

RENDERED: APRIL 8, 2016; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000992-MR

GREGORY L. CAMPBELL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARY SHAW, JUDGE  
ACTION NO. 13-CI-001331

PRO VIDEO AUDIO PRODUCTIONS, INC.

APPELLEE

AND

NO. 2014-CA-001108-MR

KENTUCKY EMPLOYERS MUTUAL  
INSURANCE COMPANY, (KEMI) AND  
GREGORY L. CAMPBELL

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORALBE MARY SHAW, JUDGE  
ACTION NO. 13-CI-001331

PRO VIDEO AUDIO PRODUCTIONS, INC.

APPELLEE

OPINION  
REVERSING

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BEFORE: DIXON, D. LAMBERT, AND THOMPSON, JUDGES.

D. LAMBERT, JUDGE: This matter is before the Court on appeal from an order entered by the Jefferson Circuit Court, which granted summary judgment in favor of the defendant below, Appellee Pro Video Audio Productions, Inc. (herein after “Pro Video”), and the plaintiff below, Appellant Gregory L. Campbell. That order also disposed of the claims brought by the intervening plaintiff, Appellant Kentucky Employers' Mutual Insurance Company (hereinafter, “KEMI”). Because both Campbell and KEMI’s claims arise out of the same nucleus of fact, we issue a single opinion adjudicating both appeals in the interests of judicial economy. For the reasons herein described, we reverse.

**I. Factual and Procedural History**

Campbell was a professional stagehand and an employee of West Breck Corporation (hereinafter “West Breck”). Pro Video was a corporation engaged in the business of providing stage construction and sound system services. Both West Breck and Pro Video were contracted by the Kentucky Derby Festival, Inc., to ply their respective trades to produce a concert in Louisville's Waterfront Park in April of 2012.

Campbell's injury occurred shortly after the conclusion of the concert on April 28, 2012. Noticing signs of impending rain, the concert crew began to

cover the sound equipment on the stage with tarps. While doing so, Campbell's foot became entangled by a tarp placed on the stage. Consequently, Campbell fell approximately seven feet from the stage, sustaining injuries to his arm, hand, leg, and face. These injuries necessitated at least two surgeries to repair. KEMI, as the workers' compensation insurance carrier for West Breck, ultimately bore these medical expenses.

Campbell initiated the action below, arguing that Pro Video created an unreasonably dangerous condition by not placing handrails around the stage. KEMI intervened in the action as a plaintiff to assert its subrogation interest, as West Breck's insurer, pursuant to KRS 342.700.

Pro Video moved for summary judgment, arguing that an owner or occupier of premises is not responsible to an independent contractor for injuries caused by dangers of which the contractor was aware. The trial court granted Pro Video's motion, finding that the record did not indicate that Pro Video was either an owner or an occupier of the premises, and for that reason, the principles of premises liability on which Campbell and KEMI relied were inapplicable. The trial court analyzed the facts presented in the record through the lens of traditional common law negligence and concluded that Pro Video owed no duty to Campbell because the injury was not foreseeable.

The trial court's ruling explicitly disposed of Campbell's claim, but KEMI's subrogation claim was also effectively dismissed as well. Campbell's

appeal came first, then KEMI's. Both argued that the trial court erred in its finding that the injury was not foreseeable.

## **II. Analysis**

### **A. Standard of Review**

“The standard of review on appeal of a summary judgment is whether the circuit judge correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law.” *Pearson ex rel Trent v. Nat'l Feeding Sys., Inc.*, 90 S.W.3d 46, 49 (Ky. 2002). Issues of law are reviewed *de novo* by a reviewing court, and issues of fact are reviewed using a “clear error” standard. *Nash v. Campbell County Fiscal Court*, 345 S.W.3d 911, 816 (Ky. 2011); *Miller v. Eldridge*, 146 S.W.3d 909, 915 (Ky. 2004).

While the Appellants contend that the issue presented before this Court is one solely of fact, the issue presented is in reality a mixed question of law and fact. This Court will therefore examine the record using a *de novo* standard.

### **B. The Trial Court Applied the Appropriate Case Law**

The trial court based its ruling primarily on the proposition that Pro Video was neither an owner, nor a possessor of the premises on which the injury occurred. This was clearly supported by the record, which indicated the realty is owned by the Waterfront Development Corporation, which in turn leased the premises to Kentucky Derby Festival, Inc., for the purpose of putting on events related to the Kentucky Derby festivities. Pro Video's presence on the premises

was pursuant to Kentucky Derby Festival, Inc.'s license to use the premises, therefore Kentucky Derby Festival, Inc. was the possessor of the land.

The trial court correctly concluded that the traditional common law of negligence should apply, rather than the law of premises liability. Pro Video was neither an owner nor a possessor of the premises on which Campbell was injured.

### **C. The Trial Court Incorrectly Concluded that Pro Video Owed No Duty to Campbell**

Kentucky recognizes a “universal duty owed by all to all.” *Gas Serv. Co. v. City of London*, 687 S.W.2d 144, 148 (Ky. 1985). This universal duty of care “requires every person to exercise ordinary care in his activities to prevent foreseeable injury.” *T & M Jewelry, Inc. v. Hicks*, 189 S.W.3d 526, 530 (Ky. 2006). But the court has also recognized that this duty is not without limit.

The examination must be focused so as to determine whether a duty is owed, and consideration must be given to public policy, statutory and common law theories in order to determine whether a duty existed in a particular situation. Consideration must also be given to whether the harm to the plaintiff resulting from the defendant's negligence was foreseeable. In deciding whether harm was foreseeable, Kentucky courts look to the general foreseeability of harm, not to whether the particular, precise form of injury could be foreseen. It is enough that injury of some kind to some person within the natural range of effect of the alleged negligent act could have been foreseen.

*Id.* at 531 (internal citations and quotations omitted).

While the universal duty also includes Campbell's duty to exercise due care for his own safety, the trial court placed too great an emphasis on too

narrow a scope of risk. It seems the trial court focused on the precise nature of injury which befell Campbell rather than the “general foreseeability of harm” contemplated in *T & M Jewelry*. There is a risk as certain as gravity in the construction of any elevated man-made structure that a person might fall off of it and sustain injury. Such risk fits squarely within the “natural range of effect” of the alleged negligent act here: failure to install handrails.

This Court must conclude that because the nature of the risk of harm was within the realm of foreseeability, Pro Video did owe a duty to those individuals on, and in proximity to, the stage, and that the trial court erred in ruling to the contrary.

### **III. Conclusion**

This Court, having reviewed the record and the arguments advanced by the parties, concludes that the trial court, though correct in its conclusion that the law of premises liability did not apply here, erred nonetheless in finding Pro Video owed no duty to Campbell. Pro Video was thus not entitled to judgment as a matter of law. The trial court's judgment is hereby REVERSED and REMANDED for further proceedings consistent with this ruling.

DIXON, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS.

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