

STATE OF MICHIGAN
COURT OF APPEALS

JOSE GARZA,

Plaintiff-Appellant,

v

DAN'S EXCAVATING, INC.,

Defendant-Appellee.

UNPUBLISHED

October 30, 2007

No. 274800

Wayne Circuit Court

LC No. 04-431721-NO

Before: Zahra, P.J., and White and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant and dismissing the case. Because this Court has already decided this case on its merits, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured while driving a cement truck on a construction site for defendant's subcontractor and filed suit alleging that defendant was negligent in the maintenance of the construction roadway. Defendant unsuccessfully moved for summary disposition and for reconsideration, and then applied to this Court for leave to appeal.

This Court peremptorily reversed on the grounds that "Plaintiff failed to present evidence that active negligence on defendant's part caused his injury, and also failed to present evidence to satisfy the elements of a claim under the common work area doctrine" *Garza v Dan's Excavating, Inc.*, unpublished order of the Court of Appeals, entered August 25, 2006 (Docket No. 269615). The trial court entered an order granting summary disposition and dismissing the case, citing this Court's August 25, 2006, order.

Plaintiff then filed a claim of appeal. Defendant moved to dismiss on the ground that this Court had already decided the case on its merits. This Court denied the motion. *Garza v Dan's Excavating, Inc.*, unpublished order of the Court of Appeals, entered January 24, 2007 (Docket No. 274800).

Plaintiff now asks "[w]hether the lower court was properly ordered" to reverse its denial of defendant's motion for summary disposition on each of the grounds cited in this Court's August 25, 2006, order. But plaintiff proposes no procedural basis upon which this Court may now deviate from its earlier decision. Because this Court, in its peremptory order, decided the

dispositive issues in this case, that order now stands as the law of the case and governs this appeal. *Webb v Smith*, 224 Mich App 203, 209; 568 NW2d 378 (1997). If plaintiff wanted us to reconsider the order, he should have timely filed an appropriate motion rather than raising his issues anew before a different panel of this Court.

For these reasons, we affirm the trial court's order in conformance with this Court's August 25, 2006, order, and we decline to examine plaintiff's issues further.

Affirmed.

/s/ Brian K. Zahra

/s/ Helene N. White

/s/ Peter D. O'Connell