STATE OF MICHIGAN

COURT OF APPEALS

KRISTY FORNELLI, as Personal Representative of the Estate of ANTHONY J. FORNELLI, Deceased,

Plaintiff-Counterdefendant-Appellant,

and

FERNANDO A. FORNELLI and ELAINE FORNELLI,

Plaintiffs-Appellants,

v

R.E. DAILEY & COMPANY, INC.,

Defendant-Counterplaintiff-Appellee,

and

UTICA PARK PLACE and NEW CENTER COMPANY, INC.,

Defendants-Appellees,

and

KELLY JOSEPH FAGAN and JENNIFER L. FAGAN,

Defendants.

UNPUBLISHED
January 29, 1999

No. 199132
Macomb Circuit Court
LC No. 94-002986 NO

Before: O'Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an October 22, 1996, final order disposing of their remaining claims in this negligence action. On appeal, plaintiffs challenge two prior orders granting summary disposition to certain other defendants. We affirm.

This cases arises from an automobile accident in which plaintiff Fernando Fornelli was injured and plaintiff Anthony Fornelli was ultimately killed.[1] The facts necessary to our resolution of this appeal are essentially undisputed. Defendants Utica Park Place and New Center Company, Inc., were the owners and developers of a shopping center under construction near Hall Road in the City of Utica. Defendant R.E. Dailey & Company, Inc., was the general contractor for the shopping center construction project. There were two access roads for ingress and egress between the construction and Hall Road. The west access road entrance to Hall Road was controlled by a traffic signal. The east access road entrance to Hall Road was controlled by a stop sign. Both access roads passed through a strip of property at the edge of Hall Road that was owned by the Michigan Department of Transportation. Both access roads were constructed pursuant to specifications approved by MDOT.

Before the shopping center opened for business, the construction workers were allowed to use either access road. However, after the first store opened, defendants Utica Park Place, New Center, and Dailey agreed that the construction workers would only be permitted to use the east access road. Plaintiffs were construction workers employed by a subcontractor of defendant Dailey. On December 11, 1992, they left the construction site by way of the east access road. Anthony Fornelli brought the vehicle to a stop at the stop sign before making a left turn onto Hall Road. As plaintiffs entered the center turn lane, their automobile was struck by a pickup truck.

On June 27, 1994, plaintiffs filed their first amended complaint alleging that the location and design of the east access road constituted a dangerous and defective condition, and that defendants were negligent for failing to provide a reasonably safe means of egress from the construction site to Hall Road. Defendants Utica Park Place and New Center together moved for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10) on the grounds (1) that they owed no duty to defendants with respect to alleged hazards of the east access road, and (2) that if any party was responsible for the safety of the workers, it was defendant Dailey. The trial court agreed with both of their contentions and granted summary disposition pursuant to MCR 2.116(C)(10). Thereafter, defendant Dailey moved for summary disposition pursuant to MCR 2.116(C)(10) on the ground that it owed no duty to defendants with respect to alleged hazards of the east access road. Again, the trial court agreed and granted summary disposition pursuant to MCR 2.116(C)(10).

On appeal, plaintiffs argue that the trial court erred in granting both motions for summary disposition. We disagree. Appellate review of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Id.* Summary disposition may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters*, 451 Mich 358, 362; 547 NW2d 314 (1996).

To establish a prima facie case of negligence, the plaintiff must prove (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached that duty, (3) that the defendant's breach of that duty was a proximate cause of the plaintiff's damages, and (4) that the plaintiff suffered damages. *Swan v Wedgwood Christian Youth & Family Services, Inc*, 230 Mich App 190, 195; 583 NW2d 719 (1998). The threshold issue in a negligence action is whether the defendant owed a duty to the plaintiff. *Johnson v Bobbie's Store*, 189 Mich App 652, 659; 473 NW2d 796 (1991). Duty is any obligation the defendant has to the plaintiff to avoid negligent conduct. *Swan*, *supra* at 195. The existence of a duty is a question of law for the court to decide. *Id.* Generally, a defendant's duty, for purposes of premises liability, ends with the boundaries of the premises, and an injury caused by a dangerous condition located outside the boundaries is not the legal responsibility of that defendant. *Johnson*, *supra* at 660. However, this general principle does not necessarily preclude liability where an injury occurs outside of defendant's premises, but as result of a danger posed by a condition existing on defendant's premises. *Id* at 660-661. In this case, *both* the site of the injury and the site of the alleged dangerous condition were outside of defendants' premises. The injury occurred in the center of Hall Road, and the alleged dangerous condition was the entire intersection of Hall Road and the east access road. As noted, this intersection was on land owned by MDOT. Accordingly, defendants may not be held liable under a premises liability theory.

Plaintiffs attempt to avoid the strictures of premises liability by arguing that defendants' breached a duty to provide a reasonably safe means of egress from the construction site when they required plaintiffs to exit by way of the east access road (which *led to* the allegedly dangerous intersection), rather than by way of the west access road (which *led to* an intersection made safer by the existence of a traffic signal). We are not persuaded by this creative argument. Because the alleged dangerous condition was outside of defendants' premises, plaintiffs had already made a safe exit from defendants' premises before they encountered the hazard. A defendant's duty with respect to a dangerous condition is based on his or her ability to exercise control over, and prevent any harm caused by, the condition itself. See *Merritt v Nickelson*, 407 Mich 544, 552; 287 NW2d 178 (1980), citing Prosser, Torts (4th ed), § 57, p 351. Thus, a defendant may not be held liable for injuries caused by a hazard outside of its premises, and outside of its control, simply because the means of egress from the defendant's premises leads to the hazard. See *Vanderwall v Goodwin*, 338 Mich 109, 112-113; 60 NW2d 916 (1953). Accordingly, we hold that plaintiff is not entitled to relief on appeal.

Given our conclusion that defendants owed no duty to plaintiffs with respect to the alleged dangerous condition, we need not address the trial court's determination regarding the degree of control over the construction site possessed by Utica Park Place and New Center as opposed to Dailey.

Affirmed.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Michael J. Talbot

[1] Anthony Fornelli and Fernando Fornelli will be referred to as "plaintiffs." Because Anthony Fornelli is deceased, his claim is brought by Kristy Fornelli, acting in her capacity as personal representative of his estate. Plaintiff Elaine Fornelli's claim asserting a loss of consortium is derivative of the claim of her husband, Fernando Fornelli.