STATE OF MICHIGAN

COURT OF APPEALS

DOROTHY BOOKER,

Plaintiff-Appellant,

v

QUALITY EMBOSSMENT CORPORATION,

Defendant/Cross-Defendant,

and

PAUL MUELLER COMPANY,

Defendant/Cross-Plaintiff,

and

G.T.B. ELECTRIC, INC., BREN'S ELECTRIC, INC., GARY T. BATES and BRENDA BATES,

Defendants,

and

BRANDON ELECTRIC, INC.,

Defendant-Appellee.

UNPUBLISHED
September 15, 2000

No. 214474
Wayne Circuit Court
LC No. 96-616050-NP

Before: Owens, P.J., and Jansen and R. B. Burns*, JJ.

PER CURIAM.

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

In this personal injury action based on a malfunctioning power press, plaintiff appeals as of right from an order granting summary disposition in favor of defendant Brandon Electric, Inc. We affirm.

Plaintiff argues that the trial court erred in determining that summary disposition was warranted because she could not establish a causal connection between her injuries and Brandon Electric's conduct as an electrical contractor. Having reviewed the trial court's ruling de novo in light of the standards applicable to a motion under MCR 2.116(C)(10), we disagree. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Graham v Ford*, 237 Mich App 670, 672-673; 604 NW2d 713 (1999). Plaintiff failed to present evidence establishing a genuine issue of material fact that it was more likely than not that Brandon Electric performed the electrical installation work for the press that caused her injury. *Skinner v Square D Co*, 445 Mich 153, 165; 516 NW2d 475 (1994). Having concluded that summary disposition was properly granted on this basis, it is unnecessary to address Brandon Electric's alternative basis for summary disposition, i.e., whether a hydraulic problem, rather than an electrical problem, was the more likely cause of the press malfunctioning.

We further conclude that plaintiff has not shown that the trial court abused its discretion in denying her motion for reconsideration. MCR 2.119(F)(3); *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). Summary disposition is not premature when the discovery deadline set by a trial court has passed. See *Vargo v Sauer*, 215 Mich App 389, 401; 547 NW2d 40 (1986), rev'd on other grounds 457 Mich 49 (1998).

Finally, plaintiff did not preserve her claim that the burden of proof should shift to Brandon Electric with regard to the issue of causation, inasmuch as this claim was not raised in opposition to Brandon Electric's motion for summary disposition. Absent unusual circumstances, an issue that is not properly raised in the trial court may not be considered on appeal. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994).

Plaintiff's citation to *Abel v Eli Lilly & Co*, 418 Mich 311; 343 NW2d 164 (1984), in her response to Brandon Electric's motion for summary disposition was insufficient to preserve a claim that the burden of proof should shift to Brandon Electric under an alternative liability theory involving Brandon Electric and defendant Gary Bates. Plaintiff cited *Abel* in support of her argument that the burden should shift to Brandon Electric because defective wiring was allegedly disposed of by Brandon Electric's employee, Mark Bunk, or defendant Quality Embossment Corporation's employee, James Bates. A trial court's power to sanction a party's misconduct with regard to the loss or destruction of evidence, *Brenner v Kolk*, 226 Mich App 149, 160; 573 NW2d 65 (1997), presents an issue distinct from the alternative liability theory formally adopted by our Supreme Court in *Abel, supra*. For example, access to evidence of causation is not a relevant factor in determining if the burden should shift under the alternative liability theory, *Abel, supra* at 333, whereas this is a relevant consideration when evidence is destroyed.

Because plaintiff has not briefed the issue whether Brandon Electric should have been sanctioned for its alleged involvement in the destruction of evidence, we do not consider this issue. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998). Further, we hold that plaintiff has not established manifest injustice or other unusual circumstances warranting relief based on her unpreserved

burden-shifting argument. *Peterman, supra*; *Herald Co, Inc v Kalamazoo*, 229 Mich App 376, 390; 581 NW2d 295 (1998). We find *Abel, supra*, instructive of the principles to apply in determining if the burden should shift to Brandon Electric on the issue of causation. See *Gelman Sciences, Inc v Fidelity & Casualty Co*, 456 Mich 305, 326 n 12; 572 NW2d 617 (1998), amended 456 Mich 1230 (1998); *Cousineau v Ford Motor Co*, 140 Mich App 19, 29; 363 NW2d 721 (1985). Giving due regard to the fact that Gary Bates, along with other defendants have been dismissed from the case with prejudice, as well as the fact that plaintiff neither claimed nor presented evidence that both Gary Bates and Brandon Electric committed tortious acts, we are unpersuaded that the burden must shift to Brandon Electric on the issue of causation so as to avoid injustice. *Abel, supra*, 327.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Robert B. Burns