

STATE OF MICHIGAN
COURT OF APPEALS

DONALD PRINGLE, II, as Personal
Representative of the Estate of BRETT PRINGLE,
Deceased,

Plaintiff-Appellant,

v

CECIL SCHAAF,

Defendant-Appellee,

and

ARENAC COUNTY ROAD COMMISSION,

Defendant.

UNPUBLISHED
May 25, 2001

No. 222265
Arenac Circuit Court
LC No. 97-005701-NI

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting the motion for summary disposition filed by defendant Cecil Schaaf, and dismissing the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent was operating a snowmobile on Foco Road when he failed to negotiate a sharp turn and traveled onto private property owned by Frederick Bruner, a non-participating defendant. Decedent died when he struck a thick wire cable gate strung between two wooden posts.

Plaintiff settled his claim against Bruner, and his claim against the Arenac County Road Commission was dismissed. Plaintiff alleged that defendant Schaaf designed and constructed the cable gate, that he knew or should have known that the sharp turn in the road was not marked, and that he breached a duty to build and mark the cable gate so as to warn travelers on the road of its presence. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that he had no liability for decedent's death because he neither owned nor possessed the property on which the accident occurred. The trial court granted the motion, finding that the

cable gate did not create an unreasonably dangerous condition on the land. The trial court did not specifically address defendant's argument.

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).

We affirm the trial court's order granting defendant's motion for summary disposition. The trial court reached the right result, albeit for the wrong reason. *Portice v Otsego County Sheriff's Dep't*, 169 Mich App 563, 566; 426 NW2d 706 (1988). Premises liability is conditioned upon the presence of both actual possession of and control over the premises. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 660; 575 NW2d 745 (1998). It was undisputed that defendant did not own, possess, or control the property on which the accident occurred, and that he did nothing to maintain the cable gate. Plaintiff's reliance on *Kapalczynski v Globe Construction Co*, 19 Mich App 396; 172 NW2d 852 (1969), is misplaced. That case concerns the liability of a contractor after completion and acceptance of work performed in a negligent manner. Schaaf was not a contractor, and did not construct the cable gate pursuant to a contract with the owner of the property. Schaaf lacked actual possession of and control over the property; therefore, he had no liability for decedent's death. *Kubczak, supra*.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens