STATE OF MICHIGAN

COURT OF APPEALS

THOMAS ROSBURY,

Plaintiff-Appellant,

v

JAMIE JASINSKI,

Defendant-Appellee.

UNPUBLISHED
November 21, 2000

No. 218857
Livingston Circuit Court
LC No. 97-016291-NO

Before: Kelly, P.J., and Whitbeck and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

This Court reviews a trial court's decision on summary disposition de novo. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

Plaintiff's theory of negligence is premised on defendant's status as the general contractor for the construction project. Generally, when an owner or general contractor hires an independent contractor to perform work, the owner or general contractor is not liable in negligence to either third parties or the independent contractor's employees. *Candelaria v B C General Contractors, Inc*, 236 Mich App 67, 72; 600 NW2d 348 (1999). The law, rather, places immediate responsibility for job safety upon the independent contractor. *Id*. However, there are situations where the owner or general contractor can be held liable for either his negligence or the negligence of the independent contractor. *Id* An owner or general contractor may be liable where he retains and exercises control over a project, such that there is a corresponding duty on the owner or general contractor to be held responsible for reasonable safety measures. *Id*. at 73-74. However, this duty only extends to circumstances involving "common work areas." *Id*. at 74. The "common work area" rule is summarized in *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 407-408; 516 NW2d 502 (1994):

> The common work area rule provides that a general contractor may be liable for a subcontractor's negligence where the general contractor fails to take reasonable precautions against "readily observable, avoidable dangers in common work areas which create a high degree of risk to a significant number of workmen." *Plummer v Bechtel Construction Co*, 440 Mich 646, 666; 489 NW2d 66 (1992). See also *Johnson v Turner Construction Co*, 198 Mich App 478, 480; 499 NW2d 27 (1993). It is not necessary for other subcontractors to be working on the same site at the same time. Rather, the common work area concept merely requires that employees of two or more subcontractors eventually work in the area.

In order to impose liability against an owner or general contractor,

> there must be: (1) a general contractor with supervisory and coordinating authority over the job site, (2) a common work area shared by the employees of several subcontractors, and (3) a readily observable, avoidable danger in that work area (4) that creates a high risk to a significant number of workers. [*Hughes v PMG Building, Inc*, 227 Mich App 1, 6; 574 NW2d 691 (1997).]

Whether a defendant owed a plaintiff a duty under the "common work area" rule is a question of law for the court to decide. *Johnson, supra* at 480.

Here, plaintiff failed to show that the stairway opening created "a high risk to a significant number of workers." *Hughes, supra* at 6, 8-9. Rather, the undisputed facts show that only the employees of plaintiff's employer, Crane Construction, were exposed to the danger of the open stairwell, inasmuch as they were the only workers required to be on the work site at the time of the accident. The hazard created by the stairway opening was eliminated before the presence of other contractors was necessary. Because plaintiff could not establish the fourth element of the "common work area" rule, defendant was entitled to summary disposition.

Because the trial court correctly determined that the "common work area" rule is inapplicable to the facts of this case, it is unnecessary to decide whether defendant could actually be considered a general contractor. However, we note that there was essentially no evidence that defendant was the general contractor with respect to the construction and erection of the house.

Affirmed.

/s/ Michael J. Kelly
/s/ William C. Whitbeck
/s/ Jeffrey G. Collins