

Court of Appeals, State of Michigan

ORDER

Paul Mission v Estate of John Corbett

Docket No. 294905

LC No. 08-105140-NO

Kathleen Jansen
Presiding Judge

Donald S. Owens

Douglas B. Shapiro
Judges

The Court orders that the February 8, 2011 opinions are hereby VACATED, and a new opinion and concurring opinion are attached.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 17 2011

Date


Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PAUL MISSION,

Plaintiff-Appellant,

v

JULIE CORBETT, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JOHN CORBETT,

Defendant-Appellant,

and

JULIE CORBETT,

Defendant-Appellee.

UNPUBLISHED
February 17, 2011

No. 294905
Wayne Circuit Court
LC No. 08-105140-NO

Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I concur.

Plaintiff testified that defendant advised him there were some bees in a particular area of the roof line. He further testified that the area where the bees swarmed was in a wholly different area of the roofline on the other side of the very large house; and that the bees did not come from the old nest he saw in the gutter, but rather from between the gutter and the shingles where, apparently, bees had made a hidden nest. Given that the warning plaintiff claims he received was not that there were bees in the area where he actually encountered the swarm and given that the bees came from a hidden area, I do not agree that the open and obvious doctrine applies.

However, I do agree that a reasonable jury would have to conclude that plaintiff was more than 50 percent at fault. He chose to work from the roof rather than from a ladder, he did so without appropriate safety equipment, he saw bees in many other areas, and he did not request that defendant or the company he worked for to arrange for an exterminator to treat the roofline before beginning or continuing the work. Moreover, defendant testified that she was unaware of any bees in the area in question or of any large number of bees anywhere on the roofline and there was no evidence to contradict this.

/s/ Douglas B. Shapiro