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

JACOB MCGEHEE and STEVEN RAY HEATH, Plaintiffs, v. SOUTHWEST ELECTRONIC ENERGY CORPORATION, FOREST OIL CORPORATION, and LANTERN DRILLING COMPANY, Defendants, and SOUTHWEST ELECTRONIC ENERGY CORPORATION, Third Party Plaintiff, v. ENGINEERED POWER LP, TELEDRIFT, INC., Third Party Defendants.	)	Case No. CIV-15-145-C

MEMORANDUM OPINION AND ORDER

Before the Court is a Motion for Summary Judgment by Defendants Forest Oil Corporation & Lantern Drilling Company (collectively, the "moving Defendants" or "Forest and Lantern") (Dkt. No. 96). Plaintiffs have responded and the Motion is now at issue.

I. Background

Plaintiffs McGehee and Heath were injured while working at Teledrift, Inc. The incident occurred while Plaintiffs attempted to remove a Measurement While Drilling ("MWD") tool from an encasing drill collar and a battery inside the tool exploded. The MWD is a long cylinder that fits inside a slightly larger collar; once combined, the tool is called the Teledrift ProShot. Teledrift manufactures and leases out the ProShot for drilling operations.

Forest and Lantern leased the ProShot for drilling operations in May 2012 and when they returned the tool, the MWD was stuck or wedged inside the drill collar. This was a common way the tools were returned to Teledrift due to the snug fit and the tendency for dirt and other drilling debris to get wedged between the tool and collar during drilling operations. Plaintiffs commonly used a combination of tapping or pushing on the inner tool with a steel bar and spraying water inside the gap to separate the parts. Unfortunately, the technique was not successful on May 24, 2012, when the battery cell inside the tool exploded, causing harm to Plaintiffs.

In the investigation that followed, bolts were discovered lodged inside the ProShot that were not part of the tool. It is disputed whether the bolts damaged the battery cell, causing the explosion. This led Plaintiffs to assert negligence claims against the moving Defendants, arguing it was Defendants' duty to keep foreign debris from entering downhole operations. The moving Defendants argue for favorable summary judgment on the negligence claim and for a determination that punitive damages are not available as a

matter of law. Plaintiffs argue there are disputed material facts that preclude summary judgment and a determination on the punitive damages question is premature.

II. Standard

The standard for summary judgment is well established. Summary judgment may only be granted if the evidence of record shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the initial burden of demonstrating the absence of material fact requiring judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A fact is material if it is essential to the proper disposition of the claim. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the movant carries this initial burden, the nonmovant must then set forth specific facts outside the pleadings and admissible into evidence which would convince a rational trier of fact to find for the nonmovant. Fed. R. Civ. P. 56(c). All facts and reasonable inferences therefrom are construed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

III. Negligence

To establish the claim, Plaintiffs must prove the following: "1) a duty of care owed by defendant to plaintiff, 2) defendant's breach of that duty, and 3) injury to plaintiff caused by defendant's breach of that duty." Lowery v. Echostar Satellite Corp., 2007 OK 38, ¶ 12, 160 P.3d 959, 964 (citations omitted). Whether a duty existed is a threshold question of law. Rose v. Sapulpa Rural Water Co., 1981 OK 85, 631 P.2d 752, 756. "The most important consideration in determining the existence of a duty of care is foreseeability of

harm to the plaintiff. Generally, a defendant owes a duty of care to the plaintiff who is foreseeably endangered by defendant's conduct with respect to all risks that make the conduct unreasonably dangerous." Lowery, 2007 OK 38, ¶ 14, 160 P.3d at 964 (citation omitted). Another consideration is "the relationship between the parties and the general risks involved in the common undertaking." Wofford v. E. State Hosp., 1990 OK 77, 795 P.2d 516, 519 (citation omitted).

Defendants argue they owed no duty as a matter of law to Plaintiffs to prevent the MWD from becoming stuck. Defendants state that as Teledrift's customers, there is no duty of care for the customer to ensure the returned tool is safe for Teledrift's employees to disassemble. Only Teledrift had the ability to ensure its employees were safely removing the MWD that often became stuck. Plaintiffs argue foreseeability is more material to the duty inquiry than the relationship of the parties. Defendants owed a duty to safely operate the tool to all of those within the zone of risk of its operations; this included workers on the jobsite and the Teledrift employees who were expected to disassemble the tool after its use.

Plaintiffs compare this case to Delbrel v. Doenges Bros. Ford, Inc., 1996 OK 36, 913 P.2d 1318, where the Oklahoma Supreme Court found a duty of care extended to the general public when an automobile dealer repaired a car in a poor manner that later failed. The injury of a passenger pushing the inoperable car off the road was a foreseeable risk to the defendant dealer. Id. at 1996 OK 36, ¶¶ 7-13, 913 P.2d at 1321-22. However, the holding is not analogous to this case. In Delbrel the holding was specifically:

> [O]ne who is paid to repair a car owes a duty of care to both the owner of the car and to the general public to assure that the repair is properly performed or the owner is warned of its dangerous condition, where the dangerous condition is discoverable in the exercise of ordinary care.

Id. at 1996 OK 36, ¶ 11, 913 P.2d at 1322. Here, Defendants paid Teledrift to deliver a safe tool, not the reverse.

This case is more closely related to Beugler v. Burlington N. & Santa Fe Ry. Co., 490 F.3d 1224 (10th Cir. 2007) (applying Oklahoma negligence law). There, the plaintiff railroad conductor was injured while lifting crossing gates that were down due to the actions of another railroad company. Plaintiff had lifted many gates before but on the day in question, he turned to observe whether a truck could proceed under the gate and sustained injuries to his back and neck. Plaintiff brought suit against the non-employer railroad company for negligence. Id. at 1225-27. The Tenth Circuit concluded that although the undertaking of repairing crossing gates cast a wide zone of risk, the non-employer railroad did not owe plaintiff a duty to protect him from injury. Id. at 1228. Plaintiff stated he had lifted gates more than 100 times and the Court found plaintiff was well-trained in these duties. This training removed plaintiff, an employee performing his work duties, out of defendant's foreseeable zone of risk. The Court stated "[a]n individual who suffers an ordinary and unforeseeable work injury in [the] course of performing his professional duties to his employer cannot sue another person for creating the occasion for the performance of those duties, even if that person's action was negligent." Id. at 1228-29.

Clearly, Beugler is applicable to this case. Plaintiffs state they "had removed hundreds, if not thousands, of MWD tools from drill collars utilizing this same [steel bar and water spraying] method without event." (Pls.' Resp. to Defs.' Mot. Summ. J., Dkt. No. 102, pp. 7-8.) Here, it is undisputed that Plaintiffs were performing their normal work duties on behalf of Teledrift when they were injured. Negligence law simply does not extend the foreseeable zone of risk, and therefore a duty of care, to Plaintiffs in this case. The inquiry of whether Defendants were negligent in allowing bolts and other materials to enter the drill hole causing the MWD to be stuck is not relevant to the claim now before the Court. Defendants Forest and Lantern are granted judgment as a matter of law on the negligence claim.*

CONCLUSION

For the reasons stated herein, the Motion for Summary Judgment by Defendants Forest Oil Corporation & Lantern Drilling Company (Dkt. No. 96) is GRANTED. A separate judgment shall issue at the conclusion of this case.

IT IS SO ORDERED this 20th day of July, 2017.

ROBIN J. CAUTHRON
United States District Judge

* Because the negligence claim no longer remains, the arguments regarding punitive damages are moot and will not be addressed herein.