STATE OF MICHIGAN

COURT OF APPEALS

ROBERT F. DESHAMBO,

Plaintiff,

ATTORNEY GENERAL, DEPARTMENT OF COMMUNITY HEALTH, and STATE OF MICHIGAN,

Intervening Plaintiffs-Appellants,

v

CHARLES W. ANDERSON,

Defendant,

and

NORMAN R. NIELSEN and PAULINE NIELSEN,

Defendants-Appellees.

UNPUBLISHED
October 22, 2002

No. 233853
Leelanau Circuit Court
LC No. 00-005127-NO

ROBERT F. DESHAMBO,

Plaintiff-Appellant,

and

ATTORNEY GENERAL, DEPARTMENT OF COMMUNITY HEALTH, and STATE OF MICHIGAN,

Intervenors,

v

No. 233854
Leelanau Circuit Court
LC No. 00-005127-NO

CHARLES W. ANDERSON,

Defendant,

and

NORMAN R. NIELSEN and PAULINE NIELSEN,

Defendants-Appellees.

Before: Fitzgerald, P.J., and Holbrook, Jr., and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendants' motion for summary disposition. Plaintiff's and intervening plaintiffs' separate appeals were consolidated in this Court. We reverse.

This case arose when plaintiff DeShambo was injured while engaged in a logging operation on defendants Nielsens' property in the employ of defendant Charles W. Anderson.[1] Plaintiffs argue that the trial court erred in granting defendants' motion for summary disposition under MCR 2.116(C)(10) because a genuine issue of material fact existed with respect to whether defendants could have reasonably anticipated the inherent risks involved in removing the timber at the time the agreement was made. We review the trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10) de novo. *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999).

As a general rule, an employer of an independent contractor is not liable for the contractor's negligence or the negligence of his employees. *Candelaria v BC General Contractors, Inc*, 236 Mich App 67, 72; 600 NW2d 348 (1999). However, there is an exception to the general rule of non-liability where the contracted work is considered to be inherently dangerous. *Bosak v Hutchinson*, 422 Mich 712, 724; 375 NW2d 333 (1985). For the inherently dangerous activity doctrine to apply, "the risk involved must be recognizable in advance, at the time of the contract, and must be inherent in the work itself or normally expected in the ordinary course of doing the work." *Burger v Midland Cogeneration Venture*, 202 Mich App 310; 507 NW2d 827 (1993) A risk is recognizable if it is reasonably anticipated. *Bosak*, *supra* at 728.

[1] Plaintiffs' claim against Anderson was voluntarily dismissed. Because Anderson is not a party to this appeal, for ease of reference, the term "defendants" will refer to the Nielsens only. "Plaintiffs" refers to plaintiff DeShambo and the intervening plaintiffs.

The trial court held that defendants could not have reasonably anticipated the risks inherent in logging, on the basis of *Justus v Swope*, 184 Mich App 91; 457 NW2d 103 (1990). In *Justus*, we declined to apply the inherently dangerous activity doctrine to impose liability on a homeowner who had hired a tree removal service to cut down a single tree near a building because a "mere homeowner" could not have anticipated the risks involved in this procedure. *Id*. at 96-98.

However, the instant case is distinguishable. Defendants had previously hired logging companies to conduct for-profit tree removals on twenty-acre parcels of land, and defendant Norman Nielsen, who entered into the logging contract, agreed that logging was risky. Viewing these facts in a light most favorable to plaintiffs, a material question of fact existed with respect to defendants' knowledge of the risks of logging at the time the agreement was made. Therefore summary disposition was improperly granted. *Maiden*, *supra* at 120.

Because plaintiffs' remaining arguments may be relevant on remand, we note that because plaintiffs presented evidence respecting the hazardous elements of logging, the determination whether logging is inherently dangerous is a question for the jury. *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 634; 601 NW2d 160 (1999); *Burger*, *supra* at 316. We further note that although cases have discussed whether an inherently dangerous activity must be "unusual" to support the imposition of liability, in none of those cases was that factor dispositive. See *Szymanski v K Mart Corp*, 196 Mich App 427, 432; 493 NW2d 460 (1992); *Rasmussen v Louisville Ladder*, 211 Mich App 541, 549; 536 NW2d 221 (1995) (risk of injury arose from the failure to use well-recognized safety measures).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh