

STATE OF MICHIGAN
COURT OF APPEALS

ROLLAND VACHON and MARSHA VACHON,

Plaintiffs-Appellees,

v

GEROTEC, INC. and LEN KOZLOWSKI,

Defendants-Appellees.

UNPUBLISHED
December 9, 2004

No. 249524
Wayne Circuit Court
LC No. 01-139798-NZ

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

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

Rolland Vachon (hereinafter Vachon) worked for Gerotec as a project manager. He had a contentious relationship with Len Kozlowski, his immediate supervisor. Vachon was involved in a single-car accident in which he sustained a closed head injury. Prior to returning to work Vachon provided Gerotec's management with a brochure that listed symptoms commonly suffered by brain injury victims. Subsequently, Vachon and Kozlowski were working at a customer's facility when Kozlowski became angry over a shipment of incorrect parts and threw the steel parts in Vachon's direction.

Plaintiffs filed suit alleging intentional infliction of emotional distress, violation of the Americans With Disabilities Act, 42 USC 12101 *et seq.*,¹ and loss of consortium. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiffs' claims were barred by the exclusive remedy provision of the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, because no conduct alleged to have been committed by Kozlowski constituted an intentional tort. The trial court granted the motion, and also concluded that Kozlowski's actions did not constitute intentional infliction of emotional distress.²

¹ This claim was dismissed pursuant to stipulation.

² Plaintiffs do not challenge this conclusion on appeal.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The exclusive remedy provision of the WDCA does not apply to claims arising from intentional torts. An intentional tort exists only when an employee is injured by a deliberate act of the employer, and the employer specifically intended that the injury occur. An employer is deemed to have specifically intended that an injury occur if the employer "had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge." To avoid the application of MCL 418.131(1), there must be a deliberate act by the employer and a specific intent that there be an injury. Specific intent existed if the employer had a purpose to bring about certain consequences. *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 169, 171; 551 NW2d 132 (1996). In addition, specific intent is established if an employer had actual knowledge that an injury was certain to occur, and willfully disregarded that knowledge. An injury was certain to occur if there was no doubt that it would occur. An employer willfully disregards its knowledge of the danger when it disregards actual knowledge that an injury is certain to occur. *Id.* at 174, 179. Constructive, implied, or imputed knowledge is insufficient. *McNees v Cedar Springs Stamping Co (After Remand)*, 219 Mich App 217, 224; 555 NW2d 481 (1996). An employer's knowledge of general risks is insufficient. *Agee v Ford Motor Co*, 208 Mich App 363, 366-367; 528 NW2d 768 (1995). Whether the facts alleged by the plaintiff are sufficient to constitute an intentional tort is a question of law for the court. Whether the facts are as the plaintiff alleges is a question for the jury. *Gray v Morley*, 460 Mich 738, 742-743; 596 NW2d 922 (1999).

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Kozlowski engaged in verbally abusive behavior toward Vachon, and threw steel parts in his direction on one occasion. However, no evidence showed that Kozlowski specifically intended to bring about psychiatric injury to Vachon by his actions, or that he had actual knowledge that his actions would result in psychiatric injury to Vachon and willfully disregarded that knowledge. *Travis, supra* at 174, 179. Plaintiffs' discussion of transferred intent in the criminal context is inapposite given that MCL 418.131(1) specifies the intent necessary to establish the existence of an intentional tort. Moreover, while Vachon provided management personnel with a brochure describing the possible symptoms the victim of a brain injury could display, defendants' possible knowledge of any risks associated with Vachon working in a stressful environment was insufficient to constitute actual knowledge that an injury was certain to occur. *Agee, supra*. The trial court correctly concluded that the facts alleged by plaintiffs did not constitute an intentional tort. *Gray, supra*. Summary disposition was correct.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens