

United States Court of Appeals
For the Eighth Circuit

No. 13-2358

Paul Burcham; Patty Burcham

Plaintiffs - Appellants

v.

Weyerhaeuser NR Company

Defendant - Appellee

Bituminous Insurance Company; Mike Alexander Logging

Intervenor Plaintiffs

Appeal from United States District Court
for the Western District of Arkansas - Texarkana

Submitted: February 7, 2014

Filed: March 25, 2014

[Unpublished]

Before LOKEN, BYE, and COLLOTON, Circuit Judges.

PER CURIAM.

Paul and Patty Burcham (the Burchams) appeal the district court's¹ adverse grant of summary judgment in their diversity negligence action which arose from injuries Paul Burcham sustained while using a chainsaw to remove timber. Upon de novo review of the record² and the district court's application of state law, see Day v. Case Credit Corp., 427 F.3d 1148, 1152 (8th Cir. 2005), we affirm. Specifically, we find that even assuming that the record established genuine issues of material fact on whether Weyerhaeuser NR Company (WNR) undertook to provide a safe work environment, a jury would be unable to conclude that there was negligence on WNR's part. See Stoltze v. Ark. Valley Elect. Coop. Corp., 127 S.W. 3d 466, 469-70 (Ark. 2003) (one exception to general rule that employer is not responsible for injuries sustained by independent contractor's employees is when employer undertakes to perform certain duties and negligently fails to perform them or performs them negligently); see also Wagner v. Gen. Motors Corp., 258 S.W.3d 749, 753-54 (Ark. 2007) (essential elements of negligence claim); Bess v. Herrin, 831 S.W. 2d 907, 908 (Ark. 1992) (negligence cannot be presumed from mere happening of accident). The judgment of the district court is affirmed.

¹The Honorable Susan O. Hickey, United States District Judge for the Western District of Arkansas.

²We find no merit to the Burchams' contentions that the district court did not construe the record in a light most favorable to them, see McKenney v. Harrison, 635 F.3d 354, 358 (8th Cir. 2011), or improperly made credibility determinations, see Coker v. Ark. State Police, 734 F.3d 838, 843 (8th Cir. 2013).