

STATE OF MICHIGAN
COURT OF APPEALS

TAMMY VERLAQUE,

Plaintiff-Appellant,

and

MICHAEL G. VERLAQUE,

Plaintiff,

v

H. MEER DENTAL SUPPLY COMPANY, and
LARRY RESCOE,

Defendants-Appellees,

and

BARBARA WOLF,

Defendant.

UNPUBLISHED
February 12, 2002

No. 227421
Alpena Circuit Court
LC No. 96-001852-NO

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Plaintiff Tammy Verlaque (“plaintiff”) appeals as of right orders separately granting summary disposition to defendants H. Meer Dental Supply Company and Larry Rescoe.¹ We affirm.

Defendant Rescoe is a dental supplies and equipment sales representative for defendant Meer. Rescoe was at the office of Dr. James Wolf when Wolf asked Rescoe to look at a malfunctioning air compressor that was located in a crawl space located under a “trap door” in

¹ Appellees’ suggestion that this Court does not have jurisdiction with regard to the order granting summary disposition in favor of Meer is without merit. A party claiming an appeal from a final order is free to raise on appeal issues related to other orders in the case. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992).

the office's sterilization room. Rescoe informed Wolf that he was not a service technician, but at Wolf's urging he agreed to look at the compressor. A staff member of Dr. Wolf removed the trap door located in the floor to enable Rescoe to access the crawl space. The room containing the trap door has two points of entry, one from an interior hallway and another leading to the outside of the building. Before entering the crawlspace, Rescoe closed the interior door and locked the outside door. Plaintiff, a dental hygienist in Dr. Wolfe's employ, opened the interior door, entered the sterilization room and fell through the open trap door, sustaining injuries.

Plaintiff brought suit alleging that Rescoe was negligent for failure to warn and protect her regarding the open trap door and alleging vicarious liability against Meer as Rescoe's employer. On May 15, 1997, the court granted summary disposition to Meer on the ground that Rescoe was an independent contractor, rather than an employee of Meer, and therefore Meer could not be vicariously liable. On May 2, 2000, the court granted summary disposition to Rescoe on the ground that Rescoe was a business invitee who owed no duty to plaintiff.

Plaintiff contends that the trial court erred by granting summary disposition in favor of defendant Rescoe on the ground that Rescoe owed no duty to plaintiff. We disagree.

An essential element of a negligence claim is the existence of a duty owed by the defendant to the plaintiff. *Smith v Kowalski*, 223 Mich App 610, 613; 567 NW2d 463 (1997). Whether a duty exists is a question of law for the court, *Maiden v Rozwood*, 461 Mich 109, 131; 597 NW2d 817 (1999); *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000), subject to review de novo. *Meek v Dep't of Transportation*, 240 Mich App 105, 115; 610 NW2d 250 (2000).

Plaintiff's amended complaint included a claim of "negligence" with respect to Rescoe. A review of the complaint reveals that the negligence claim against Rescoe was based on the condition of the premises (the open trap door), the failure to warn of the condition, and the failure to protect from the condition. The trial court properly concluded that the claim is simply a premises liability claim regardless of the label attached to it by plaintiff. Plaintiff offered no evidence to show that Rescoe was in possession or control of the premises at the time of the fall. *Orel v UniRak Sales Co*, 454 Mich 564, 568; 563 NW2d 241 (1997). Hence, Rescoe had no duty to protect plaintiff from, or warn her of, a condition on the premises. The trial court properly granted summary disposition in favor of Rescoe. Because plaintiff's allegations against defendant Meer are based on vicarious liability, the trial court also properly granted summary disposition in favor of Meer.²

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Harold Hood

/s/ David H. Sawyer

² In light of this conclusion, we need not address plaintiff's issues with respect to whether Rescoe was an employee or independent contractor of Meer.