DIETMAR FELBER	*	**NO. 2003-CA-0579**
VERSUS	*	**COURT OF APPEAL**
STATE FARM FIRE AND CASUALTY COMPANY, ELIZABETH TETLOW, WIFE OF AND L. MULRY TETLOW	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-1719, DIVISION "F-10"
HONORABLE YADA MAGEE, JUDGE
* * * * * *
JAMES F. MCKAY III
JUDGE
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(Court composed of Judge Charles R. Jones, Judge James F. McKay III, Judge Dennis R. Bagneris Sr.)

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AFFIRMED

The plaintiff, Deitmar Felber, was asked by his neighbor, defendant, Elizabeth Tetlow, to cut some branches from a magnolia tree on her property. Mr. Felber had helped Mrs. Tetlow, who happens to be disabled because of a neurological condition, with jobs around her house before and agreed to do this work. Mrs. Tetlow showed Mr. Felber the branches that she wanted cut and provided him with a ladder and chainsaw. She then left her residence to go to the library; her husband, L. Mulry Tetlow, was out of town.

Mr. Felber placed the ladder near the tree and ascended the ladder with the chainsaw. He then cut the first branch with no problem. Mr. Felber then moved the ladder into position to cut the second branch. He again ascended the ladder with the chainsaw and proceeded to cut a second branch. After making the cut, the branch did not fall directly to the ground but swung around and hit him, knocking him off of the ladder. When he fell, his right foot and heel hit first and he fractured his right heel bone.

Mr. Felber filed suit against Elizabeth Tetlow, L. Mulry Tetlow, and their homeowner's insurer, State Farm Fire and Casualty Company. The

defendants filed a motion for summary judgment, which the trial court granted, ruling that the plaintiff's accident resulted solely from his own actions, and that he provided no legal or factual basis upon which to hold the defendants liable. It is from this judgment that the plaintiff now appeals.

The issue before this Court is whether the trial court properly granted summary judgment. Appellate courts review the granting or denial of summary judgment *de novo*. Independent Fire Ins. Co. v. Sunbeam Corp., 99-2181 (La. 2/29/00), 755 So.2d 226, 230. Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B).

La. C.C.P. art. 966(C) (2) provides that where the party moving for summary judgment will not bear the burden of proof at trial, his burden does not require him to negate all essential elements of the adverse party's claim, but rather point out that there is an absence of factual support for one or more elements essential to the claim. If the adverse party fails to produce factual support as to any element, there is no genuine issue of material fact,

and the mover is entitled to summary judgment as a matter of law. Schreiber v. Jewish Federation, 2002-0992 (La.App. 4 Cir. 1/29/02), 839 So.2d 51, 53-54.

In the instant case, the trial court determined that the defendants owed no duty to the plaintiff where the inherent dangers of the operation are open and obvious. The existence of a duty is a legal question. This is a type of issue that should be resolved by the summary judgment procedure. Richter v. Provence Royal Street Co., 97-0297 (La.App. 4 Cir. 10/8/97), 700 So.2d 1180, 1182. "Where the risk is obvious, universally known, easily avoidable, and a part of the natural order and one's quotidian surroundings, we find that there is no duty to warn, no duty to prevent, no unreasonable risk or hazard and no liability under LSA C.C. Art 2317 or 2315." Henshaw v. Audobon Park Commission, 605 So.2d 640, 642 (La.App. 4 Cir. 1992). In Henshaw, this Court went on to state: "We hardly see how a warning that 'if you fall, you might get hurt', which is so obvious and universally known, would have supplied plaintiff with any useful information he did not already possess." Id. at 643. Likewise, in the instant case, we hardly see how a warning that a branch from a tree you are cutting could swing back and hit

you would have given Mr. Felber any more useful information than he should have already known. The risk is inherently obvious due to the nature of this activity and the instrumentalities involved. Mr. Felber offers no proof that Mrs. Tetlow had superior knowledge with respect to cutting of trees or branches nor does he offer any proof that the ladder and chainsaw provided for his use were not in proper working order. There is simply no duty on the part of the defendants to warn the plaintiff that he could be injured while cutting tree branches. Accordingly, Mr. Felber would not be able to carry his evidentiary burden at trial. Therefore, summary judgment was appropriate in this case.

For the foregoing reasons, the trial court's granting of summary judgment is affirmed.

AFFIRMED