentional tort action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff suffered a broken hand in the course of her employment with Wayne County when a file drawer fell out of its track. She brought this action asserting that her injury was the result of an intentional tort, taking the claim outside the exclusive remedy provision of the Worker’s Disability Compensation Act. MCL 418.131(1); MSA 17.237(131)(1). The trial court granted defendants’ motion for summary disposition, finding that plaintiff failed to present evidence that defendants had actual knowledge that an injury would occur and willfully disregarded that knowledge. We review the trial court’s decision whether to grant a motion for summary disposition under MCR 2.116(C)(10) de novo to determine whether any genuine issue of material fact exists that would prevent entering judgment for defendants as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

The exclusive remedy provision of the worker’s compensation act, MCL 418.131(1); MSA 17.237(131)(1), provides:

(1) The right to the recovery of benefits as provided in this act shall be the employee’s exclusive remedy against the employer for a personal injury or occupational

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

disease. The only exception to this exclusive remedy is an intentional tort. 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 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. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

Because the Legislature used the term “actual knowledge,” an intentional tort is not proved by constructive, implied or imputed knowledge that an injury would occur. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 173; 551 NW2d 132 (1996); *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 224; 555 NW2d 481 (1996). A plaintiff may establish an employer’s actual knowledge by showing that a supervisor or manager had actual knowledge that an injury would follow from what the employer deliberately did or did not do. *Travis, supra* at 173-174. The term “certain to occur” must be interpreted as setting forth an extremely high standard. No doubt may exist with regard to whether the injury will occur. *Id.* at 174. Additionally, the employer’s action or failure to act must be more than mere negligence, or a failure to protect a person from foreseeable injury from an appreciable risk of harm. *Id.* at 179. Rather, the employer must “willfully disregard” actual knowledge that an injury is certain. *Id.*

Plaintiff failed to present facts that would support an intentional tort claim. Although defendants may have known that the file cabinet was defective, there was no evidence showing that defendants had actual knowledge that an injury was certain to occur. Although plaintiff presented evidence of previous problems with the cabinets, there was no evidence that prior injuries had been reported to a manager or supervisor. Plaintiff has demonstrated mere negligence, at best. There is no showing that plaintiff was injured as a result of a deliberate act of the employer and that the employer specifically intended an injury.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Patrick M. Meter  
/s/ Timothy G. Hicks