

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS GARLICK,

Plaintiff-Appellant,

UNPUBLISHED
June 8, 2001

v

GREAT LAKES STEEL CORPORATION and
MID AMERICAN GUNITE COMPANY,

No. 215932
Wayne Circuit Court
LC No. 95-505109-NO

Defendants-Appellees.

THOMAS GARLICK,

Plaintiff-Appellant,

v

GREAT LAKES STEEL CORPORATION and
MID AMERICAN GUNITE COMPANY,

No. 217649
Wayne Circuit Court
LC No. 95-505109-NO

Defendants-Appellees.

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

WHITE, J. (*concurring*).

I agree with the majority's determination that the trial court did not err in denying plaintiff's motion for judgment notwithstanding the verdict on the inherently dangerous activity issue. Although plaintiff submitted substantial evidence on this theory, there was also evidence from which a reasonable jury could conclude that the boiler rebuild was not an inherently dangerous activity.

I also agree that admission of the videotape was not an abuse of discretion, but note that because the jury found no liability and did not reach the issue of damages, any error would be harmless.

I agree that the trial court did not err in granting GLS's motion for directed verdict on the question of retained control.

While I agree that there was no reversible error in the trial court's failure to instruct on the common work area rule, I do not agree with the majority's analysis. Separate from the retained control doctrine is the common work area rule, under which a general contractor may be held liable for a subcontractor's negligence if it failed to take "reasonable steps within its supervisory and coordinating authority" to guard against "readily observable, avoidable dangers in common work areas which create a high degree of risk to a significant number of workmen." *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 5-6; 574 NW2d 691 (1997), quoting *Funk v General Motors Corp*, 392 Mich 91, 104; 220 NW2d 641 (1974); see also *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 407-408; 516 NW2d 502 (1994); and *Johnson v Turner Construction Co*, 198 Mich App 478, 480 n1, 481; 499 NW2d 27 (1993). Thus, I do not agree with the majority that the trial court's grant of directed verdict on the retained control issue disposed of the question whether plaintiff was entitled to a jury instruction on the common work area rule. Rather, I conclude that plaintiff failed to meet the requirements set forth in *Hughes*, *supra* at 5-6.

I conclude that any error in the court's failure to give a clarifying instruction regarding the interrelationship between the inherently dangerous doctrine and the proximate cause instructions was harmless under the circumstance that the jury did not reach the causation question.

Lastly, I agree that the court did not err in awarding sanctions.

/s/ Helene N. White