STATE OF MICHIGAN

COURT OF APPEALS

DEBRA BAADE, Personal Representative of the Estate of STEVEN K. BAADE, Deceased,

Plaintiff-Appellant,

v

DISCOVERY FORD, INC., and TODD STAHL,

Defendants-Appellees.

UNPUBLISHED
May 25, 1999

No. 207974
Muskegon Circuit Court
LC No. 97-336145 NO

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court's order granting defendants' motions for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Decedent and defendant Stahl worked for defendant Discovery Ford. Stahl was decedent's supervisor. Stahl threw or placed a firecracker near or under the door of a restroom occupied by decedent. The firecracker made a loud noise as it exploded and frightened decedent.

Baade filed suit alleging that defendants acted deliberately to injure him and specifically intended to injure him. He claimed that the incident caused various injuries, including permanent damage to his right ear. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that Baade's claim was barred by MCL 418.131(1); MSA 17.237(131)(1), the intentional tort exception to the Worker's Disability Compensation Act, MCL 418.101 *et seq*.; MSA 17.237(101) *et seq*. The trial court granted the motions, finding that reasonable minds could not differ as to whether Stahl intended to injure decedent or as to whether Discovery had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

MCL 418.131(1); MSA 17.237(131)(1) provides:

> The right to recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

To avoid the application of MCL 418.131(1); MSA 17.237(131)(1), there must be a deliberate act by the employer and a specific intent that there be an injury. A deliberate act may be one of omission or commission. Specific intent exists if the employer has a purpose to bring about certain consequences. *Travis v Dries & Krump Mfg Co*, 453 Mich 149, 169, 171; 551 NW2d 132 (1996). Specific intent is established if an employer had actual knowledge that an injury was certain to occur, and willfully disregarded that knowledge. An injury is certain to occur if there is no doubt that it will occur. An employer willfully disregards its knowledge of the danger when it disregards actual knowledge that an injury is certain to occur. *Travis*, *supra*, at 174, 179. Actual knowledge is required; constructive, implied, or imputed knowledge is insufficient. *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 224; 555 NW2d 481 (1996). Knowledge of general risks is insufficient. *Agee v Ford Motor Co*, 208 Mich App 363, 366-367; 528 NW2d 768 (1995).

Plaintiff argues that the trial court erred by granting defendants' motions for summary disposition. We disagree and affirm. Even assuming that Stahl committed an intentional tort for which Discovery could be held liable, plaintiff has not shown that Discovery had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. MCL 418.131(1); MSA 17.237(131)(1) is not triggered simply by knowledge that an injury could occur or even that an injury was likely to occur. *Oaks v Twin City Foods, Inc*, 198 Mich App 296, 297; 497 NW2d 196 (1992). To find the requisite intent on the part of a corporation, there must have been a human who acted with that intent. *Travis*, *supra*, at 173-174. Reasonable minds could not differ on the issue whether Discovery had actual knowledge that Stahl's act was certain to result in an injury and willfully disregarded that knowledge. The laws of probability do not constitute actual knowledge that an injury is certain to occur. *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 149; 565 NW2d 868 (1997).

Affirmed.

/s/ Richard Allen Griffin
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald