STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH TURNER and PATRICE TURNER,

Plaintiffs-Appellants,

v

KOENIG COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 14, 1997

No. 182944
Wayne Circuit Court
LC No. 94-403590-NO

Before: Marilyn Kelly, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting summary disposition pursuant to MCR 2.116(C)(8) and (10) in favor of defendant and dismissing the case with prejudice. We affirm.

A trial court's grant of summary disposition is reviewed de novo. *Bitar v Wakim*, 211 Mich App 617, 619; 536 NW2d 583 (1995); *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). We note that the proper subrule for reviewing questions regarding the exclusive remedy provision of the Worker's Disability Compensation Act, MCL 418.131(1); MSA 17.237(131)(1), is MCR 2.116(C)(4) [lack of subject matter jurisdiction]. *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 646 n 1; 364 NW2d 670 (1984); *Bitar, supra*, p 619. Under this subrule, proofs are required when the grounds asserted do not appear on the face of the pleadings. MCR 2.116(G)(3)(a). The pleadings, together with any proofs filed or submitted, must be considered by the trial court when deciding the motion. MCR 2.116(G)(5). This Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the proofs show that there was a genuine issue of material fact. *Bitar, supra*, p 617; *Faulkner v Flowers*, 206 Mich App 562, 564; 522 NW2d 700 (1994). The contents of the complaint are accepted as true unless specifically contradicted by the movant's proofs. *Patterson v Kleiman*, 447 Mich 429, 434; 526 NW2d 879 (1994).

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* Circuit judge, sitting on the Court of Appeals by assignment.

However, even considering the motion under MCR 2.116(C)(10), we would affirm because no genuine issue of material fact was shown on whether defendant specifically intended an injury. MCR 2.116(I)(1). We will not impute Samuel Brown's knowledge to defendant because Samuel Brown was not a supervisory or managerial employee. Giving plaintiffs the benefit of every reasonable doubt and resolving all reasonable inferences in their favor, we hold that plaintiffs would have been unable to prove that defendant had actual knowledge that an injury was certain to occur and that it willfully disregarded that knowledge. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149; 551 NW2d 132 (1996).

Because there was no factual support for an intentional tort, we find it unnecessary to consider if the complaint contained sufficient allegations to state a claim for an intentional tort. Even if MCR 2.116(C)(8) was a proper subrule for a motion for summary disposition based on MCL 418.131(1); MSA 17.237(131)(1), the proper remedy, in the event that plaintiffs established factual support for their claim, would have been to give plaintiffs an opportunity to amend the complaint. MCR 2.116(I)(5). Hence, the pleadings, standing alone, provide no basis for dismissing the case.

Affirmed.

/s/ Marilyn Kelly
/s/ Kathleen Jansen
/s/ Meyer Warshawsky