

STATE OF MICHIGAN
COURT OF APPEALS

WALTER SANDUSKY,

Plaintiff-Appellee,

v

ROCKWELL AUTOMATION, INC.,

Defendant-Appellant,

and

MCINALLY ELECTRIC, INC.,

Defendant,

and

LAPEER METAL STAMPING,

Defendant-Appellee.

UNPUBLISHED

April 4, 2006

No. 257698

Lapeer Circuit Court

LC No. 02-031746-NO

Before: Neff, P.J., and Saad and Bandstra, JJ.

MEMORANDUM.

In this products liability action, defendant Rockwell Automation, Inc. (Rockwell) appeals by leave granted the circuit court's order granting plaintiff's motion to strike its notice naming plaintiff's employer as a nonparty at fault. We reverse and remand. This case is being decided without oral argument under MCR 7.214(E).

Rockwell contends that the plain language of the comparative fault statutes, MCL 600.2957 and MCL 600.6304, support that employers can be identified as nonparties as fault. It argues that there is no conflict between the comparative fault statutes and the exclusive remedy provision of the Workers' Disability Compensation Act, MCL 418.101, *et seq.* Rather, the two can be read in harmony because the comparative fault statutes only allocate fault – they do not impose liability on employers. Rockwell also argues that the trial court erred in both concluding that a duty is required in order to assess fault against a nonparty and that there was no duty owed to plaintiff by his employer in this case. We agree.

This Court's recent decision in *Kopp v Zigich*, 268 Mich App 258; 707 NW2d 601 (2005), which was decided after the filing of the parties' briefs on appeal, resolves this case. In *Kopp*, this Court concluded that the plaintiff's employer could be named as a nonparty at fault and that a finding of a duty is not required to assess fault against a nonparty. *Id.* at 259-261. Therefore, we conclude that *Kopp* is dispositive of this appeal.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra