STATE OF MICHIGAN

COURT OF APPEALS

ROBERT BURTON, Plaintiff-Appellant,	UNPUBLISHED December 6, 2005
v	No. 263463 Kent Circuit Court
DAN DURAN, Defendant-Appellee.	LC No. 03-006923-NZ

Before: Bandstra, P.J., and Neff and Markey, JJ.

PER CURIAM.

In this negligence action, plaintiff appeals as of right an order of the trial court granting summary disposition in favor of defendant and dismissing plaintiff's claim. We affirm.

I

In April 2002, defendant hired plaintiff to perform repair of a leaky nine-foot-by-twelve-foot roof on a rental home owned by defendant. At the end of the second day of work, plaintiff was attempting to cover the partially repaired roof with a tarp when the roof board gave way and plaintiff fell approximately twenty feet to the ground. Plaintiff alleged that the roof gave way when he stepped from the ladder onto a rotted piece of scrap wood that defendant insisted plaintiff use to patch the roof. Plaintiff suffered severe injuries, was hospitalized, and underwent surgery. Plaintiff spent approximately nine-months at a center recuperating after his surgery, during which time his mobility was restricted. He alleged that he thereafter was unable to fully resume his work as a drywaller because of the residual effects of his injuries from the fall.

II

This Court reviews de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is properly granted when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The court considers the pleadings, affidavits, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. *Id*.

III

On appeal, plaintiff argues that the trial court erred in dismissing his claims against defendant as an employer.[1] We disagree.

Plaintiff has failed to set forth any basis for reversal of the grant of summary disposition on the ground that defendant violated his duties as an employer. Plaintiff asserts that defendant owed plaintiff a duty to provide a safe environment in which to work. In general, "[a]n employer must provide and maintain a reasonably safe place to work and reasonably safe tools and appliances." 15 Michigan Law & Practice, Employment (2d ed), § 71, p 484; see also *Judis v Borg-Warner Corp*, 339 Mich 313, 323; 63 NW2d 647 (1954). As defendant points out, however, plaintiff's argument presupposes an employer-employee relationship. Defendant argues that plaintiff does not qualify as an "employee" and that plaintiff was instead an independent contractor.

We agree that plaintiff has failed to show that he was an "employee" of defendant as a threshold matter. Plaintiff merely asserts that "[t]here can be no doubt that an employer-employee relationship was created when [defendant] hired [plaintiff] to work directly for him." However, plaintiff's status as an employee is not evident from the record. An appellant may not give issues cursory treatment with little or no citation of supporting authority and leave it to this Court to search for authority to sustain or reject his position. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).[2]

IV

The reasoning above likewise applies to plaintiff's premises liability claim. Plaintiff has not clearly set forth a legal basis for attributing liability for his injury to defendant under the facts of this case. Plaintiff's argument concerning his premises liability theory conflates distinct theories of liability. Absent a clearer basis of the alleged liability, we cannot conclude that summary disposition was improvidently granted.

> In general, a premises possessor must exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v. Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). However, this duty does not generally require the removal of open and obvious

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[1] Plaintiff has waived the filing of the lower court transcript, and, therefore, absent any record of the hearing below or the trial court's basis for its decision, we address plaintiff's argument on appeal only to the extent the record permits.

[2] Moreover, the duty to provide a safe place to work is limited in application. "An employer is not negligent for failing to furnish a safe place against apparent and obvious dangers . . ." and the duty "does not apply to work that is inherently dangerous in its nature . . . ." 15 Michigan Law & Practice, Employment (2d ed), § 72, p 489.

> dangers. In *Lugo*[*v Ameritech Corp, Inc*, 464 Mich 512,] 516-517[; 629 NW2d 384 (2001)], we rearticulated the open and obvious doctrine:
>
> > "[W]here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee." [*Ghaffari v Turner Const Co*, 473 Mich 16, 21-22; 699 NW2d 687 (2005).]

Plaintiff correctly notes that, in *Ghaffari*, the Supreme Court found the open and obvious doctrine inapplicable in the general contractor liability context. However, contrary to plaintiff's argument, the decision in *Ghaffari* is not an appropriate basis for disregarding the open and obvious doctrine in a premises liability claim such as this.

Unlike this case, *Ghaffari* involved liability of a general contractor for injury to the employee of a subcontractor in a common work area. *Id*. at 18-20. The Court held that the open and obvious doctrine and the common work area doctrine were incompatible because the former imposes no duty if hazards are open and obvious,[3] while the latter imposes an affirmative duty "'to guard against readily observable and avoidable dangers . . . .,'" i.e., hazards that are open and obvious. *Id*. at 22-23, quoting *Ormsby v Capital Welding, Inc*, 471 Mich 45, 54; 684 NW2d 320 (2004). Different duties are owed under the two doctrines and the legal analysis employed in the general contractor context is distinct from that of a premises owner. *Ghaffari, supra* at 24-26.

> As our analysis today attempts to make clear, the two doctrines at issue are independent of and distinct from one another. The open and obvious doctrine serves as an "integral part of the definition" of the duty a premises possessor owes invitees, *Lugo, supra* at 516, while the common work area doctrine "is an exception to the general rule of nonliability for the negligent acts of independent subcontractors and their employees," under which "an injured employee of an independent subcontractor [may] sue the general contractor...." *Ormsby, supra* at 49. The two doctrines involve completely distinct sets of plaintiffs and defendants, and therefore, as noted in *Perkoviq*[*v Delcor Homes—Lake Shore Pointe, Ltd*, 466 Mich 11; 643 NW2d 212 (2002)], different sets of duties. [*Ghaffari, supra* at 29.]

Plaintiff has failed to clearly distinguish these doctrines and contexts in his argument and has not articulated the specific theories and doctrines under which defendant is allegedly liable. An appellant may not simply "'announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Yee, supra* at 406, quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

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[3] Absent "special aspects." *Ghaffari, supra* at 23 n 2.

In any event, viewing defendant's liability as merely a premises owner, we find no basis for reversal. The nature of the duties owed by virtue of the ownership of property is not altered by the fact that a defendant may have additional duties in its role as a general contractor or employer. *Perkoviq supra* at 19. As the premises owner, defendant had no reason to foresee that the condition of the premises would be unreasonably dangerous. *Id*. Plaintiff was aware that scab or scrap wood was used to patch the roof, and he complained to defendant about it. The roof lacked any other special aspects that made it unreasonably dangerous such that defendant could not expect that plaintiff would take special precautions to guard against the obvious danger of the allegedly substandard wood. *Id*. Accordingly, we find no basis for reversal of the grant of summary disposition with respect to plaintiff's premises liability theory.

Affirmed.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Jane E. Markey