

STATE OF MICHIGAN
COURT OF APPEALS

CINDIE L. PALMER, Personal Representative of
the Estate of MICHAEL W. PALMER, Deceased,

Plaintiff-Appellant,

v

WESLEY INTERNATIONAL, INC., f/k/a
BUENA VISTA COATINGS, INC., f/k/a FLINT
COATINGS, INC., f/k/a IOWA COATINGS,
INC., f/k/a PROKOTE HOLDING, INC., f/k/a
PROKOTE USA, INC., f/k/a UNIVERSAL
APPLICATORS, INC., WESLEY INDUSTRIES,
INC., HAROLD AUBERT, and DELPHI
AUTOMOTIVE SYSTEMS USA, LLC, f/k/a
DELPHI AUTOMOTIVE SYSTEMS, LLC,

Defendants-Appellees.

UNPUBLISHED
September 28, 2006

No. 262873
Saginaw Circuit Court
LC No. 01-040359-NO

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant Delphi Automotive Systems USA, LLC (Delphi). We affirm. This appeal is being decided without oral argument under the provisions of MCR 7.214(E).

This lawsuit arose out of fatal injuries suffered by plaintiff's decedent while he was employed by defendant Wesley International, Inc. (Wesley), at its plant in Buena Vista, Michigan. Delphi had contracted with Wesley to coat Delphi's brake rotors, and plaintiff's decedent was fatally injured while he was performing maintenance on a brake-rotor-coating machine that was in operation. After plaintiff filed suit against Wesley and Delphi, the trial court granted Delphi's motion for summary disposition under MCR 2.116(C)(10),¹ concluding that

¹ The trial court also granted Wesley's motion for summary disposition. This Court upheld the trial court's ruling. See *Palmer v Wesley International, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 2005 (Docket No. 262873). This Court did not
(continued...)

Delphi was not liable to plaintiff because Delphi was a separate legal entity from Wesley, because the location where the injury occurred was not owned by Delphi, and because the only relationship that Delphi had with the decedent was through its contract with Wesley to coat Delphi's brake rotors. Plaintiff later moved for reconsideration, and the court denied the motion.

Plaintiff argues that that the trial court's rulings were erroneous. Plaintiff contends that Delphi was liable to plaintiff as a general contractor who failed to implement proper safety procedures. She contends that Delphi retained control over the day-to-day operations of Wesley's plant and was liable to plaintiff as a general contractor under the "common work area" doctrine. We disagree.

We review de novo a trial court's decision with regard to a motion for summary disposition. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). Moreover, "[t]his Court reviews a trial court's decision regarding denial of a motion for rehearing or reconsideration for an abuse of discretion." *Ensink v Mecosta Co Gen Hosp*, 262 Mich App 518, 540; 687 NW2d 143 (2004).

Generally, a general contractor is not liable for the negligent acts of independent subcontractors and their employees. *Ormsby, supra* at 53. However, a general contractor may be liable for the negligence of an independent contractor under the "common work area" doctrine if

(1) the defendant, either the property owner or general contractor, failed to take reasonable steps within its supervisory and coordinating authority (2) to guard against readily observable and avoidable dangers (3) that created a high degree of risk to a significant number of workmen (4) in a common work area. [*Id.* at 54.]

Contrary to plaintiff's assertion, we conclude that the common work area doctrine does not apply in this case. First, in *Ghaffari v Turner Constr Co*, 473 Mich 16, 20; 699 NW2d 687 (2005), the Court stated that the common work area doctrine applied "in cases involving construction projects[.]" See also, generally, *Funk v General Motors Corp*, 392 Mich 91; 220 NW2d 641 (1974), overruled in part on other grounds by *Hardy v Monsanto Enviro-Chem Systems, Inc*, 414 Mich 29; 323 NW2d 270 (1982). This case did not involve a construction project. Rather, Delphi contracted with Wesley to coat its brake rotors.

Second, there was no "common work area" in this case. Plaintiff contends that there was a common work area here because Delphi employees, Wesley employees, and employees from another company, BBK, Ltd. (BBK),² were allegedly working side-by-side to "debug" the rotor-coating machine on which plaintiff's decedent was injured. However, the alleged fact that these

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address the claim against Delphi in the earlier opinion because of Delphi's involvement in bankruptcy proceedings. We address the claim now because we have been given permission to do so by the pertinent bankruptcy court.

² BBK was a corporate restructuring company, allegedly hired by Delphi, brought in to assist with the financing and monitor the production goals of the Wesley plant.

employees were all involved in the debugging process of the machine does not automatically mean that Wesley's plant was a common work area for purposes of applying the common work area doctrine. In *Plummer v Bechtel Constr Co*, 440 Mich 646, 667; 489 NW2d 66 (1992), our Supreme Court stated as follows:

The common work area formulation was an effort to distinguish between a situation where employees of a subcontractor were working in isolation from employees of other subcontractors and a situation where employees of a number of subcontractors were working in the same area.

Similarly, in *Ormsby*, *supra* at 57 n 9, the Court stated:

We thus read the common work area formulation as an effort to distinguish between a situation where employees of a subcontractor were working on a unique project in isolation from other workers and a situation where employees of a number of subcontractors were all subject to the same risk or hazard. In the first instance, each subcontractor is generally held responsible for the safe operation of its part of the work. In the latter case, where a substantial number of employees of multiple subcontractors may be exposed to a risk of danger, economic considerations suggest that placing ultimate responsibility on the general contractor for job safety in common work areas will render it more likely that the various subcontractors . . . will implement or that the general contractor will himself implement the necessary precautions and provide the necessary safety equipment in those areas. [Internal citations and quotations marks omitted.]

This case did not involve a number of subcontractors working in the same area because there were no multiple and pertinent subcontractor/general contractor relationships involved in this case. Instead, Delphi contracted with Wesley to coat Delphi's brake rotors, and BBK was brought in to assist with the financing and monitor the production goals of the Wesley plant. In our view, these relationships did not render the location of the decedent's injury a "common work area" for purposes of the common work area doctrine.

The common work area doctrine did not apply in this case, and thus the trial court did not err in granting summary disposition to Delphi and in denying plaintiff's motion for reconsideration.³

We additionally note that, contrary to plaintiff's implication, Delphi was not liable to her under the "retained control" doctrine. In *Ormsby*, *supra* at 60, the Court explained that "[t]he doctrines of 'common work area' and 'retained control' are not two distinct and separate" doctrines. The Court explained:

³ We note that in *White v Chrysler Corp*, 421 Mich 192, 199-200; 364 NW2d 619 (1985), the Court stated that "there is an absence of authority for the imposition of tort liability on an employer for a contractor's failure to observe workplace safety precautions at a location other than premises owned by the employer of the contractor."

[U]nder the “common work area doctrine,” a general contractor may be held liable for the negligence of its independent subcontractors only if all the elements of the four-part “common work area” test . . . have been satisfied. Further, the “retained control doctrine” is subordinate to the “common work area doctrine” and simply stands for the proposition that when the “common work area doctrine” would apply, and the property owner had stepped into the shoes of the general contractor, thereby “retaining control” over the construction project, that owner may likewise be held liable for the negligence of its independent subcontractors. [Id.]

Therefore, a theory of retained control is only relevant to the extent that the common work area doctrine applies, and it only applies to premises owners. Here, the common work area doctrine does not apply, and Delphi was not the premises owner. Consequently, the retained control doctrine is inapplicable here.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Alton T. Davis