

STATE OF MICHIGAN
COURT OF APPEALS

ALBERT ZAMARRIPA,

Plaintiff-Appellant,

v

COMMERCIAL TOOL & DIE, INC.,

Defendant-Appellee.

UNPUBLISHED
October 16, 1998

No. 203115
Kent Circuit Court
LC No. 95-003308 NO

Before: Whitbeck, P.J., and McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Plaintiff sustained a serious and permanently debilitating injury to his left shoulder when, in the course of his employment, he sustained an electrical shock upon touching the reset button on a radial drill. Plaintiff brought suit against defendant, his employer, seeking to apply the intentional tort exception to the exclusive remedy provision in the Worker's Disability Compensation Act (the act), MCL 418.131(1); MSA 17.237(131)(1). The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that reasonable minds could not differ but that defendant lacked actual knowledge that a serious injury was certain to occur and that defendant lacked the requisite "deliberate intent" to establish an intentional tort within the meaning of the act. Plaintiff appeals this ruling as of right. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

Giving the benefit of reasonable doubt to plaintiff, *Farm Bureau Mutual Ins Co of Michigan v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991), reasonable minds could not conclude that defendant's supervisory and managerial personnel had actual knowledge that an injury was certain to occur where only one employee reported sustaining an electrical shock before plaintiff's injury occurred, where there were only unsubstantiated rumors of other employees experiencing electrical shocks, and where no employee reported sustaining any injury from receiving an electrical shock. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 169, 171-174, 180 (Boyle, J.), 191 (Riley, J.); 551 NW2d 132 (1996); *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 149; 565 NW2d 868 (1997);

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

McNees v Cedar Springs Stamping Co (After Remand), 219 Mich App 217, 224; 555 NW2d 481 (1996).

Affirmed.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks