

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JACKYE HUSMANN; and)
GARY HUSMANN,)

Plaintiffs,)

v.)

CIV-14-1436-R

SUNDANCE ENERGY, INC.,)
SUNDANCE ENERGY OKLAHOMA,)
LLC, d/b/a SEO, LLC; and TERRA)
OILFIELD SERVICES, LLC.,)

Defendants.)

ORDER

This matter comes before the Court on the Motions for Summary Judgment filed by Defendants Sundance Energy, Inc, and Sundance Energy Oklahoma, LLC, d/b/a SEO, LLC (hereinafter "Sundance"). Doc Nos. 51 & 52. Plaintiff responded in opposition to the motion. Having considered the parties' submissions, the Court finds as follows.

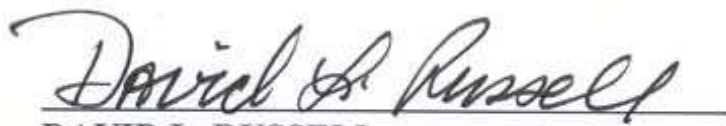
Defendant Sundance, which hired Terra Oilfield Services, LLC to run the water from Cottonwood Creek to the Sundance's well sites for purposes of fracking, seeks summary judgment on the grounds that even if Terra was negligent, Terra was an independent contractor and thus Sundance is not liable for its negligence. Plaintiff responds to the motion and does not directly deny that Terra was an independent contractor, although certain of their factual disputes appear designed to raise this issue. *See e.g.* Doc. 58 at p. 2, ¶ 7 ("By dictating point A and point B, Sundance had partial control over the route the hose had to be installed on in this case."). Rather, Plaintiff contends Defendant Sundance falls into the exception to

independent contractor non-liability that provides for liability where the defendant "owes a non-delegable contractual or defined legal duty to the injured party." *Bouziden v. Alfalfa Elec. Co-op., Inc.*, 16 P.3d 450, 455 (Okla. 2000). Plaintiff correctly notes that "in such cases, an employer may be held liable for the negligence of an independent contractor although the employer has exercised reasonable care in all endeavors." Doc. No. 58 at p. 5 (*quoting Bouziden*, 16 P.3d at 455).

The Court has, this same date, entered a separate Order granting summary judgment to Defendant Terra, finding that it owed no duty to Plaintiff in light of the open and obvious status. Having concluded that Defendant Terra owed no duty to Plaintiff, Plaintiff cannot establish that Defendant Sundance is liable for Terra's negligence. Accordingly, Defendant Sundance is entitled to summary judgment in its favor. Furthermore, to the extent Plaintiff argues that Sundance breached a duty owed to Plaintiff, Sundance is entitled to summary judgment on the same grounds as the Court concluded Terra was entitled.

The motion for summary judgment filed by Defendants Sundance Energy, Inc, and Sundance Energy Oklahoma, LLC, d/b/a SEO, LLC, is hereby GRANTED.

IT IS SO ORDERED this 16th day of December, 2015.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE