

STATE OF MICHIGAN
COURT OF APPEALS

AL PETWAY and GAIL PETWAY,
Plaintiffs-Appellants,

UNPUBLISHED
February 2, 2001

v

No. 219058
Wayne Circuit Court
LC No. 97-718432-NO

ELLIS DON MICHIGAN, INC.,

Defendant-Third-Party Plaintiff-
Appellee,

and

STEWART ENTERPRISES, INC., and
STEWART & STEWART CONTRACTING
COMPANY,

Third-Party Defendants.

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Al Petway was injured in a construction accident. Defendant Ellis Don Michigan, Inc., was the general contractor, and plaintiff was employed by a masonry subcontractor. Plaintiff was injured while constructing a scaffold for use by employees of the subcontractor. He maintained that defendant had a duty to guard against unreasonable dangers in a common work area.

Ordinarily, a general contractor is not liable for a subcontractor's negligence. *Hughes v PMG Building, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). However, a general contractor may be held liable if it failed to take reasonable steps within its authority to guard against readily observable, avoidable dangers in common work areas that create a high degree of risk to a significant number of workers. *Id.* To establish liability, 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 more than one subcontractor, and (3) a readily observable and avoidable danger in that common work area, (4) that creates a high degree of risk to a significant number of workers. [*Groncki v Detroit Edison Co*, 453 Mich 644, 662; 557 NW2d 289 (1996).]

The common work area rule only requires that employees of two or more subcontractors eventually work in the area. *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 408; 516 NW2d 502 (1994).

The trial court properly granted summary disposition where plaintiff's injury did not occur in a common work area. Plaintiff was injured when he fell off a scaffold constructed and maintained by his employer, a subcontractor. There was no evidence that workers of any other contractor used the scaffold. The fact that other workers passed by the scaffold is insufficient to establish that the scaffold was a common work area that contained a readily observable and avoidable risk to a significant number of workers. *Hughes, supra* at 7. Defendant was entitled to judgment as a matter of law.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White