

STATE OF MICHIGAN
COURT OF APPEALS

JOHN LEE LOGAN, Personal Representative of the
Estate of SIDNEY LOGAN, Deceased,

UNPUBLISHED
August 22, 1997

Plaintiff-Appellant,

v

No. 192455
Wayne Circuit Court
LC No. 95-502370-NO

ERMA LEE,

Defendant-Appellee.

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

In this wrongful death action, plaintiff appeals by right summary disposition granted in favor of defendant by the Wayne Circuit Court. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's sole remaining theory is that defendant homeowner supplied decedent, a handyman hired to do roofing work, with a defective instrumentality, an extension ladder the bottom section of which, according to plaintiff's engineer, "has a well defined bend of about one inch to the right with maximum deflection midway from top to bottom." Summary disposition was properly granted because, on the undisputed facts, no breach by defendant of any actionable duty has been established.

The record is unclear as to whether decedent was an independent contractor or an employee. If he was an employee, then because the extension ladder was a simple tool, *Rule v Giuglio*, 304 Mich 79, 82-83; 7 NW2d 227 (1942), the simple tool doctrine bars this tort liability claim. *Kendrick v Graddis*, 75 Mich App 383, 387; 255 NW2d 14 (1977); *Rule v Giuglio, supra*. The simple tool doctrine provides a complete defense notwithstanding the adoption of comparative negligence and abolition of assumption of the risk in Michigan jurisprudence. *Cressman v Wright*, 105 Mich App 194, 198-199; 306 NW2d 447 (1981). If, on the other hand, decedent was an independent contractor, he was in the better position to observe this patent defect in the ladder furnished for his use and to take appropriate precaution for his own safety as

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

compared with defendant homeowner. Restatement Torts, 2d, § 388, Comment k; *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 390-391; 491 NW2d 208 (1992); *Tasca v GTE Products*, 175 Mich App 617, 623-624; 438 NW2d 625 (1988); see also *Muscat v Khalil*, 150 Mich App 114, 119-120; 388 NW2d 267 (1986). Here it may be noted that the affidavit of plaintiff's engineer indicates that decedent ignored conspicuous warnings contained on labels on the ladder itself regarding its proper use, and any fault underlying this tragic accident is not properly attributable to defendant.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell