

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

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CHRISTOPHER PARENT,

Plaintiff-Appellant,

v

QUASAR INDUSTRIES, INC.,

Defendant-Appellee.

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UNPUBLISHED

June 8, 1999

No. 195354

Oakland Circuit Court

LC No. 95-501425 NO

Before: Collins, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff brought this action against defendant seeking damages pursuant to the intentional tort exception to the Worker's Disability Compensation Act ("WDCA"), MCL 418.131(1); MSA 17.237(131)(1), for injuries he sustained while operating a press brake during the course of his employment. The trial court concluded that plaintiff had failed to establish an intentional tort that would permit him to avoid the exclusive remedy provision of the WDCA.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual basis underlying a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence in a light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). The moving party is entitled to judgment as a matter of law only if no genuine issue of material fact exists to warrant a trial. *Id.*

Generally, disability or death benefits under the WDCA are an employee's exclusive remedy for personal injury or occupational disease against an employer who has complied with the act. MCL 418.131(1); MSA 17.237(131)(1); *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 510; 563 NW2d 214 (1997). The statute, however, provides an exception where the employer has committed an intentional tort:

The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist 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 intentional shall be a question of law for the court. [MCL 418.131(1); MSA 17.237(131)(1).]

To avoid the exclusive remedy provision through the intentional tort exception, there must be a deliberate act by the employer and the specific intent that there be an injury. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 169; 551 NW2d 132 (1996); *Palazzola v Karmazin Products*, 223 Mich App 141, 149; 565 NW2d 868 (1997). A deliberate act may be one of commission or omission. *Travis, supra* at 169-170, 191; *Palazzola, supra* at 149. Specific intent to injure exists only when an employer had in mind a conscious purpose to bring about the consequences that caused the plaintiff's injury. *Travis, supra* at 171. When an employer is a corporation, one of its employees must possess the requisite state of mind in order to prove an intentional tort. *Id.* at 171-172.

Where, as here, there is no direct evidence of an employer's intent to injure, a plaintiff may establish the requisite intent by showing that the employer (1) had actual knowledge, (2) that an injury was certain to occur, and (3) willfully disregarded that knowledge. *Id.* at 172; *Palazzola, supra* at 149-150. With regard to the actual knowledge requirement, it is not sufficient that an employer should have known, or had reason to believe, that an injury was certain to occur. *Travis, supra* at 173. Moreover, "[w]hen an injury is 'certain' to occur, no doubt exists with regard to whether it will occur." *Id.* at 174. Whether the facts alleged by the plaintiff are sufficient to constitute an intentional tort is a question of law for the court, and whether the facts are as the plaintiff alleges is a question for the jury. *Id.* at 188.

We conclude that plaintiff failed to establish a genuine issue of material fact with regard to his intentional tort claim. There is no evidence that defendant had actual knowledge that an injury was certain to occur under the circumstances of this case, much less that it willfully disregarded such knowledge. There is no claim, let alone evidence to support a claim, that defendant concealed latent dangers or required plaintiff to work on an unavoidably dangerous machine. To the contrary, it was uncontested that plaintiff was instructed how to use the machine safely, that plaintiff's supervisor personally demonstrated how to use the machine, and that plaintiff's supervisor repeatedly checked to ensure that plaintiff was operating the machine safely. By plaintiff's own admission, the accident occurred because he inadvertently pressed the foot pedal while his hand was within the point of operation, contrary to the warnings and instructions given.

Plaintiff also contends that the machine was inherently dangerous because the machine had been manipulated by defendant, a safer model was available, and the machine allegedly violated industry standards. However, in light of the uncontested fact that there had been no prior accidents, and particularly where plaintiff's supervisors took specific measures to promote the safe operation of the machine, plaintiff's evidence fails to establish a factual question as to whether defendant knew an injury was certain to occur. At best, the evidence presented in this case supports a conclusion that it was

foreseeable that plaintiff could be injured while operating the press in question. However, mere negligence in failing “to act to protect a person who might foreseeably be injured from an appreciable risk of harm” is not sufficient to trigger the intentional tort exception to the WDCA. *Travis, supra* at 178-179.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Kathleen Jansen

/s/ Helene N. White