STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH SMITH,

Plaintiff-Appellant,

v

GORDON BROOKS and PATRICIA BROOKS,

Defendants-Appellees.

UNPUBLISHED
February 10, 2009

No. 282885
Oakland Circuit Court
LC No. 2006-079189-NO

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

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition for defendants in this personal injury action. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, who had a history of performing odd jobs for defendants and others, went to defendants' farm to bow hunt. After hunting, defendant Gordon Brooks (defendant) asked plaintiff to remove a metal kick plate installed underneath a doorsill in his barn.[1] The plate, which spanned the length of the doorway, was approximately six inches wide, and was wrapped under the doorsill. Defendant gave plaintiff a pair of tin snips and asked him to cut the metal flush with the threshold where it went under the sill. Plaintiff, who maintained that he had never cut tin, told defendant that he was "not a very good straight cut." However, defendant told him

[1] There exists some discrepancy as to whether plaintiff was a volunteer, an employee, or an independent contractor at the time of his injury. Plaintiff testified that he was laid off from his regular job in 2001, and returned to regular employment in 2005. In between these periods of employment, he periodically helped Gordon Brooks perform "odd jobs" around the house and farm. Plaintiff maintained that in return, "If I needed any help financially on my bills he would help me." In addition, plaintiff was given permission to hunt on defendants' property. He maintained, however, that, this arrangement was not a formal one. He also claimed that at the time of the accident, he was initially present on defendants' property only to hunt, and that defendant subsequently asked plaintiff to do him a favor. Defendant testified that he did not pay plaintiff to work on this project. For the purposes of this appeal, we accept plaintiff's description of the relationship he had with defendants.

that he planned to put another piece of metal over the area. Defendant then went into his house. Plaintiff cut the bottom portion of the strip, and began to cut the remainder of the metal. As he reached the end of the cut, the metal curled up and struck plaintiff in the eye, causing serious injury.

Plaintiff brought the instant suit. Defendants filed a motion for summary disposition asserting that plaintiff had failed to make a prima facie case of premises liability. Plaintiff responded that the action was based on general negligence, not premises liability. Defendants then argued that plaintiff's claim is deficient because under the undisputed facts presented in this matter, defendants were not under a duty to protect against the injury sustained by plaintiff. The trial court granted summary disposition in favor of defendants.

We review a trial court's decision on a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and documentary evidence presented, viewed in the light most favorable to the non-moving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 N.W.2d 314 (1996).

In *Lelito v Monroe*, 273 Mich App 416; 729 NW2d 564 (2006), this Court presented the following analysis concerning a claim for a claim of general negligence:

> To establish a prima facie case of negligence, a plaintiff must show (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached the duty, (3) that the defendant's breach of the duty caused the plaintiff injuries, and (4) that the plaintiff suffered damages. *Teufel v Watkins*, 267 Mich App 425, 427; 705 NW2d 164 (2005). "Duty" is defined as the legal obligation to conform to a specific standard of conduct in order to protect others from unreasonable risks of injury. *Burnett v Bruner*, 247 Mich App 365, 368; 636 NW2d 773 (2001). "In deciding whether a duty should be imposed, the court must look at several factors, including the relationship of the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented." *Hakari v Ski Brule Inc*, 230 Mich App 352, 359; 584 NW2d 345 (1998). There can be no actionable negligence if no duty exists. *Id*. The threshold issue of whether a duty exists is determined by the court as a matter of law. *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). [*Lelito, supra* at 418-419.]

As a general matter, each person is obligated to exercise reasonable care for one's own safety. The duty to aid or protect a third party may be found only if the injured party can establish the existence of a special relationship with the defendant. The notion of a special relationship was discussed in *Dykema v Gus Macker Enterprises*, 196 Mich App 6, 9; 492 NW2d 472 (1992):

> In a special relationship, one person entrusts himself to the control and protection of another, with a consequent loss of control to protect himself. The duty to protect is imposed upon the person in control because he is in the best position to provide a place of safety. Thus, the determination whether a duty-imposing special relationship exists in a particular case involves the determination whether

> the plaintiff entrusted himself to the control and protection of the defendant, with a consequent loss of control to protect himself.

Applying the above-cited principle to the present case, we conclude that the undisputed evidence fails to establish that plaintiff entrusted himself to the control and protection of defendant, thereby losing control of his ability to protect himself. While defendant provided plaintiff the tin snips, the record does not establish that defendant informed plaintiff he was required to use them. Likewise, the record does not reveal that defendant dictated the manner by which plaintiff was to remove the kick plate or use the tin snipes. Significantly, plaintiff observed the tin coiling after effectuating the first cut in the plate. Plaintiff independently and without direction from defendant elected to hold the metal plate down with his left hand while using the tin snipes with his right hand. Not surprisingly, when plaintiff reached the point where his second cut met his initial cut, the metal recoiled, resulting in injury to plaintiff. The record establishes that plaintiff could have elected to remove the kick plate in any manner he saw fit, or to simply not remove it at all. We therefore conclude defendant was not under a legal duty to protect plaintiff from the injury he ultimately sustained while removing the metal plate.

Plaintiff's reliance on *Laier v Kitchen*, 266 Mich App 482, 493-494; 702 NW2d 199 (2005), is misplaced. In *Laier*, the defendant asked the plaintiff to assist in the repair of a piece of farm equipment. The plaintiff alleged that in the course of attempting to affect the repair, the defendant negligently operated the equipment, thereby resulting in death to the plaintiff's decedent. In *Laier*, the plaintiff alleged active negligence against the defendant. By contrast, defendant in the present case was not in any way assisting in the project that defendant agreed to undertake. Moreover, the danger presented in *Laier* was significant -- it involved the repair and operation of heavy farm equipment. By contrast, the injury sustained by plaintiff arose from the misuse of a simple tool -- tin snipes. The tin snipes were not defective in any way. The injury sustained by plaintiff was the result of the manner in which plaintiff elected to use the tin snipes. Defendant was not responsible for the manner in which plaintiff used the tin snipes. Accordingly, defendant was not under a duty to guard against the injury sustained by plaintiff.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood