STATE OF MICHIGAN

COURT OF APPEALS

ZORAN SAVESKI,

Plaintiff-Appellant

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 6, 2009

No. 287308
Macomb Circuit Court
LC No. 2007-001546-NO

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff attempts to plead an intentional tort in order to avoid the exclusive remedy provision of the Worker's Disability Compensation Act. MCL 418.131(1). There is no dispute that plaintiff suffered an injury, or any question about how the injury occurred. The only question raised is whether defendant had actual knowledge that injury was certain to occur.

Plaintiff worked as a toolmaker, but was ordered to help in the maintenance and repair of a "Lamb" machine. The plant was idled at the time, but skilled trades workers remained on the job to catch up on repair work. Plaintiff's immediate supervisor, Rainer Schwager, asked plaintiff and plaintiff's partner to help machine workers repair the Lamb. Plaintiff and his partner were unsure about the job because they had never been trained on a Lamb and did not know how it operated or was put together. Plaintiff was required to be in the middle of the machine, take a bar weighing around 100 pounds from his partner and a machine worker, and guide it where another machine worker would fasten it. As plaintiff turned to guide the bar to the other worker, the bar slipped and plaintiff took its full weight; he felt pain and knew something was wrong. Plaintiff was diagnosed with a ruptured disc.

Defendant moved for summary disposition, arguing that plaintiff and his partner were simply asked to help move and lift the bar; no special training was required. This type of maintenance of the Lamb had been done hundreds of times in the past and no one had ever been injured doing it. Defendant cited Schwager's deposition testimony that he and plaintiff had been friends and that he neither intended nor anticipated plaintiff would be injured by helping with the Lamb maintenance. Defendant noted that even in cases where the employer has knowledge that

injury has occurred in the past, Michigan courts decline to find that is enough to rise to the level of an intentional tort. *Travis v Dreis & Krump Mfg, Inc*, 453 Mich 149; 551 NW2d 132 (1996); *Palazzola v Karmazin Products Corp*, 223 Mich App 141; 565 NW2d 868 (1997).

Plaintiff's response centered on his own deposition statement: "I feel they intended to hurt me. After I specifically told them I didn't feel safe, they intended it." He argued that there was ample evidence that defendant knew it was unsafe for a toolmaker to do this work and, because a jury could believe this, and disbelieve Schwager's statement that he did not intend injury, a question of fact existed. The trial court agreed with defendant, and granted summary disposition.

The exclusive remedy provision does not apply to claims arising from intentional torts:

> An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law. [MCL 418.131(1).]

To avoid the exclusive remedy provision through the intentional tort exception, there must have been a deliberate act by the employer and a specific intent that there be an injury. A deliberate act may be one of commission or one of omission, and a specific intent existed if an employer had a purpose to bring about certain consequences. *Herman v Detroit*, 261 Mich App 141, 148; 680 NW2d 71 (2004). Specific intent is also established if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. MCL 418.131(1); *Herman, supra*. A plaintiff must allege a specific danger known to the employer that was certain to result in an injury and must allege that the employer required the plaintiff to work in the face of that danger. *Herman, supra*. An injury was certain to occur if there was no doubt that it would occur, and an employer willfully disregarded its knowledge of the danger when it disregarded actual knowledge that an injury was certain to occur. *Bock v General Motors Corp*, 247 Mich App 705, 711; 637 NW2d 825 (2001). Actual knowledge by a corporation of the certainty of an injury requires actual knowledge by a supervisory or managerial employee; constructive, implied, or imputed knowledge is insufficient. *Bock, supra*; *Herman, supra* at 149. An employer's knowledge of general risks is insufficient to establish an intentional tort. *Id*. Whether the facts alleged by plaintiff are sufficient to constitute an intentional tort is a question of law for the court, and whether the facts are as plaintiff alleges is a question for the jury. *Herman, supra* at 147.

Plaintiff has failed to establish sufficient proof that the intentional tort exception to the Workers Disability Compensation Act is applicable to this case. As noted above, the evidentiary threshold in such cases is extremely high, and in this case the record is devoid of evidence that the employer acted in a manner consistent with any of the provisions listed in MCL 418.131(1). Further, the citations on which plaintiff bases his appeal are not applicable to the facts set forth in this case. Other than the mere assertions of plaintiff there was no evidence presented to the trial court that the employer committed a deliberate act or that the employer specifically intended the injury to occur. We note that plaintiff is not without recourse for injuries he sustained while

working for defendant, however his recourse is limited to the provisions set forth in the Workers' Disability Compensation Act. Accordingly, the trial court correctly applied the rules of law to the factual record presented in this case and we affirm its findings and its decision.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Stephen L. Borrello